SUPPLEMENT FOR NOVEMBER 13, 2012 BOARD MEETING

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BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

NOVEMBER 13, 2012

Presentation, Discussion, and Possible Action to adopt the 2013 Multifamily Programs Procedures Manual.

RECOMMENDED ACTION

WHEREAS, the consolidation of multifamily program activities in the Multifamily Finance Division was approved by the Governing Board on April 12, 2012, to establish consistency and efficiency among all multifamily programs; and

WHEREAS, the Multifamily Finance Division has streamlined all multifamily program related rules into the Uniform Multifamily Rules and Housing Tax Credit Qualified Allocation Plan; and

WHEREAS, the Department has created the Multifamily Programs Procedures Manual as a resource guide for applicants; and

WHEREAS, pursuant to Chapter 2306, Texas Government Code the Board shall adopt a manual to provide information regarding the administration of and eligibility for the housing tax credit program;

NOW, therefore, it is hereby,

RESOLVED, the Manual is hereby approved and the publication of the Manual on the Department's website shall occur no later than the date the adoption of the Uniform Multifamily Rules and Housing Tax Credit Allocation Plan is filed for publication in the *Texas Register;* and

FURTHER RESOLVED, the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing and to further amend from time to time as it deems necessary to provide guidance on the filing of multifamily related documents.

BACKGROUND

As part of the annual rule-making process for multifamily-related funding, the Multifamily Finance Division creates a Multifamily Programs Procedures Manual. The purpose of the Manual is to provide guidance on the filing of a multifamily application and other multifamily program-related documents. Staff creates this Manual as a resource guide which shall contain, to some extent, a reiteration of the rules and include examples where applicable regarding the requirements of the program of which the applicant is applying. From time to time staff may update the Manual based on updated information that may become available or to correct inconsistencies or to clarify information contain therein. The Board's action in approving the adoption of this Manual allows staff the flexibility to provide more detailed instructions and amend it as it deems necessary in order to effectively implement the Department's multifamily program rules once such rules have been adopted. Staff notes that the Manual contains the main headings of various categories and/or tabs that will mirror the application and upon adoption of the rules and the finalization of the application staff will finalize this manual with instructions, guidance or re-iteration of the rules.

2013
Multifamily Programs Procedures Manual

221 East 11th Street
Austin, Texas 78701

Table of Contents

Introduction to the 2013 Multifamily Application

Programs

In March 2012, the Texas Department of Housing and Community Affairs' ("TDHCA" or "Department") Governing Board adopted resolution 12-019 which acknowledged the "re-organization" of the Department and its divisions. This re-organization shifted program staff and responsibilities to more closely align with the Department's mission.

Under the new structure, all multifamily funding programs were officially moved under the Multifamily Finance umbrella. The multifamily components of the HOME, Neighborhood Stabilization Program (NSP), and Housing Trust Fund (HTF) are now administered by Multifamily Finance Division staff. All Single-Family financing for the HOME, NSP, and HTF programs will be administered by their respective divisions, and will not be covered in this manual. The programs administered by the Multifamily Finance Division include;

- 9% Housing Tax Credits
- 4% Housing Tax Credits
- Tax Exempt Bonds
- Multifamily HOME
- Multifamily NSP
- Multifamily HTF

As a result of the Department's re-organization and the changes to the Uniform Multifamily Rules and Qualified Allocation Plan for the 2013 application cycle, staff deemed it necessary to update the Uniform Application in order to effectively administer the Multifamily Programs.

New in 2013

The 2013 Multifamily Uniform Application (the "Application") includes several updates and improvements that are meant to eliminate redundancy, simplify exhibits, and streamline the review process for staff. The 2013 Application has fully integrated each of the Multifamily Programs into one coherent application, realizing a goal set in motion over the past few application cycles. The Application contains fewer tabs than the 2012 Application, and includes more features intended to make the application process more user friendly.

Staff began by identifying similarities in the multifamily financing programs, and conceptualizing an application that focused on those similarities, while distinguishing the differences within those shared functions. The Application has been divided into six (6) parts listed below, each of which will be briefly explained in this section, and fully explained later in this Manual.

- Administrative
- Development Site
- Finance
- Development Activities
- Organization
- Third Party

The **Administrative** section of the Application collects the most basic information about the proposed Development and the Applicant contact information. The purpose of the administrative section is to identify the program(s) to which the Application is submitted and includes the Applicant and Developer Certifications. The selections made in these tabs will affect formulas throughout the application.

The **Development Site** section of the Application includes all of the information related to the physical location of the proposed Development site, such as the development address, census tract number, flood zone designation, as well as information about the schools and elected officials in the community.

The **Finance** section of the Application includes all of the sources of financing, the development cost schedule, annual operating expenses, and the rent schedule.

The **Development Activities** section of the Application includes all of the information about what activity is being proposed, from what is being built to the services provided to the tenants. This section includes the architectural drawings and information regarding existing structures on the development site.

The **Organization** section of the Application includes information about the Applicant, Developer, and Non-Profit entities involved with the Application, along with all of their owners, managers, and board members. It includes the organizational charts and evidence of experience as well as credit limit documentation.

The **Third Party** section briefly identifies the entities used for the Environmental Site Assessment, Market Study, and Property Condition Assessment, as well as any other required reports.

Of particular interest is the fact that the application, with respect to the competitive 9% housing tax credit program, is no longer separated into sections based on threshold, eligibility, and selection criteria. Instead, items that affect an Application's score are found throughout the application. For instance, scoring criteria that are site-specific, such as Underserved Areas, are located in the Development Site portion of the application, while other scoring criteria, such as the Commitment of Funding from a Unit of General Local Government, area found in the Finance section.

Using this Manual

The purpose of this manual is to provide a brief description of each tab in the application and guidance as to the Department's submission requirements and what is acceptable supporting documentation. While the Department expects that this guide may not contemplate all unforeseen

situations, we hope that the information will provide an adequate foundation upon which you may build your understanding of this program.

The Department always stands ready to assist you in understanding the tax credit program and other sources of multifamily financing offered by the Department and the means by which an application is to be presented. The Department will offer direct assistance to any individual that requires this service in the preparation of the multifamily application. However, the Department will not take the responsibility of completing the application package for you.

The Department looks forward to your continuing interest in the Multifamily Finance programs and in the creation of decent, safe, and sanitary affordable housing for the citizens of the State of Texas.

Instructions for Completing the Electronic Application

What you will learn in this section:

- ✓ How to download the Electronic Application Materials (including Pre-Application)
- ✓ How to convert the Excel Application to PDF
- ✓ How to set Bookmarks

If submitting an Application, Pre-Application, or the Department Determination, Disclosure & Waiver Application Supplement ("Supplement"), all Applicants are required to use the 2013 Uniform Application, Pre-Application, and/or the Supplement Excel files provided by TDHCA located at the following link: (http://www.tdhca.state.tx.us/multifamily/applications.htm).

1. To download any of the electronic Application files, right-click on the link at the website provided above, select "Save Target As" and choose the storage location on your computer. The Excel file should be named in the following format -- <Application #_Development Name>.xls (e.g. 13001_Austin_Crossing.xls). If an Application number has not been previously assigned then the file should be named as follows -- <Development Name>.xls (e.g. Austin_Crossing.xls).

2. Please do not transfer tabs from one Excel file to another, even if it is for the same Application. If you plan to submit more than one Application, please make additional copies of the 2013 Uniform Application file **after** completing portions of the Application that ***are common*** to all of your Applications and **before** completing any portions that are not common to all of your Applications.

3. Any cell that is highlighted yellow is available to be manipulated by the applicant. All other cells (unless specifically stated) are for Department use only, have been pre-formatted to automatically calculate information provided, and are locked. Applicants may view any formulas within the cells. Applicants may not add additional columns or rows to the spreadsheets, unless otherwise stated.

4. All questions are intended to elicit a response, so please do not leave out any requested information. If references are made by the Applicant to external spreadsheets those references must be removed prior to submission to TDHCA as this may hamper the proper functioning of internal evaluation tools and make pertinent information unavailable to TDHCA.

5. This electronic Application has been designed so that much of the calculations regarding development cost, eligible basis, and eligible point items will automatically compute once

enough information has been entered. If you see a "#VALUE" or "DIV/0" in a cell do not worry. These values will disappear upon data entry in other tabs.

Tip – Complete the Development Narrative and the Rent Schedule in the Administrative and Finance Parts of the Application first to take full advantage of the automated calculations.

6. Be sure to save the file as you fill it out!

If you have difficulty downloading the files from the website, contact Jason Burr at (512) 475-3986, or Jason.burr@tdhca.state.tx.us.

Instructions for Converting the Excel file to PDF

Once the Excel Application file is completed and you are ready to convert the file to PDF, follow these instructions.

Tip- Be sure to check all of the Page Breaks in the Excel files before you convert to PDF.

Excel 2007 Users:

Click the **Microsoft Office Button**  , point to the arrow next to **Save As**, and then click **PDF or XPS**.

1. In the **File Name** list, type or select a name for the workbook.

2. In the **Save as type** list, click **PDF**.

3. If you want to open the file immediately after saving it, select the **Open file after publishing** check box. This check box is available only if you have a PDF reader installed on your computer.

4. Next to **Optimize for**, do one of the following, depending on whether file size or print quality is more important to you:
   - If the workbook requires high print quality, click **Standard (publishing online and printing)**.
   - If the print quality is less important than file size, click **Minimum size (publishing online)**.

5. Click **Options**. Under **Publish What** select **Entire Workbook** and click **OK**.

6. Click **Publish**.

Excel 1997-2003 Users:

1. With the Excel file open go to the Adobe PDF drop-down box from the task bar (if using Excel 2007 click on "Acrobat" tab in the task bar)

2. Select "Convert to Adobe PDF" from the drop-down list (Excel 2007- select "Create PDF")

3. The Adobe PDFMaker box will appear. One the left hand side of the box all of the sheets within the Excel file will be listed and you will be prompted to select the sheets you would like to covert to PDF. Once the sheets you want to convert are selected click on the "Add

Sheets" button to move those sheets over to the right-handed side of the Adobe PDFMaker box, this will list the sheets selected to be converted to PDF.

4. Once all sheets you have selected appear on the right-hand side under "Sheets in PDF" click on the "Convert to PDF" button.

5. You will be prompted to create a name and save the PDF file. The PDF file should be named in the following format -- <Application #_Development Name>.pdf (e.g. 13001_Austin_Crossing.pdf). If an Application number has not been previously assigned then the file should be named as follows --<Development Name>.pdf (e.g. Austin_Crossing.pdf)

6. A pop-up box will appear that asks "Do you want to proceed without creating tags?" Click Yes.

Remember that there are forms that require a signature. Once you have executed all required documents scan them and re-insert the scanned forms back into the order required. The Application and Pre-Application submitted should be the electronic copy created from the Excel file, not a scanned copy of the Excel or PDF file. Scanned copies of the Application are difficult to read, and slow down the process for staff and applicants.

Creating Bookmarks

Once the file has been converted to PDF and all executed forms have been re-inserted into their appropriate location within the file, you will need to create Bookmarks. Bookmarks may or may not have already been created as part of the conversion process. You will need to designate or re-set the locations. To correctly set the Bookmark locations you must have the PDF file open in Adobe Acrobat. Click on the Bookmark icon located on the left-hand side of the Adobe Acrobat screen, or go to the task bar and select these options in the following order: **View → Navigation Panels → Bookmarks**.

If a Bookmark has already been created for each tab within the Excel file, simply re-set the bookmarks to the correct locations. To re-set the location for the Bookmarks, go to the first page of each separately labeled form/exhibit. You will then right-click on the corresponding Bookmark for the form/exhibit you are currently viewing. Select **Set Destination** and a pop-up box will appear asking you the following: "Are you sure you want to set the destination of the selected bookmark to the current location?" Select **Yes**.

If Bookmarks were not already created within the Excel file, then you will need to create these Bookmarks. Go to **Document → Add Bookmark.** Right-click on the first Bookmark and re-name it for the appropriate form or exhibit. You will then need to set the location of the Bookmark by going to the first page of each form or exhibit, right click on the corresponding Bookmark and select **Set Destination**. A pop-up box will appear asking you the following: "Are you sure you want to set the destination of the selected bookmark to the current location?" Select **Yes**.

Tabs within the Excel Application workbook have been color coded to distinguish between "Parts" of the Application consistent with this manual. Additionally, beside each bulleted item a label to use for purposes of bookmarking the final PDF Application file is included in parentheses.

If after conversion of the Excel file to PDF you have extra blank pages of any exhibit, you can delete those pages in order to limit the size of the file. To delete any extra, unnecessary pages identify the page number(s) you want deleted. On the Adobe Acrobat Task Bar click on Document and select Delete Pages from the drop down list. A box will appear prompting you to select which page(s) you would like to delete. Enter the page numbers to be deleted and hit OK.

The PDF formatted file must be checked for the following prior to submission:

- ✓ All tabs and/or volumes must be correctly bookmarked
- ✓ Files should average less than 100 kilobytes per page
- ✓ Files must be readable with free PDF file viewers including Adobe Reader and be compatible with Adobe Reader 5.0 and above
- ✓ Files should be saved so that "Fast Web View" (or page at a time downloading) is enabled
- ✓ Text within the PDF file should be searchable using the "Find" command in the PDF viewer

If you have any questions on using or experience difficulties with the Microsoft Excel based application, contact Jean Latsha via email at jean.latsha@tdhca.state.tx.us.

Department Determination, Disclosure & Waiver Application Supplement

What you will learn in this section:

- ✓ Overview and purpose of the Supplement
- ✓ Submission timeline for the Supplement
- ✓ Instruction for completing the Supplement

The re-structuring of the Uniform Multifamily Rules, Qualified Allocation Plan, and the court ordered Remedial Plan posed several administrative challenges for Department staff with regard to seamless implementation throughout the Multifamily Finance programs. Staff determined the timing of Application materials would have to be altered slightly in order to provide as much time as possible for Applicants to receive guidance from the Department. Staff recognizes the significant cost associated with preparing an Application for Multifamily financing, and staff further recognizes the value in mitigating as much risk as possible, by finalizing Application materials earlier.

Multifamily staff created the Department Determination, Disclosure & Waiver Application Supplement ("Supplement") in an effort to formalize the process by which applicants seek Pre-Clearance for Community Revitalization Plans and Undesirable Area Features, request staff or Board determinations regarding definitions or Undesirable Site Features, disclose possible issues of ineligibility, and request waivers. The Supplement consists of five (5) tabs identified below.

1. Application Supplement Overview
2. Pre-Clearance Request (Community Revitalization and Undesirable Area Features)
3. Requests for Department Determinations (related to definitions and Undesirable Site Features)
4. Disclosures (related to ineligible Applicants)
5. Waiver Requests

Although not all the tabs in the Waiver Supplement are directly related, staff determined they do share a need for staff consideration prior to submission of a Pre-Application and/or full Application.

Submission timeline for the Waiver Supplement

The Department Determination, Disclosure & Waiver Supplement may be submitted as early as December 17, 2012 for Competitive Housing Tax Credit Applications. If applicable, it must be submitted with the bond pre-application (if TDHCA is the Issuer) or with the Full Application for all other funding programs. Staff recommends the Supplement be submitted as early as possible for Competitive HTC applications in order to provide the Department as much time as possible to review its contents before making a decision regarding pre-clearance, waivers, or determinations.

Multifamily staff, in conjunction with the Executive Director, will review the Supplement submissions on a first come first served basis. Applicants are expected to continue to meet all other Application deadlines and submission requirements.

Instructions for Completing the Waiver Supplement

The following are instructions for completing the Supplement. Each bullet represents the name of each Tab.

- **Tab 1 – Application Supplement Overview**

- **Tab 2 – Pre-Clearance Request**
  - **Part 1 – Community Revitalization**
  - **Part 2 – Undesirable Area Features**

- **Tab 3 – Department Determinations**
  - **Part 1 – Undesirable Site Features**
  - **Part 2 – Definitions**

- **Tab 4 – Disclosures**

- **Tab 5 – Waiver Requests**

Pre-Application (for Competitive HTC only)

What you will learn in this section:

- ✓ Pre-Application delivery instructions
- ✓ Pre-Application assembly instructions
- ✓ Required Pre-Application exhibits

Pre-Application Delivery Instructions

Deliver To: (Overnights)	Multifamily Finance Division Texas Department of Housing and Community Affairs 221 East 11th Street Austin, Texas 78701
Regular Mail:	P.O. Box 13941 Austin, Texas 78711

Please note that the Applicant is solely responsible for proper delivery of the Application. Late deliveries will **not** be accepted.

Competitive Application Cycle

The Pre-Application must be received by TDHCA no later than 5:00 p.m. on Tuesday, January 8, 2013. On January 8, the Department will accept walk-in delivery, and tables will be set up in one of the Department's conference rooms from 8:00 a.m. to 5:00 p.m. Department resources may not be used to copy, format, or assemble the Pre-Application.

Mailed or courier packages must be received by TDHCA on or before 5:00 p.m. Tuesday, January 8, 2013. TDHCA shall not be responsible for any delivery failure on the part of the Applicant. If the Applicant chooses to use a postal or courier service to deliver the Pre-Application to TDHCA and such service fails to deliver the Pre-Application by the deadline, then the Pre-Application will be considered untimely and will not be accepted.

Pre-Application Assembly Instructions

For each Pre-Application the Applicant must ensure execution of all necessary forms and supporting documentation and place them in the appropriate order according to this manual. All Pre-Application materials must be submitted in electronic format only, unless specifically noted otherwise. The Applicant must deliver (by 5:00 PM on January 8, 2013):

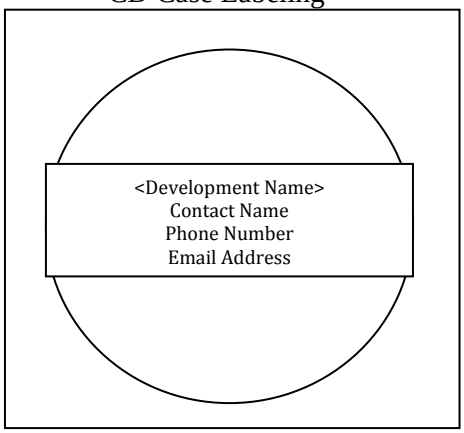
1. One VIRUS-FREE CD-R in a protective hard plastic case containing the following:
   - A complete 2013 Multifamily Pre-Application saved as a Microsoft Excel file; and
   - A complete, executed PDF copy of the 2013 Multifamily Pre-Application file with all attachments and supporting documentation;

2. One complete hard copy of the 2013 Payment Receipt with check attached for the correct Pre-Application Fee, made out to "Texas Department of Housing and Community Affairs"; and

3. One complete and fully executed 2013 Electronic Application Filing Agreement. (The Electronic Filing Agreement may be hard copy or electronic)

Label the CD protective case with a standard label containing the typed-in development name and the Applicant's name with email address to contact. Leave 2" above the label for a TDHCA Project Number label that will be added later by TDHCA. **PLEASE DO NOT ATTACH ADHESIVE LABEL TO THE CD ITSELF.** Rather, write the requested information legibly on the printed side of the CD itself with a felt-tip pen. Refer to labeling illustrations below. **Double-check the CD to verify that it contains the properly named virus-free application files.**

CD Case Labeling



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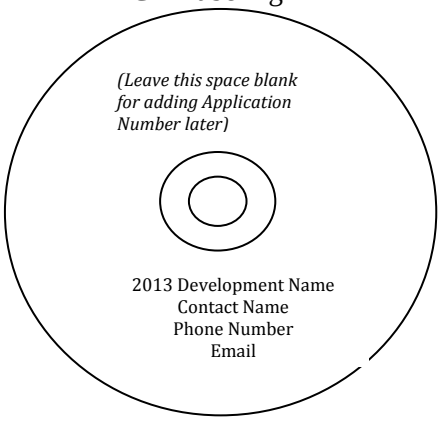


Required Forms and Exhibits for the Pre-Application

Submission of a Pre-Application is not required; however, submitting a Pre-Application qualifies the Application for six (6) points, if all pre-application threshold requirements are met, notwithstanding the requirements under §11.9(e)(3). These points would not be available otherwise.

During the review process an Administrative Deficiency will be issued to an Applicant in cases where a clarification, correction or non-material missing information is needed to resolve inconsistencies in the original Pre-Application. It is important that Applicants take extra care in completing and compiling all required documentation for the Pre-Application submission.

There are ten tabs in the Pre-Application Excel workbook that represent separate spreadsheets for Applicant use. The complete PDF Pre-Application file must be submitted in the order presented in the Excel file and detailed below. Note that some tabs in the workbook act as a placeholder for purposes of reminding Applicants of the unbound documents that must be provided within the Application (*Applicants are encouraged to print out a blank version of each tab beforehand to be aware of all contents*):

- **Tab 1: Pre-Application Certification**
- **Tab 2: Applicant Information Form**
- **Tab 3: Development Narrative**
- **Tab 4: Self Score**
- **Tab 5: Site Control**
- **Tab 6: Waivers**
- **Tab 7: Community Revitalization**
- **Tab 8: Certification of Notifications at Pre-Application Form**
- **Tab 9: Elected Officials Form**
- **Tab 10: Neighborhood Organizations Form**

Application

What you will learn in this section:

- ✓ Application delivery instructions
- ✓ Application assembly instructions
- ✓ How to fill out the electronic Application file
- ✓ Required Application exhibits
- ✓ Public viewing of Pre-Applications and Applications

NOTE: 4% Tax Credit Applications for Bond Financed Developments can be submitted throughout the year. Submission of these Applications is based on the Bond Review Board Priority designation and the 75-day deadlines posted on the Departments website at the following link: http://www.tdhca.state.tx.us/multifamily/htc/index.htm.

Application Delivery Instructions

Deliver To: (overnights)	Multifamily Finance Division Texas Department of Housing and Community Affairs 221 East 11th Street Austin, Texas 78701
Regular Mail:	P.O. Box 13941 Austin, Texas 78711

Please note that the Applicant is solely responsible for proper delivery of the Application. Late deliveries will **not** be accepted.

Competitive Application Cycle

The Application must be received by TDHCA no later than 5:00 p.m. on Friday, March 1, 2013. On March 1, 2013, the Department will accept walk-in delivery, and tables will be set up in one of the Department's conference rooms from 8:00 a.m. to 5:00 p.m. Department resources may not be used to copy, format, or assemble the Application. **All required supplemental reports must be submitted simultaneously with the application** (unless otherwise noted).

Mailed or courier packages must be received by TDHCA on or before 5:00 p.m. Friday, March 1, 2013. TDHCA shall not be responsible for any delivery failure on the part of the Applicant. If the Applicant chooses to use a postal or courier service to deliver the Application to TDHCA and such service fails to deliver the Application by the deadline, then the Application will be considered untimely and will not be accepted.

Application Assembly Instructions

For each Application the Applicant must ensure execution of all necessary forms and supporting documentation, and place them in the appropriate order according to this manual. The submitted Application should be the electronic copy created from the Excel file, ***and not*** a scanned copy of the Excel or PDF file. Scanned copies of the Application are difficult to read, and slow down the process for staff and applicants.

All Application materials must be submitted in electronic format only, unless specifically noted otherwise. The Applicant must deliver:

1. One VIRUS-FREE CD-R in a protective hard plastic case containing the following:
   - the completed, active Microsoft Excel based 2013 Multifamily Uniform Application; and
   - the completed, executed PDF copy of the 2013 Multifamily Uniform Application with all attachments;

NEW!

2. **One VIRUS-FREE CD-R in a protective hard plastic case containing a complete, single file, searchable copy of the following 3rd party reports:**
   - Phase I Environmental Site Assessment,
   - Property Condition Assessment (where applicable),
   - Appraisal (where applicable)
   - If the Market Study and/or Feasibility Study are available on March 1st, they may be included on the CD with all other 3rd party reports.

Note: The Department will also accept one CD-R with both the Application and the Third Party Reports on the same disc. Staff appreciates that third party reports may come directly from the report provider and will also accept one third party report per disc. However, the entire Application (both the Excel and the PDF files), regardless of how the third party reports are submitted, must be included on one single disc. Tabs within the Application should not be separated onto separate discs. In addition, each of the two Application files (the Excel and PDF) should be one file; the Application should not be separated into more than one file.

3. Completed hard copy of the 2013 Payment Receipt. Attach check for the correct Application Fee made out to "Texas Department of Housing and Community Affairs"; and

4. Completed and fully executed 2013 Electronic Application Filing Agreement (**ONLY REQUIRED IF NOT SUBMITTED AT PRE-APPLICATION**).

NOTE!

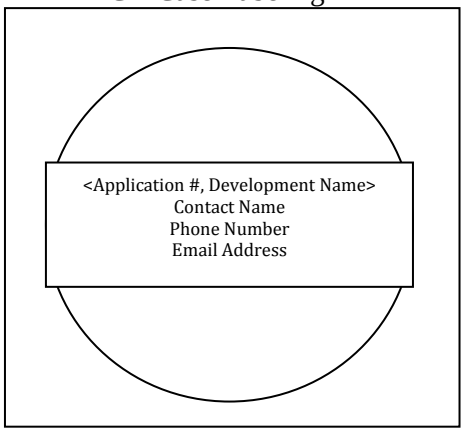
The Market Study and Site Design and Development Feasibility Report are not due to the Department until Monday, April 1, 2013 (for Competitive HTC Applications); however, the supplemental report should be submitted in the same format as described above for all other supplemental reports.

Label the CD protective case with a standard label containing the typed-in development name, application number (if assigned at Pre-Application) and the Applicant's name with email address to contact. If an application number has not previously been assigned or a Pre-Application was not submitted for the same Development Site, leave 2" above the label for a TDHCA Application Number label that will be added later by TDHCA. **PLEASE DO NOT ATTACH ADHESIVE LABLE TO THE CD ITSELF.** Rather, write the requested information legibly on the printed

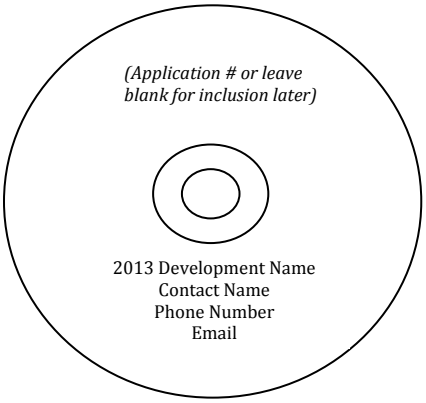
side of the CD itself with a felt-tip pen. Refer to labeling illustrations below. **Double-check the CD to verify that it contains the properly named virus-free application files.**

CD LABELING INSTRUCTIONS FOR APPLICATION

CD Case Labeling

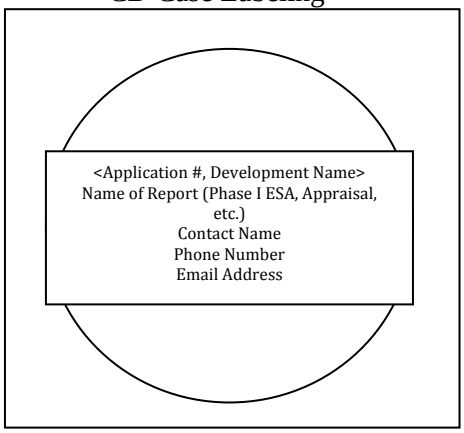


CD Labeling



CD LABELING INSTRUCTIONS FOR THIRD PARTY REPORTS
(if applicable)

CD Case Labeling



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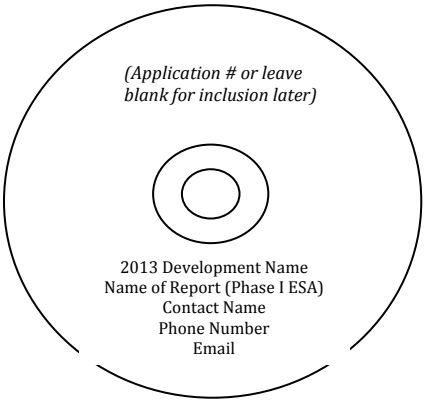

Part 1- Administrative Tabs

- **Tab 1 – Application Certification**
- **Tab 2 – Certification of Development Owner**
- **Tab 3 – Certification of Principal**
- **Tab 4 – HOME Development Certification**
- **Tab 5 – Applicant Information Page**
- **Tab 6 – Development Narrative**
  - **Part 1- Construction Type:**
  - **Part 2 – Target Population:**
  - **Part 3 – Staff Determinations**:
  - **Part 4 – Narrative:**
  - **Part 5 – Funding Request:**
  - **Part 6 – Set-Aside:**
  - **Part 7 – Previously Awarded State and Federal Funding:**
  - **Part 8 – Qualified Low Income Housing Development Election:**
- **Tab 7 – Self-Score (Competitive HTC Only)**

Part 2 – Development Site

The blue colored Development Site tabs (8-15) collects all information specific to the physical location of the Development site.

- **Tab 8 – Site Information Form Part I:**
  - **Part 1 – Development Address:**
  - **Part 2 – Census Tract Information:**
  - **Part 3 – Educational Excellence**:
  - **Part 4 – Opportunity Index:**
  - **Part 5 – Underserved Area:**
  - **Part 6 – Community Revitalization:**
  - **Part 7 – Input other that Quantifiable Community Participation:**
  - **Part 8 – Site Characteristics:**
  - **Part 9 – Declared Disaster Area:**
  - **Part 10 – Resolutions:**
  - **Part 11 – Site Location:**

❖ **Tab 9 – Supporting Documentation for the Site Information Form**

- **Census Tract Map -**
- **School Attendance Zone Map and/school rating**
- **Evidence of Underserved area –**
- **Community Revitalization Plan –**
- **Declared Disaster Area**

❖ **Tab 10 – Site Information Form Part II**

❖ **Tab 11 – Supporting Documentation from Site Information Part II**

- Evidence of Site Control (Readiness to Proceed- Threshold)
  - See 2013 Uniform Multifamily Rules Subchapter C, §10.204(9) for detailed instructions of the rules regarding site control. Be aware that the rules for scoring the submission of a Pre-Application are affected by site control.

- Title Commitment or Title Policy
  - See 2013 Uniform Multifamily Rules Subchapter C, §10.204(10) for detailed instructions of the rules regarding title documents.

❖ **Tab 12 – Scattered Site Information**

❖ **Tab 13 – Elected Officials**

❖ **Tab 14 – Neighborhood Organizations Certification of Notifications (All Programs)**

Part 3- Development Financing

❖ **Tab 15 – Offsite Costs Breakdown**

❖ **Tab 16 – Site Work Costs**

❖ **Tab 17 – Development Cost Schedule**

❖ **Tab 18 – Summary of Sources and Uses of Funds**

❖ **Tab 19 – Home Applications-Financial Capacity and Construction Oversight**

❖ **Tab 20 – Matching Funds**

❖ **Tab 21 – Financing Narrative & Term Sheets (Pt 3- Narrative & Term Sheets) This is a new form that includes Selection Criteria sections related to financing and the narrative of the Development's finance plan.**

NEW

- **Part 1 – Commitment of Development Funding by Unit of General Local Government (UGLG) (HTC Applications only)**
- **Part II – Financial Feasibility (HTC Applications only)**
- **Part 3 – Leveraging of Private, State, and Federal Resources (HTC Applications only)**
- **Part 4 – Financing Narrative (All Applications)**

❖ **Tab 22 – Supporting Documents/Term Sheets**

❖ **Tab 23 – 15 Year Pro Forma**

❖ **Tab 24 – Annual Operating Expenses**

❖ **Tab 25 – Utility Allowances**

❖ **Tab 27 – Rent Schedule**

- Gross Rent cannot exceed the HUD maximum rent limits unless documentation of project-based rental assistance is provided.
- The unit mix and net rentable square footages must be consistent with the site plan and architectural drawings.
- If any non-rental income is included, describe the source(s) of the income. "Misc" income is not an acceptable description.
- If the Development includes loft/efficiency Units, label these Units as "0" bedrooms as provided in the drop-down list.
- If applying for TDHCA HOME funds the column titled "HOME Unit Designation (Rent/Inc)" also includes the Income level required for each HOME Unit designation.
- **4% Tax-Exempt Bond Developments ONLY**.
- **Cost of Development per Square Foot (Competitive HTC ONLY):**

Part 4- Development Activities

❖ **Tab 28 – Building/Unit Type Configuration**

- **Part 1 – Specifications and Amenities –**
- **Part 2 – Building/Unit Type –**

❖ **Tab 29 – Architectural Drawings**

- **Site Plan**

- **Building Floor Plans**
- **Unit Floor Plans**
- **Building Elevations**

❖ **Tab 30 – Development Activities –**

- **Part 1 – Size and Quality of Units (competitive HTC applications only)**
- **Part 2 – Income Levels of Tenants (competitive HTC applications only)**
- **Part 3 – Rent Levels of Tenants (competitive HTC applications only)**
- **Income Levels of Tenants & Rent Levels of Tenants Worksheet**
- **Part 4 – Tenant Services (competitive HTC applications only)**
- **Part 5 – Tenant Populations with Special Housing Needs (competitive HTC applications only)**
- **Part 6 – Pre-Application Participation (competitive HTC applications only)**
- **Part 7 – Extended Affordability or Historic Preservation (competitive HTC applications only)**
- **Part 8 – Right of First Refusal (competitive HTC applications only)**
- **Part 9 – Development Size (competitive HTC applications only)**
- **Part 10 – Common Amenities (ALL Multifamily Applications)**
- **Part 11 – Unit Requirements (ALL Multifamily Applications)**
- **Part 12 – Tenant Supportive Services (NOT applicable to competitive HTC Applications)**
- **Part 13 – Development Accessibility Requirements (ALL Multifamily Applications)**

❖ **Tab 31 – Acquisition and Rehabilitation Information**

- **Part 1 – At-Risk Set-Aside (Competitive HTC Developments applying under the At-Risk Set-Aside ONLY)**
- **Part 2 – Existing Development Assistance on Housing Rehabilitation Activities**
- **Part 3 – Lead Based Paint (HOME Applications Only).**

❖ **Tab 32 – Occupied Rehabilitation Developments**

Part 5 – Development Organization

❖ **Tab 33 – Sponsor Characteristics –**

❖ **Tab 34 – Applicant and Developer Ownership Charts**

❖ **Tab 35 – List of Organizations and Principals**

❖ **Tab 36 – Previous Participation and Background Certification**

❖ **Tab 37 – Nonprofit Participation**

- **Tab 38 – Nonprofit Support Documentation –**

- **Tab 39 – Development Team Members**

- **Tab 40 – HOME Management Plan Certification (HOME Applicants only)**

- **Tab 41 – Architect Certification**

- **Tab 42 –Experience Certificate**
  - **DUNS Number and CCR Documentation (HOME Applications Only)**
  - **Davis Bacon Labor Standards (HOME Applications Only)**
  - **Affirmative Marketing Plan (HOME Applications Only)**

- **Tab 43 – 9% Applicant Credit Limit Documentation and Certification**

Part 6 – Third Party Reports

All third party reports must be submitted in their entirety by the deadline specified below. Incomplete reports will result in termination of the application. Reports should be submitted in a searchable electronic copy in the format of a single file containing all of the required information and conform to Subchapter D of the Uniform Multifamily Rules. Exhibits should be clearly bookmarked.

The 2013 Multifamily Housing Application form consists of six (6) sections. Complete all applicable sections. Those cells in which require entry are highlighted yellow. Some of the required information for this form has been entered in a previous tab and will auto fill here as applicable. Please review and ensure all information is accurate. Remember to include any supporting documentation.

- **Tab 44 – Third Party:** The required **Environmental Site Assessment** (ESA) must be submitted to the Department no later than 5pm CST on **March 1, 2013**.

  - The required **Market Analysis** must be submitted to the Department no later than 5pm CST on **April 1, 2013.**

  - If applicable, the **Property Condition Assessment** (PCA) must be submitted to the Department no later than 5pm CST on **March 1, 2013**.

  - If applicable, the **Appraisal** must be submitted to the Department no later than 5pm CST on **March 1, 2013**.

  - If applicable, the **Site Design and Development Feasibility Report** must be submitted to the Department no later than 5pm CST on **April 1, 2013**

PUBLIC VIEWING OF PRE-APPLICATIONS AND APPLICATIONS

The Department will allow the public to view any Pre-Applications or Applications that have been submitted to the Department in an electronic format. These electronic versions will be available within approximately two weeks of the close of the Application Acceptance Period. An Applicant may request via an open records request an electronic copy between the hours of 8:00 A.M. and 5:00 P.M. Monday through Friday. There may be an associated cost with requesting this information. To submit an open records request or to coordinate the viewing of a Pre-Application or Application please contact Misael Arroyo in the Multifamily Finance Division at Misael.arroyo@tdhca.state.tx.us.

Areas of Difficulty Experienced by Applicants to the Tax Credit Program

To provide you as much information as possible concerning the tax credit program, the Department will cover some of the typical areas in the program that have given previous applicants difficulty.

2013 HTC Reference Manual

2013 HOUSING TAX CREDIT SITE DEMOGRAPHICS CHARACTERISTICS REPORT

The 2013 HTC Site Demographics Characteristics Report can be found at the following link:

http://www.tdhca.state.tx.us/multifamily/applications.htm

2013 LIST OF DECLARED DISASTER AREAS

2013 LIST OF QUALIFIED CENSUS TRACTS

A complete list of Qualified Census Tracts can be found at the following website: http://qct.huduser.org/tables/1statetable.odb?statefp=48.0&DDAYEAR=2012

7a

BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

NOVEMBER 13, 2012

Presentation, Discussion, and Possible Action on orders adopting the repeals of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.1, Definitions and Amenities for Housing Program Activities; Chapter 53, HOME Program Rules, Subchapter A, General, Subchapter B, Availability of Federal Funds, Application Requirements, and Review and Award Procedures; Subchapter H, Multifamily (Rental Housing) Development (MFD) Program Activity; and Subchapter I, Community Housing Development Organization (CHDO); and orders adopting new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter A, General Information and Definitions; Subchapter B, Site and Development Restrictions and Requirements; Subchapter C, Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules; and Subchapter G, Fee Schedule, Appeals, and Other Provisions and directing their publication in the *Texas Register.*

RECOMMENDED ACTION

WHEREAS, the Department's Governing Board approved organizational changes on April 12, 2012, of which a key component was the consolidation of multifamily program activities into the Multifamily Finance Division establishing greater consistency and efficiency among all multifamily programs; and

WHEREAS, the current Definitions and Amenities for Housing Program Activities rule has been expanded to include general requirements associated with all of the Department's multifamily funding sources; and

WHEREAS, the proposed Uniform Multifamily Rules were presented and approved at the September 6, 2012 Board meeting for publication in the *Texas Register* to obtain public comment; and

WHEREAS, the public comment period ended on October 22, 2012, and the comment summary and staff responses are provided herein;

NOW, therefore, it is hereby

RESOLVED, that the final order adopting the repeal of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.1, Definitions and Amenities for Housing Program Activities; Chapter 53, HOME Program Rules, Subchapter A, General, Subchapter B, Availability of Federal Funds, Application Requirements, and Review and Award Procedures; Subchapter H, Multifamily (Rental Housing) Development (MFD) Program Activity; and Subchapter I, Community Housing Development Organization (CHDO); and final order adopting the new Uniform Multifamily Rules, 10 TAC Chapter 10, Subchapters A, B, C, and G are hereby ordered and approved, together with the preambles presented to this meeting, for publication in the *Texas Register*.

FURTHER RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the repeal and new Uniform Multifamily Rules, together with the preambles in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The Board approved the proposed Uniform Multifamily Rules at the September 6, 2012 Board meeting to be published in order to receive public comment. In keeping with the requirements of the Administrative Procedures Act, staff has reviewed all comments received and provided a reasoned response to each comment. Staff has listed the areas below that received the most comment.

1. §10.101(a)(2) – Subchapter B – Mandatory Site Characteristics
2. §10.101(a)(3) – Subchapter B – Undesirable Site Features
3. §10.101(a)(4) – Subchapter B – Undesirable Area Features
4. §10.101(b)(5) – Subchapter B – Common Amenities
5. §10.101(b)(6) – Subchapter B – Unit Amenities

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Attachment A: Preamble, Reasoned Response, and New Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter A, §§10.1 – 10.4 concerning General Information and Definitions. Sections 10.3 and 10.4 are adopted with changes to the text as published in the September 21, 2012 issue of the *Texas Register* (37 TexReg 7342). Sections 10.1 and 10.2 are adopted without changes and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the sections will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition..

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

The comments and responses include both administrative clarifications and corrections to the Uniform Multifamily Rule based on the comments received. After each comment title, numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the proposed Uniform Multifamily Rule as presented to the Board in September, such changes are indicated. Public comments were accepted through October 22, 2012 with comments received from (11) Claire Palmer, (13) Cynthia Bast, Locke Lord, (19) Benjamin Farmer, Rural Rental Housing Association, (43) David Mark Koogler, Mark-Dana Corporation, (52) Barry Palmer, Coats Rose, (65) Janine Sisak, JSA Development Company, (66) Texas Association of Affordable Housing Providers.

1. §10 – General Comments – (43)
COMMENT SUMMARY: Commenter (43) noted the 2012 QAP and the 2012 Definitions and Amenities for Housing Program Activities as well as the published proposed 2013 QAP and Uniform Multifamily Rules have provisions that increase the cost of affordable housing unnecessarily as evidenced by the following: requiring a minimum rehabilitation amount of $25,000 per unit; requiring an increased number of required amenities for larger projects and for rehabilitation developments, requiring numerous tenant services, requiring a detailed civil engineering feasibility study and requiring sites to be within a certain radius of the development which increases the cost of the land and increases the likelihood of neighborhood opposition.

STAFF RESPONSE: Staff recognizes that the development of affordable housing can be costly, but all of the costs mentioned by commenter (43) are associated with items that are important either to the development process (third party reports) or to the finished product (amenities and services) and the households who live in them. Staff notes that changes are recommended in Subchapter C as it relates to the civil engineer feasibility study as a result of public comment that will hopefully result in reduced costs associated with this report, in particular. Staff recommends no change based on this comment.

2. §10.3 – Subchapter A – Definitions - General Comments – (13)
COMMENT SUMMARY: Commenter (13) stated that throughout the definitions multiple terms are used for the same definition, *e.g.* "Commitment (also referred to as Contract);" however, this section does not include a cross-reference definition for the word "Contract." Commenter (13) recommended establishing one working definition for each term throughout the

rules or for those terms that use multiple defined words, establishing a cross-referencing system in the Definitions.

STAFF RESPONSE: Staff agrees with commenter (13) and recommends cross-reference definitions where appropriate.

3. §10.3(a)(2) – Subchapter A – Definitions – Administrative Deficiencies (13)
COMMENT SUMMARY: Commenter (13) questioned whether the definition should also include a reference to omissions and whether it should be clear that the administrative deficiency process does not apply to the underwriting process. Commenter (13) recommended the following revision to the definition:

> "Administrative Deficiencies--Information requested by the Department staff that is required to clarify or correct one or more inconsistencies or omissions in an Application that in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application. Administrative Deficiencies may be issued at any time while the Application or Contract is under consideration by the Department, including at any time while reviewing performance under a Contract, processing documentation for a Commitment of Funds, closing of a loan, processing of a disbursement request, close-out of a Contract, or resolution of any issues related to compliance, but excluding real estate analysis and underwriting."

STAFF RESPONSE: Staff believes including the word "omissions" as recommended by commenter (13) would allow for the submission of material information that may affect, for competitive HTC applications, the scoring of the application as well as point deductions associated with §11.9(f) of the QAP. Staff maintains that substantially complete applications should be submitted and the review of those applications should consist of clarifications or inconsistencies that do not rise to the level of being material in nature. Moreover, the Administrative Deficiency process will be applicable to issues related to real estate analysis and underwriting. Staff recommends the following revision to this definition:

> "Administrative Deficiencies--Information requested by the Department staff that is required to clarify or correct one or more inconsistencies or to provide non-material missing information in an Application that, in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application. Administrative Deficiencies may be issued at any time while the Application or Contract is under consideration by the Department, including at any time while reviewing performance under a Contract, processing documentation for a Commitment of Funds, closing of a loan, processing of a disbursement request, close-out of a Contract, or resolution of any issues related to compliance."

4. §10.3(a)(4) – Subchapter A – Definitions – Affordability Period (13)
COMMENT SUMMARY: Commenter (13) recommended this definition also include a reference to a deed in lieu of foreclosure and offered the following revision:

"Affordability Period--….The term of the Affordability Period shall be imposed by the LURA or other deed restriction and may be terminated upon foreclosure or deed in lieu of foreclosure…."

STAFF RESPONSE: Staff agrees with the proposed revision by commenter (13) and recommends the amended language.

5. §10.3(a)(8) – Subchapter A – Definitions – Bedroom (11)
COMMENT SUMMARY: Commenter (11) questioned whether the den has to have a door.

STAFF RESPONSE: Bedroom is a defined term, but den is not. Accordingly, a den (since it is not defined) may or may not have a door. However, if a den does have a door and can reasonably function as a bedroom and meets the definition of bedroom (has a window, closet, etc.), then it will be considered a bedroom. Staff may require that the LURA for such a development specify the number of bedrooms per unit to provide clarity with respect to the maximum rents applicable to each unit. Staff recommends no change based on this comment.

6. §10.3(a)(10) – Subchapter A – Definitions – Building Costs (11)
COMMENT SUMMARY: Commenter (11) noted the use of the term "vertical construction" in this definition limits the costs more than what was intended.

STAFF RESPONSE: It was intended for this definition to include the "sticks and bricks" or direct construction costs, whether eligible or ineligible. The term is not meant to encompass all eligible costs or site work, off-site work, indirect ("soft") costs, contingency, or contractor fees. Staff recommends no change based on this comment.

7. §10.3(a)(22) – Subchapter A – Definitions – Compliance Period (13)
COMMENT SUMMARY: Commenter (13) noted that throughout the rules it isn't always clear which requirements apply to which program and suggested the following change to the definition for clarity:

"Compliance Period--With respect to a building financed by Housing Tax Credits, the period of fifteen (15) taxable years, beginning with the first taxable year of the credit period pursuant to §42(i)(1) of the Code."

STAFF RESPONSE: Staff agrees with the suggested revision by commenter (13) and recommends the amended language.

8. §10.3(a)(23) – Subchapter A – Definitions – Continuously Occupied (13)
COMMENT SUMMARY: Commenter (13) stated the reference to the "same household" in this definition is unclear as to how life events such as births and deaths affect whether a household fits within the definition.

STAFF RESPONSE: This term is used in the actual use method for utility allowances. If a household moves out and an entirely new household moves in, the unit would not be considered continuously occupied. Staff recommends no change based on this comment.

9. §10.3(a)(24) – Subchapter A – Definitions – Control (11)
COMMENT SUMMARY: Commenter (11) noted this definition says that control can be as little as 10% ownership; however, for purposes of the prior year QAP it was not allowed to constitute control. Commenter (11) requested clarification on whether such percentage of ownership will still constitute control and further questioned what is meant by the phrase "indirectly manage."

STAFF RESPONSE: The issue that arose last year dealt with usage of the term controlling interest rather than simply "control" and had to be read in reference to the statute related to the Nonprofit Set-Aside. Staff has adjusted the language to clarify the specific ownership requirement in that section. To indirectly manage means to manage via some intervening or interposed instrumentality or person. Staff recommends no change based on this comment.

10. §10.3(a)(30) – Subchapter A – Definitions – Developer (11)
COMMENT SUMMARY: Commenter (11) questioned whether this definition should also include the 20% consultant fee on nonprofit applications.

STAFF RESPONSE: As currently recommended, consulting fees are part of developer's fee and a consultant earning 20% of the developer fee would qualify as a developer. Staff recommends no change based on this comment.

11. §10.3(a)(33) – Subchapter A – Definitions – Development Consultant (13)
COMMENT SUMMARY: Commenter (13) indicated the duties of a Development Consultant are described to include activities that are not includable in eligible basis (*e.g.* work on the tax credit application), yet other portions of the rules and the application forms reflect the Development Consultant receiving a portion of the Development Fee. To the extent such consultants are performing non-eligible activities, they should be paid a fee separate and above the Development Fee and while such amount could be measured based upon a percentage of the Development Fee, it should not actually be paid out of the Development Fee.

STAFF RESPONSE: Staff believes that consultant's fees are paid for work that is generally performed by a developer and that such fees should directly reduce the allowable Development Fee that can be paid to other parties, such as the Developer. The classification of such fees as eligible or ineligible is an issue to resolve with the legal and accounting professionals involved in a transaction. Staff recommends no change based on this comment.

12. §10.3(a)(35) – Subchapter A – Definitions – Development Team (11)
COMMENT SUMMARY: Commenter (11) questioned the expansion of this definition in the published draft. Specifically, whether it is sufficient to be part of the Development Team and play "a role" and exactly how much of a role needs to be played. Commenter (11), by way of example, stated if this meant one needed to check that all subcontractors or vendors are in compliance with the Department.

STAFF RESPONSE: Staff did not propose any changes to this definition in the published draft over the prior year. As written, the rule does not require that applicants check compliance status of every member of the Development Team. Those individuals and entities identified on the previous participation exhibits are who will be captured as part of such review. The definition is not intended to capture subcontractors but all professionals paid directly by the development owner. Staff recommends no change based on this comment.

13. §10.3(a)(43) – Subchapter A – Definitions – Existing Residential Development (11)
COMMENT SUMMARY: Commenter (11) questioned if there was one unit in a building is residential and the rest is used for something else would qualify.

STAFF RESPONSE: Although this scenario was not contemplated in the rule, as it is currently drafted more than one unit would be necessary to meet the definition. Staff recommends no change based on this comment.

14. §10.3(a)(46) – Subchapter A – Definitions – General Contractor (11), (13)
COMMENT SUMMARY: Commenter (11) stated there are many nonprofits that serve as the General Contractor to get the tax exemption and then subcontract the work to a contractor and further questioned whether this is still allowed. Commenter (13) suggested clarifying this definition in order to identify when a Person fits within the definition of a prime subcontractor and, therefore, is equivalent to the General Contractor. Moreover, commenter (13) indicated that subparagraph (C) seems to have been randomly inserted. The following revisions were recommended:

> "General Contractor (including "Contractor")--One who contracts for the construction or rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. A ~~P~~prime subcontractor~~s~~ will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, ~~if any of the criteria~~ in the scenarios described in subparagraphs (A) and (B) of this paragraph ~~are true (in which case, such subcontractor fees will be treated as fees to the General Contractor)~~:
>
> (A) any subcontractor, material supplier, or equipment lessor receiving more than 50 percent of the contract sum in the construction contract ~~is subcontracted to one subcontractor, material supplier, or equipment lessor ("~~will be deemed a prime subcontractor~~s")~~; or
>
> (B) if more than 75 percent of the contract sum in the construction contract is subcontracted to three or ~~less~~fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed ~~("~~prime subcontractors~~"); or~~
>
> ~~(C) the General Contractor has less than seven (7) subcontractors~~."

STAFF RESPONSE: Staff agrees with commenter and recommends the following amendments:

> "(4~~6~~9~~6~~) General Contractor (including "Contractor")--One who contracts for the construction or rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. A ~~P~~prime subcontractor~~s~~ will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, ~~if any of the criteria~~ in the scenarios described in subparagraphs (A) and (B) of this paragraph ~~are true (in which case, such subcontractor fees will be treated as fees to the General Contractor)~~:

(A) any subcontractor, material supplier, or equipment lessor receiving more than 50 percent of the contract sum in the construction contract ~~is subcontracted to one subcontractor, material supplier, or equipment lessor ("~~will be deemed a prime subcontractor~~s")~~; or

(B) if more than 75 percent of the contract sum in the construction contract is subcontracted to three or ~~less~~ fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed ~~("~~prime subcontractors~~"); or~~

~~(C) the General Contractor has less than seven (7) subcontractors~~."

15. §10.3(a)(49) – Subchapter A – Definitions – Governmental Entity (11)
COMMENT SUMMARY: Commenter (11) requested clarification on whether this definition includes quasi-governmental entities such as housing authorities.

STAFF RESPONSE: The definition could include a public housing authority. It should be noted that this term is not used in the QAP under Commitment of Funding from a Unit of General Local Government and that there are specific qualifications that need to be met in order for entities to qualify for points under that scoring item. Staff recommends no change based on this comment.

16. §10.3(a)(53) – Subchapter A – Definitions – Guarantor (11)
COMMENT SUMMARY: Commenter (11) questioned why this definition does not include the construction guarantor.

STAFF RESPONSE: The construction guarantor was specifically excluded from this definition as it was intended to capture the entity responsible for the development in the long term. Construction guarantees generally serve a different more limited purpose that is not intended to be captured where the term Guarantor is used in the rules. Staff recommends no change based on this comment.

17. §10.3(a)(56) – Subchapter A – Definitions – Historically Underutilized Businesses (13), (43)
COMMENT SUMMARY: Commenter (13), (43) suggested limited liability companies be included in this definition which are common forms of ownership for a HUB.

STAFF RESPONSE: Staff agrees with the suggested revision provided by commenter (13) and (43) and recommends the amended language.

18. §10.3(a)(58) – Subchapter A – Definitions – Housing Credit Allocation (13)
COMMENT SUMMARY: Commenter (13) noted this definition refers to "this chapter" and then to "Chapter 10" and questioned that since this definition is in Chapter 10 whether it should read "this subchapter" instead.

STAFF RESPONSE: Staff recommends the following clarification to this definition:

"Housing Credit Allocation--An allocation of Housing Tax Credits by the Department to a Development Owner for a specific Application in accordance with the provisions of this chapter and Chapter 11~~10~~ of this title (relating to ~~Uniform Multifamily Rules~~Qualified Allocation Plan)."

19. §10.3(a)(59) – Subchapter A – Definitions – Housing Credit Allocation Amount (13)
COMMENT SUMMARY: Commenter (13) recommended the following revision to this definition:

> "Housing Credit Allocation Amount--With respect to a Development or a building within a Development, the amount of Housing Tax Credits the Department determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the affordability period and which the Board allocates to the Development."

STAFF RESPONSE: Staff agrees with the suggested revision and recommends the amended language.

20. §10.3(a)(64) – Subchapter A – Definitions – Low-Income Unit (13)
COMMENT SUMMARY: Commenter (13) noted this definition refers to an income eligible household "as defined by the Department"; however, it does not tell the reader where or how the Department defines income eligible households. Commenter (13) suggested this definition be clarified.

STAFF RESPONSE: Staff recommends the following revision to this definition:

> Low-Income Unit--A Unit that is intended to be restricted for occupancy by an income eligible household, as defined by the Department, utilizing its published income limits.

21. §10.3(a)(68) – Subchapter A – Definitions – Market Rent (13)
COMMENT SUMMARY: Commenter (13) stated this definition refers to rents "determined after adjustments are made"; however, what is meant by adjustments is unclear and requested clarification.

STAFF RESPONSE: Staff agrees that clarification is needed and recommends the following revision:

> "Market Rent--The achievable rent ~~for a particular Comparable Unit~~ determined by the Market Analyst or Underwriter for a unit without rent and income restrictions after adjusting ~~adjustments are made to~~ actual rents ~~charged by owners of~~ on Comparable Units for differences in net rentable square footage, functionality, overall condition, location, age, unit amenities, utility structure and common area amenities.~~on properties without rent and income restrictions.~~"

22. §10.3(a)(69) – Subchapter A – Definitions – Material Deficiency (11)
COMMENT SUMMARY: Commenter (11) noted this definition seems very subjective.

STAFF RESPONSE: While an application may be considered ineligible based on Material Deficiencies and the definition thereof, the rules allow an applicant the ability to pursue the appeals process as outlined in §10.902 of the Uniform Multifamily Rules. Further clarification of what constitutes a Material Deficiency may not encompass the universe of possibilities that the

current definition is intended to encompass. Staff recommends no change based on this comment.

23. §10.3(a)(85) – Subchapter A – Definitions – Principal (11)
COMMENT SUMMARY: Commenter (11) stated that 10% ownership interest alone, without also being an officer, should not make someone a principal.

STAFF RESPONSE: Staff disagrees with commenter (11). This definition is used for purposes of previous participation reviews, in which case the Department wants to ensure that all persons and entities with 10% or more ownership are reviewed for previous compliance issues. Staff recommends no change based on this comment.

24. §10.3(a)(93) and (94) – Subchapter A – Definitions – Qualified Nonprofit Organization and Qualified Nonprofit Development (13)
COMMENT SUMMARY: Commenter (13) stated the word "qualified nonprofit organization" is used throughout the rules, both capitalized and non-capitalized and further noted that what constitutes a qualified nonprofit organization under Section 42 of the Code and what constitutes a qualified nonprofit organization for the purposes of the non-profit set-aside under Chapter 2306 are different. According to commenter (13), the Department's use of the term interchangeably could have a detrimental effect on certain nonprofit organizations; specifically noting that a nonprofit organization does not need to meet the criteria of Chapter 2306 in order to participate in the right of first refusal process. Commenter (13) recommended the Department review the instances in which the term "qualified nonprofit organization" is used to ensure each usage incorporates only those restrictions that are applicable in that particular instance.

STAFF RESPONSE: Staff agrees with this comment and recommends the following revision to the definition:

> (101~~93~~) Qualified Nonprofit Organization--An organization that meets the requirements of Section 42(h)(5)(c) of the Code for all purposes, and for an allocation in the nonprofit set-aside or subsequent transfer of the property, meets the requirements of Texas Government Code §2306.6706 and §2306.6729, and §42(h)(5) of the Code. ~~and is seeking Competitive Housing Tax Credits.~~

25. §10.3(a)(96) – Subchapter A – Definitions – Reconstruction (11)
COMMENT SUMMARY: Commenter (11) questioned if one building in a development is demolished how much would have to be rebuilt.

STAFF RESPONSE: Staff recommends the following clarifying language:

> "(104~~96~~) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the re-construction of an equal number of units or less on the Development Site. At least one unit must be reconstructed in order to qualify as Reconstruction."

26. §10.3(a)(97) – Subchapter A – Definitions – Rehabilitation (11)
COMMENT SUMMARY: Commenter (11) questioned whether rehabilitation and reconstruction are now the same thing.

STAFF RESPONSE: State statute treats Reconstruction as a type of Rehabilitation activity. However, Rehabilitation can encompass the repair of an existing building, which does not constitute Reconstruction. Staff recommends no change based on this comment.

27. §10.3(a)(99)(B) – Subchapter A – Definitions – Relevant Supply (13)
COMMENT SUMMARY: Commenter (13) suggested further clarification is needed for the phrase "that may not have been presented to the Board for decision."

STAFF RESPONSE: Staff agrees and recommends the following revision:

> "Relevant Supply--The supply of Comparable Units in proposed and Unstabilized Developments targeting the same population including:
>
> (B) Comparable Units in another proposed development within the PMA with a priority Application over the subject, based on the Department's evaluation process described in §10.201~~(a)~~(6) of this chapter (relating to Procedural Requirements for Application Submission) that may not yet have been presented to the Board for consideration of approval~~decision~~…;"

28. §10.3(a)(101) – Subchapter A – Definitions – Right of First Refusal (11), (13), (52)
COMMENT SUMMARY: Commenter (11) asked if there was a way to designate one entity that has the right of first refusal. Commenter (13) and (52) suggested this definition reflect that a right of first refusal can also be provided to a governmental agency to maintain consistency with law. Commenter (52) suggested the following revision:

> "Right of First Refusal--An Agreement to provide a right to purchase the Property to a ~~nonprofit or tenant organization~~ Qualified ROFR Organization with priority to that of any other buyer at a price whose formula is prescribed in the LURA."

Commenter (52) further suggested adding the following as a defined term in this section:

> "Qualified ROFR Organization--Defined as:
> (1) qualified nonprofit that meets the requirements of Section 42(h)(5) of the Code,
> (2) a government agency,
> (3) a tenant organization, or
> (4) tenants."

STAFF RESPONSE: Staff disagrees with the recommendation by commenter (13) and (52). Texas Government Code, 2306.6726 only includes qualified nonprofit organizations and tenant organizations as receiving the benefit of a right of first refusal. While Texas Government Code, 2306.6727 allows the board to develop rules to allow the department to also purchase property via the right of first refusal process, the TDHCA has not yet developed such a program. There is no other provision in state statute for the right of first refusal to extend to any other government entity. In response to commenter (11), such provision currently exists in Appendix D(v) of the LURA and has since 2009. Staff recommends no change based on these comments.

29. §10.3(a)(102) – Subchapter A – Definitions – Rural Area (19)
COMMENT SUMMARY: Commenter (19) requested clarification on this definition and suggested that any Section 515 development should be considered rural and therefore receive the 30% boost in eligible basis, even if the location has become within urban or exurban areas as a result of growth. Commenter (19) suggested that so long as the development retains USDA financing it should be considered rural for at-risk tax credit purposes as it is for USDA and GNMA purposes and further recommends that the area needs to be less than 50,000 population and/or eligible for USDA funding, specifically the retention of a Section 514 or 515 loan.

STAFF RESPONSE: Classification as a Rural Area does not have a relationship to the type of financing associated with a development. Staff does not believe state statute provides discretion to refine the definition further. Staff will provide a list on its website of those areas determined to be urban or rural based on the statutory definition in the release of the 2013 Site Demographics Characteristics Report. Staff recommends no change based on this comment.

30. §10.3(a)(106) – Subchapter A – Definitions – Site Work (66)
COMMENT SUMMARY: Commenter (66) recommended this definition in the development cost schedule be carved out of site work and placed into a new category defined as "site amenity costs" and include all non-site work items such as pools, fencing, landscaping, sport courts and playground areas.

STAFF RESPONSE: Staff agrees with the suggestion and recommends the following revision. These site amenity costs shall be separated into a distinct section in the development cost schedule included within the application.

> "Site Work--Materials and labor for the horizontal construction generally including excavation, grading, paving, and underground utilities~~, fencing, pools and landscaping.~~"

31. §10.3(a)(109) – Subchapter A – Definitions – Supportive Housing (65)
COMMENT SUMMARY: Commenter (65) suggested the following revision to this definition to account for Tax Exempt Bond Developments that may not otherwise meet all the current requirements:

> "Supportive Housing--Residential rental developments intended for occupancy by individuals or households in need of specialized and specific non-medical services in order to maintain independent living. Supportive housing developments generally require established funding sources outside of project cash flow and are proposed and expected to be debt free or have no foreclosable or noncash flow debt, unless the development is a Tax Exempt Bond Development with a project based rental assistance contract that assures a contract rent for a majority of the units, in which case the Development is treated as Supportive Housing under all chapters of the Uniform Multifamily Rules, except Subchapter D – Underwriting and Loan Policies. The services offered generally address special attributes of such populations as Transitional Housing for homeless and at risk of homelessness, persons who have experienced domestic violence or single parents or guardians with minor children."

STAFF RESPONSE: Staff agrees with the suggested revision and recommends the amended language.

32. §10.3(a)(114) – Subchapter A – Definitions – Third Party (13)
COMMENT SUMMARY: Commenter (13) suggested this defines the general contractor as someone who is not a third party; however, while a general contractor is sometimes related to the applicant, that is not always the case and a general contractor can be an unaffiliated third party. Moreover, commenter (13) recommended use of the word "related party" be removed due to its complexity and suggested the Department should only use such term in the context actually required by Chapter 2306; otherwise the defined term "affiliate" would be adequate.

STAFF RESPONSE: Staff agrees with the suggested revision and recommends the amended language.

33. §10.3(a)(116) – Subchapter A – Definitions – Transitional Housing (52)
COMMENT SUMMARY: Commenter (52) suggested this definition be clarified so that ownership can be in the form of a tax credit partnership and recommended the following change:

> "Transitional Housing--A Supportive Housing development that includes living Units with more limited individual kitchen facilities and is:
>
> (A) used exclusively to facilitate the transition of homeless individuals and those at-risk of becoming homeless, to independent living within 24 months; and
>
> (B) is owned by a Development Owner that includes a governmental entity or a qualified non-profit which provides temporary housing and supportive services to assist such individuals in, among other things, locating and retaining permanent housing. The limited kitchen facilities in individual Units must be appropriately augmented by suitable, accessible shared or common kitchen facilities."

STAFF RESPONSE: Staff agrees with the suggested revision and recommends the amended language.

34. §10.3(a)(120) – Subchapter A – Definitions – Unit of General Local Government (11)
COMMENT SUMMARY: Commenter (11) requested clarification on whether this definition includes quasi-governmental entities, such as housing authorities.

STAFF RESPONSE: In general, the definition could include public housing authorities. However, as stated in the definition, for purposes of §11.9(d)(3), the term has other limiting parameters to carry out the specific underlying policy intent of that rule. Staff recommends no change based on this comment.

35. §10.3(a)(122) – Subchapter A – Definitions – Unstabilized Development (13)
COMMENT SUMMARY: Commenter (13) suggested this definition may be missing text and suggested the following change:

> "Unstabilized Development--A development with Comparable Units that has been approved for funding by the Department's Board of Directors or is currently under construction or has not maintained a 90 percent occupancy level for at least twelve (12) consecutive months following construction completion. A development may be deemed stabilized by the Underwriter based on factors

relating to a development's lease-up velocity, Sub-Market rents, Sub-Market occupancy trends and other information available to the Underwriter. The Market Analyst may not consider such a development stabilized in the Market Study."

STAFF RESPONSE: Staff agrees with the suggested revision and recommends the amended language.

36. §10.3(b) – Subchapter A – Request for Staff Determinations (11)
COMMENT SUMMARY: Commenter (11) questioned why staff determinations relating to the definitions must be requested at the time of pre-application when often times a lot of issues come up at the time of application.

STAFF RESPONSE: The ability to request a staff determination is a benefit provided to Applicants that identify unique situations with their planned development activities. Staff believes that it is imperative to ensure that staff determinations be addressed early in the process to provide for more transparency in the process. Staff recommends no change based on this comment.

37. §10.4(7) – Subchapter A – Program Dates (13)
COMMENT SUMMARY: Commenter (13) noted the heading in this paragraph refers to the civil engineer feasibility study; however, the text refers only to the market analysis and recommended it be clarified.

STAFF RESPONSE: Staff agrees and recommends revisions to this section to references both third party reports.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are adopted pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

Uniform Multifamily Rules

Subchapter A – General Information and Definitions

§10.1. Purpose.

The rules in this chapter apply to an award of multifamily development funding or other assistance including the award of Housing Tax Credits by the Texas Department of Housing and Community Affairs (the "Department") and establish the general requirements associated in making such awards. Applicants pursuing such assistance from the Department are required to certify, among other things, that they have familiarized themselves with the rules that govern that specific program, including but not limited to, Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules) and other Department rules. This rule does not apply to any project-based rental or operating assistance programs or funds unless incorporated by reference in whole or in part in a Notice of Funding Availability (NOFA) or rules for such a program except to the extent that Developments receiving such assistance and otherwise subject to this rule remain subject to this rule.

§10.2. General.

(a) These rules may not contemplate unforeseen situations that may arise, and in that regard the Department staff is to apply a reasonableness standard in the evaluation of Applications for multifamily development funding. Additionally, Direct Loan funds and other non-Housing Tax Credit or tax exempt bond resources may be made available through a NOFA or other similar governing document that includes the basic Application and funding requirements:

(1) deadlines for filing Applications and other documents;

(2) any additional submission requirements that may not be explicitly provided for in this chapter;

(3) any applicable Application set-asides and requirements related thereto;

(4) award limits per Application or Applicant;

(5) any federal or state laws or regulations that may supersede the requirements of this chapter; and

(6) other reasonable parameters or requirements necessary to implement a program or administer funding effectively.

(b) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, rent and income limits, and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the multifamily rules or be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the multifamily rules to each specific situation as it is presented in the submitted Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to independently perform the necessary due diligence to research, confirm, and verify any data, opinions, interpretations or other information upon which Applicant bases an Application.

(c) Board Standards for Review. Some issues may require or benefit from board review. The Board is not constrained to a particular standard, and while its actions on one matter are not binding as to how it will address another matter, the Board does seek to promote consistency with its policies, including the policies set forth in this rule.

§10.3. Definitions.

(a) Terms defined in this chapter apply to the Housing Tax Credit Program, Multifamily Housing Revenue Bond Program, HOME Program and any other programs for the development of affordable rental property

administered by Department and as may be defined in this title. Any capitalized terms not specifically mentioned in this section or any section referenced in this document shall have the meaning as defined in Texas Government Code, Chapter 2306, Internal Revenue Code (the "Code"), §42, the HOME Final Rule, and other Department rules as applicable.

(1) Adaptive Reuse--The change-in-use of an existing building not, at the time of Application, being used, in whole or in part, for residential purposes (e.g., school, warehouse, office, hospital, hotel, etc.), into a building which will be used, in whole or in part, for residential purposes. Adaptive reuse requires that the exterior walls of the existing building remain in place. All units must be contained within the original exterior walls of the existing building. Porches and patios may protrude beyond the exterior walls. Ancillary non-residential buildings, such as a clubhouse, leasing office and/or amenity center may be newly constructed outside the walls of the existing building or as detached buildings on the Development Site.

(2) Administrative Deficiencies--Information requested by the Department staff that is required to clarify or correct one or more inconsistencies or to provide non-material missing information in an Application that, in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application. Administrative Deficiencies may be issued at any time while the Application or Contract is under consideration by the Department, including at any time while reviewing performance under a Contract, processing documentation for a Commitment of Funds, closing of a loan, processing of a disbursement request, close-out of a Contract, or resolution of any issues related to compliance.

(3) Affiliate--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, has Control of, is Controlled by, or is under common Control with any other Person. All entities that share a Principal are Affiliates.

(4) Affordability Period--The Affordability Period commences as specified in the Land Use Restriction Agreement (LURA) or federal regulation, or commences on the first day of the Compliance Period as defined by the Code, §42(i)(1) and continues through the appropriate program's affordability requirements or termination of the LURA, whichever is earlier. The term of the Affordability Period shall be imposed by the LURA or other deed restriction and may be terminated upon foreclosure or deed in lieu of foreclosure. The Department reserves the right to extend the Affordability Period for HOME or NSP Developments that fail to meet program requirements. During the Affordability Period the Department shall monitor to ensure compliance with programmatic rules as applicable, regulations, and Application representations.

(5) Applicable Percentage--The percentage used to determine the amount of the Housing Tax Credit for any Development, as defined more fully in the Code, §42(b).

(A) For purposes of the Application, the Applicable Percentage will be projected at:

(i) nine percent if the Development is proposed to be placed in service prior to December 31, 2013 or such timing as deemed appropriate by the Department or if the ability to claim the full 9 percent credit is extended by the U.S. Congress;

(ii) forty basis points over the current applicable percentage for 70 percent present value credits, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department; or

(iii) fifteen basis points over the current applicable percentage for 30 percent present value credits, unless fixed by Congress, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department.

(B) For purposes of making a credit recommendation at any other time, the Applicable Percentage will be based in order of priority on:

(i) the percentage indicated in the Agreement and Election Statement, if executed; or

(ii) the actual applicable percentage as determined by the Code, §42(b), if all or part of the Development has been placed in service and for any buildings not placed in service the percentage will be the actual percentage as determined by the Code, §42(b) for the most current month; or

(iii) the percentage as calculated in subparagraph (A) of this paragraph if the Agreement and Election Statement has not been executed and no buildings have been placed in service.

(6) Application Acceptance Period--That period of time during which Applications may be submitted to the Department.

(7) Bank Trustee--A bank authorized to do business in this state, with the power to act as trustee.

(8) Bedroom--A portion of a Unit which is no less than 100 square feet; has no width or length less than 8 feet; is self contained with a door (or the Unit contains a second level sleeping area of 100 square feet or more); has at least one window that provides exterior access; and has at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to accommodate 5 feet of hanging space. A den, study or other similar space that could reasonably function as a bedroom and meets this definition is considered a bedroom.

(9) Breakeven Occupancy--The occupancy level at which rental income plus secondary income is equal to all operating expenses, including replacement reserves and taxes, and mandatory debt service requirements for a Development.

(10) Building Costs--Cost of the materials and labor for the vertical construction or rehabilitation of buildings and amenity structures.

(11) Carryover Allocation--An allocation of current year tax credit authority by the Department pursuant to the provisions of §42(h)(1)(C) of the Code and U.S. Treasury Regulations, §1.42-6.

(12) Carryover Allocation Agreement--A document issued by the Department, and executed by the Development Owner, pursuant to §10.402(f) of this chapter (relating to Housing Tax Credit and Tax Exempt Bond Developments).

(13) Cash Flow--The funds available from operations after all expenses and debt service required to be paid have been considered.

(14) Certificate of Reservation--The notice given by the Texas Bond Review Board (TBRB) to an issuer reserving a specific amount of the state ceiling for a specific issue of bonds.

(15) Code--The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the U.S. Department of the Treasury or the Internal Revenue Service (IRS).

(16) Code of Federal Regulations (CFR)--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

(17) Colonia--A geographic area that is located in a county some part of which is within one-hundred fifty (150) miles of the international border of this state, that consists of eleven (11) or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood, and that:

(A) has a majority population composed of individuals and families of low-income and very low-income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed area under Texas Water Code, §17.921; or

(B) has the physical and economic characteristics of a colonia, as determined by the Department.

(18) Commitment (also referred to as Contract)--A legally binding written contract, setting forth the terms and conditions under which housing tax credits, loans, grants or other sources of funds or financial assistance from the Department will be made available.

(19) Commitment of Funds--Occurs when the Development is approved by the Department and a Commitment is executed between the Department and a Development Owner or Applicant. For the HOME Program, this occurs when the activity is set up in the disbursement and information system established by HUD; known as the Integrated Disbursement and Information System (IDIS). This may also be referred to as an Obligation.

(20) Committee—See *Executive Award and Review Advisory Committee*

(210) Comparable Unit--A Unit, when compared to the subject Unit, is similar in net rentable square footage, number of bedrooms, overall condition, location, age, unit amenities, utility structure, and common amenities.

(221) Competitive Housing Tax Credits (HTC)--Tax credits available from the State Housing Credit Ceiling.

(232) Compliance Period--With respect to a building financed by Housing Tax Credits, the period of fifteen (15) taxable years, beginning with the first taxable year of the credit period pursuant to §42(i)(1) of the Code.

(243) Continuously Occupied--The same household has resided in the Unit for at least twelve (12) months.

(25) Contract--See *Commitment.*

(26) Contractor--See *General Contractor.*

(274) Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. Controlling entities of a partnership include the general partners, special limited partners when applicable, but not investor limited partners who do not possess other factors or attributes that give them Control. Controlling entities of a limited liability company include but are not limited to the managers, managing members, any members with 10 percent or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership, but not investor members who do not possess other factors or attributes that give them Control. Multiple Persons may be deemed to have Control simultaneously.

(285) Contract Rent--Net rent based upon current and executed rental assistance contract(s), typically with a federal, state or local governmental agency.

(296) Credit Underwriting Analysis Report--Sometimes referred to as the "Report." A decision making tool used by the Department and Board containing a synopsis and reconciliation of the Application information submitted by the Applicant.

(3027) Debt Coverage Ratio (DCR)--Sometimes referred to as the "Debt Coverage" or "Debt Service Coverage." Calculated as Net Operating Income for any period divided by debt service required to be paid during the same period.

(3128) Deobligated Funds--The funds released by the Development Owner or recovered by the Department canceling a Contract or award involving some or all of a contractual financial obligation between the Department and a Development Owner or Applicant.

(3229) Determination Notice--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which specifies the Department's determination as to the amount of tax credits that the Development may be eligible to claim pursuant to §42(m)(1)(D) of the Code.

(330) Developer--Any Person entering into a contract with the Development Owner to provide development services with respect to the Development and receiving a fee for such services and any other Person receiving any portion of a developer fee, whether by subcontract or otherwise, except if the Person is acting as a consultant with no Control and receiving less than 10 percent of the total Developer fee.

(341) Development Site--The area, or if scattered site, areas on which the Development is proposed to be located.

(352) Development--A residential rental housing project that consists of one or more buildings under common ownership and financed under a common plan which has applied for Department funds. This includes a project consisting of multiple buildings that are located on scattered sites and contain only rent restricted units. (§2306.6702)

(363) Development Consultant or Consultant--Any Person (with or without ownership interest in the Development) who provides professional services relating to the filing of an Application, or post award documents as required by the program.

(374) Development Owner (also referred to as "Owner")--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract or ground lease approved by the Department and is responsible for performing under the allocation and/or Commitment with the Department. (§2306.6702)

(385) Development Team--All Persons or Affiliates thereof that play a role in the Development, construction, rehabilitation, management and/or continuing operation of the subject Development, including any Development Consultant and Guarantor.

(396) Direct Loan--Funds provided through the HOME Program, Neighborhood Stabilization Program, or Housing Trust Fund or other program available through the Department for multifamily development. Direct Loans may also include deferred forgivable loans or other similar direct funding by the Department, regardless if it is required to be repaid. The tax-exempt bond program is specifically excluded.

(4037) Economically Distressed Area--An area that has been identified by the Water Development Board as meeting the criteria for an economically distressed area under Texas Water Code, §17.92(1).

(4138) Effective Gross Income (EGI)--The sum total of all sources of anticipated or actual income for a rental Development less vacancy and collection loss, leasing concessions, and rental income from employee-occupied units that is not anticipated to be charged or collected.

(4239) Efficiency Unit--A Unit without a separately enclosed Bedroom designed principally for use by a single person.

(430) Eligible Hard Costs--Hard Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation.

(441) Environmental Site Assessment (ESA)--An environmental report that conforms to the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E 1527) and conducted in accordance with §10.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines) as it relates to a specific Development.

(452) Executive Award and Review Advisory Committee (also referred to as the "Committee")--The Department committee created under Texas Government Code, §2306.1112.

(463) Existing Residential Development--Any Development Site which contains existing residential units at the time the Application is submitted to the Department.

(474) Extended Use Period--With respect to an HTC building, the period beginning on the first day of the Compliance Period and ending the later of:

(A) the date specified in the Land Use Restriction Agreement; or

(B) the date which is fifteen (15) years after the close of the Compliance Period.

(485) First Lien Lender--A lender whose lien has first priority as a matter of law or by operation of a subordination agreement or other intercreditor agreement.

(496) General Contractor (including "Contractor")--One who contracts for the construction or rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. A Pprime subcontractors will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, if any of the criteria in the scenarios described in subparagraphs (A) and (B) of this paragraph are true (in which case, such subcontractor fees will be treated as fees to the General Contractor):

(A) any subcontractor, material supplier, or equipment lessor receiving more than 50 percent of the contract sum in the construction contract is subcontracted to one subcontractor, material supplier, or equipment lessor ("will be deemed a prime subcontractors"); or

(B) if more than 75 percent of the contract sum in the construction contract is subcontracted to three or less fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed ("prime subcontractors"); or

~~(C) the General Contractor has less than seven (7) subcontractors~~.

(50~~47~~) General Partner--That partner, or collective of partners, identified as the general partner of the partnership that is the Development Owner and that has general liability for the partnership. In addition, unless the context shall clearly indicate the contrary, if the Development Owner in question is a limited liability company, the term "General Partner" shall also mean the managing member or other party with management responsibility for or Control of the limited liability company.

(51~~48~~) Governing Body--The elected or appointed body of public or tribal officials, responsible for the enactment, implementation and enforcement of local rules and the implementation and enforcement of applicable laws for its respective jurisdiction.

(52~~49~~) Governmental Entity--Includes federal, state or local agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts, tribal governments and other similar entities.

(53~~0~~) Gross Capture Rate--Calculated as the Relevant Supply divided by the Gross Demand.

(54~~1~~) Gross Demand--The sum of Potential Demand from the Primary Market (PMA), demand from other sources, and Potential Demand from a Secondary Market Area (SMA) to the extent that SMA demand does not exceed 25 percent of Gross Demand.

(55~~2~~) Gross Program Rent--Maximum rent limits based upon the tables promulgated by the Department's division responsible for compliance which are developed by program and by county or Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA) or national non-metro area.

(56~~3~~) Guarantor--Any Person that provides, or is anticipated to provide, a guaranty for all or a portion of the equity or debt financing for the Development.

(57~~4~~) HTC Development--Sometimes referred to as "HTC Property." A Development using Housing Tax Credits allocated by the Department.

(58) HTC Property--See *HTC Development.*

(59~~5~~) Hard Costs--The sum total of Building Cost, Site Work costs, Off-Site Construction costs and contingency.

(60~~56~~) Historically Underutilized Businesses (HUB)--A business that is a Corporation, Sole Proprietorship, Partnership, Limited Liability Company, or Joint Venture in which at least 51 percent of the business is owned, operated, and actively controlled and managed by a minority or woman and that meets the requirements in Texas Government Code, Chapter 2161.

(61~~57~~) Housing Contract System (HCS)--The electronic information system established by the Department for tracking, funding, and reporting Department Contracts and Developments. The HCS is primarily used for Direct Loan Programs administered by the Department.

(62~~58~~) Housing Credit Allocation--An allocation of Housing Tax Credits by the Department to a Development Owner for a specific Application in accordance with the provisions of this chapter and Chapter 11~~0~~ of this title (relating to Qualified Allocation Plan~~Uniform Multifamily Rules~~).

(63~~59~~) Housing Credit Allocation Amount--With respect to a Development or a building within a Development, the amount of Housing Tax Credits the Department determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the affordability period and which the Board allocates to the Development.

(64~~0~~) Housing Quality Standards (HQS)--The property condition standards described in 24 CFR §982.401.

(65~~1~~) Initial Affordability Period--The Compliance Period or such longer period as shall have been elected by the Owner as the minimum period for which Units in the Development shall be retained for low-income tenants and rent restricted, as set forth in the LURA.

(662) Integrated Disbursement and Information System (IDIS)--The electronic grants management information system established by HUD to be used for tracking and reporting HOME funding and progress and which may be used for other sources of funds as established by HUD.

(673) Land Use Restriction Agreement (LURA)--An agreement between the Department and the Development Owner which is a binding covenant upon the Development Owner and successors in interest, that, when recorded, encumbers the Development with respect to the requirements of the programs for which it receives funds. (§2306.6702)

(684) Low-Income Unit--A Unit that is intended to be restricted for occupancy by an income eligible household, as defined by the Department utilizing its published income limits.

(695) Managing General Partner--A general partner of a partnership that is vested with the authority to take actions that are binding on behalf of the partnership and the other partners. The term Managing General Partner can also be used for a Managing Member of a limited liability company where so designated to bind the limited liability company and its members under its Agreement or any other person that has such powers in fact, regardless of their organizational title.

(7066) Market Analysis--Sometimes referred to as "Market Study." An evaluation of the economic conditions of supply, demand and rental rates conducted in accordance with §10.303 of this chapter (relating to Market Analysis Rules and Guidelines) as it relates to a specific Development.

(7167) Market Analyst--A real estate appraiser or other professional familiar with the subject property's market area who prepares a Market Analysis.

(7268) Market Rent--The achievable rent for a ~~particular Comparable Unit~~unit without rent and income restrictions determined by the Market Analyst or Underwriter after adjustments are made to actual rents ~~charged by owners of~~on Comparable Units to account for differences in net rentable square footage, functionality, overall condition, location, age, unit amenities, utility structure and common area amenities.~~on properties without rent and income restrictions.~~

(73) Market Study—See *Market Analysis.*

(7469) Material Deficiency--Any individual Application deficiency or group of Administrative Deficiencies which, if addressed, would require, in the Department's reasonable judgment, a substantial reassessment or re-evaluation of the Application or which, are so numerous and pervasive that they indicate a failure by the Applicant to submit a substantively complete and accurate Application.

(750) Material Noncompliance--Defined as:

(A) a Housing Tax Credit (HTC) Development located within the State of Texas will be classified by the Department as being in Material Noncompliance status if the noncompliance score for such Development is equal to or exceeds (30 points) in accordance with the Material Noncompliance provisions, methodology, and point system in Subchapter F of this chapter (relating to Compliance Monitoring);

(B) non-HTC Developments monitored by the Department with 1 - 50 Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds (30 points). Non-HTC Developments monitored by the Department with 51 - 200 Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds (50 points). Non-HTC Developments monitored by the Department with 201 or more Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds (80 points); and

(C) for all programs, a Development will be in Material Noncompliance if the noncompliance is stated in Subchapter F of this chapter to be in Material Noncompliance.

(761) Multifamily Programs Procedures Manual--The manual produced and amended from time to time by the Department which reiterates and implements the rules and provides guidance for the filing of multifamily related documents.

(772) Net Operating Income (NOI)--The income remaining after all operating expenses, including replacement reserves and taxes that have been paid.

(783) Net Program Rent--Calculated as Gross Program Rent less Utility Allowance.

(794) Net Rentable Area (NRA)--The unit space that is available exclusively to the tenant and is typically heated and cooled by a mechanical HVAC system. NRA is measured to the outside of the studs of a unit or to the middle of walls in common with other units. NRA does not include common hallways, stairwells, elevator shafts, janitor closets, electrical closets, balconies, porches, patios, or other areas not actually available to the tenants for their furnishings, nor does NRA include the enclosing walls of such areas.

(8075) Non-HTC Development--Sometimes referred to as Non-HTC Property. Any Development not utilizing Housing Tax Credits or Exchange funds.

(8176) Notice of Funding Availability (NOFA)--A notice issued by the Department that announces funding availability, usually on a competitive basis, for multifamily rental programs requiring Application submission from potential Applicants.

(8277) Off-Site Construction--Improvements up to the Development Site such as the cost of roads, water, sewer and other utilities to provide access to and service the Site.

(8378) Office of Rural Affairs--An office established within the Texas Department of Agriculture; formerly the Texas Department of Rural Affairs.

(8479) One Year Period (1YP)--The period commencing on the date on which the Department and the Owner agree to the Qualified Contract price in writing and continuing for twelve (12) calendar months.

(85) Owner(also referred to as Owner)—See *Owner.*

(860) Person--Without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality or other organization or entity of any nature whatsoever and shall include any group of Persons acting in concert toward a common goal, including the individual members of the group.

(871) Persons with Disabilities--With respect to an individual, means that such person has:

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) is regarded as having such an impairment, to include persons with severe mental illness and persons with substance abuse disorders.

(88) Physical Needs Assessment--See *Property Condition Assessment.*

(892) Post Carryover Activities Manual--The manual produced and amended from time to time by the Department which explains the requirements and provides guidance for the filing of post-carryover activities, or for Tax Exempt Bond Developments, the requirements and guidance for post Determination Notice activities.

(9083) Potential Demand--The number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placement in service date.

(9184) Primary Market (PMA)--Sometimes referred to as "Primary Market Area." The area defined by the Market Analyst as described in §10.303 of this chapter ~~(concerning Market Analysis Rules and Guidelines)~~ from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(92) Primary Market Area—See *Primary Market.*

(9385) Principal--Persons that will exercise Control over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) partnerships, Principals include all General Partners, special limited partners, and Principals with ownership interest;

(B) corporations, Principals include any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation and any individual who has Control with respect to such stock holder; and

(C) limited liability companies, Principals include all managers, managing members, members having a 10 percent or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.

(94~~86~~) Pro Forma Rent--For a restricted Unit, the lesser of the Net Program Rent or the Market Rent. For an unrestricted unit, the Market Rent. Contract Rents, if applicable, will be used as the Pro Forma Rent.

(95~~87~~) Property--The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built thereon in connection with the Application.

(96~~88~~) Property Condition Assessment (PCA)--Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessment," or “Property Condition Report.” The PCA provides an evaluation of the physical condition of an existing Property to evaluate the immediate cost to rehabilitate and to determine costs of future capital improvements to maintain the Property. The PCA must be prepared in accordance with §10.306 of this chapter (relating to Property Condition Assessment Guidelines) as it relates to a specific Development.

(97~~89~~) Qualified Contract (QC)--A bona fide contract to acquire the non-low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the Applicable Fraction (specified in the LURA) of the calculation as defined within §42(h)(6)(F) of the Code.

(98~~0~~) Qualified Contract Price (“QC Price”)--Calculated purchase price of the Development as defined within §42(h)(6)(F) of the Code and as further delineated in §10.408 of this chapter (relating to Qualified Contract Requirements).

(99~~1~~) Qualified Contract Request (Request)--A request containing all information and items required by the Department relating to a Qualified Contract.

(100~~92~~) Qualified Elderly Development--A Development which is operated with property-wide age restrictions for occupancy and which meets the requirements of “housing for older persons” under the federal Fair Housing Act.

(101~~93~~) Qualified Nonprofit Organization--An organization that meets the requirements of Section 42(h)(5)(c) of the Code for all purposes, and for an allocation in the nonprofit set-aside or subsequent transfer of the property, meets the requirements of Texas Government Code §2306.6706 and §2306.6729, and §42(h)(5) of the Code~~, and is seeking Competitive Housing Tax Credits.~~

(102~~94~~) Qualified Nonprofit Development--A Development which meets the requirements of §42(h)(5) of the Code, includes the required involvement of a Qualified Nonprofit Organization, and is seeking Competitive Housing Tax Credits.

(103~~95~~) Qualified Purchaser--Proposed purchaser of the Development who meets all eligibility and qualification standards stated in the Qualified Allocation Plan of the year the Request is received, including attending, or assigning another individual to attend, the Department's Property Compliance Training.

(104~~96~~) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the re-construction of an equal number of units or less on the Development Site. At least one unit must be reconstructed in order to qualify as Reconstruction.

(105~~97~~) Rehabilitation--The improvement or modification of an Existing Residential Development through alteration, incidental addition or enhancement. The term includes the demolition of an Existing Residential Development and the Reconstruction of a Development on the Development Site, but does not include

Adaptive Reuse. (§2306.004(26-a)) More specifically, Rehabilitation is the repair, refurbishment and/or replacement of existing mechanical and structural components, fixtures and finishes. Rehabilitation will correct deferred maintenance, reduce functional obsolescence to the extent possible and may include the addition of: energy efficient components and appliances, life and safety systems; site and resident amenities; and other quality of life improvements typical of new residential Developments.

(106~~98~~) Related Party--Includes certain individuals or entities as defined in Texas Government Code, §2306.6702. Nothing in this definition is intended to constitute the Department's determination as to what relationship might cause entities to be considered "related" for various purposes under the Code.

(107~~99~~) Relevant Supply--The supply of Comparable Units in proposed and Unstabilized Developments targeting the same population including:

(A) the proposed subject Units;

(B) Comparable Units in another proposed development within the PMA with a priority Application over the subject, based on the Department's evaluation process described in §10.201~~(a)~~(6) of this chapter (relating to Procedural Requirements for Application Submission) that may not yet have been presented to the Board for consideration of approval~~decision~~;

(C) Comparable Units in previously approved but Unstabilized Developments in the PMA; and

(D) Comparable Units in previously approved but Unstabilized Developments in the Secondary Market Area (SMA), in the same proportion as the proportion of Potential Demand from the SMA that is included in Gross Demand.

(108) Report--See *Credit Underwriting Analysis Report.*

(109) Request--See *Qualified Contract Request.*

(110~~00~~) Reserve Account--An individual account:

(A) created to fund any necessary repairs for a multifamily rental housing Development; and

(B) maintained by a First Lien Lender or Bank Trustee.

(111~~01~~) Right of First Refusal--An Agreement to provide a right to purchase the Property to a nonprofit or tenant organization with priority to that of any other buyer at a price whose formula is prescribed in the LURA.

(112~~02~~) Rural Area--An area that is located:

(A) outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area;

(B) within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an urban area; or

(C) in an area that is eligible for funding by the Texas Rural Development Office of the USDA, other than an area that is located in a municipality with a population of more than 50,000.

(113~~03~~) Secondary Market (SMA)--Sometimes referred to as "Secondary Market Area." The area defined by the Qualified Market Analyst as described in §10.303 of this chapter.

(114) Secondary Market Area—See *Secondary Market.*

(115~~04~~) Single Room Occupancy (SRO)--An Efficiency Unit that meets all the requirements of a Unit except that it may, but is not required, to be rented on a month to month basis to facilitate Transitional Housing. Buildings with SRO Units have extensive living areas in common and are required to be Supportive Housing and include the provision for substantial supports from the Development Owner or its agent on site.

(116~~05~~) Site Control--Ownership or a current contract or series of contracts that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the owner, to require conveyance to the Applicant.

(1170~~6~~) Site Work--Materials and labor for the horizontal construction generally including excavation, grading, paving, and underground utilities~~, fencing, pools and landscaping~~.

(1180~~7~~) State Housing Credit Ceiling--The aggregate amount of Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with applicable federal law, including §42(h)(3)(C) of the Code and Treasury Regulation 1.42-14.

(1190~~8~~) Sub-Market--An area defined by the Underwriter based on general overall market segmentation promulgated by market data tracking and reporting services from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(1200~~9~~) Supportive Housing--Residential rental developments intended for occupancy by individuals or households in need of specialized and specific non-medical services in order to maintain independent living. Supportive housing developments generally require established funding sources outside of project cash flow and are proposed and expected to be debt free or have no foreclosable or noncash flow debt unless the development is a Tax Exempt Bond Development with a project based rental assistance contract that assures a contract rent for a majority of the units, in which case the Development is treated as Supportive Housing under all subchapters of this chapter, except Subchapter D – Underwriting and Loan Policies. The services offered generally address special attributes of such populations as Transitional Housing for homeless and at risk of homelessness, persons who have experienced domestic violence or single parents or guardians with minor children.

(1210~~10~~) Target Population--The designation of types of housing populations shall include those Developments that are entirely Qualified Elderly and those that are entirely Supportive Housing. All others will be considered to serve general populations without regard to any subpopulations.

(1221~~11~~) Tax-Exempt Bond Development--A Development requesting or having been awarded Housing Tax Credits and which receives a portion of its financing from the proceeds of tax-exempt bonds which are subject to the state volume cap as described in §42(h)(4) of the Code, such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.

(1231~~12~~) Tax Exempt Bond Process Manual--The manual produced and amended from time to time by the Department which explains the process and provides guidance for the filing of a Housing Tax Credit Application utilizing Tax Exempt Bonds.

(1241~~13~~) TDHCA Operating Database--Sometimes referred to as "TDHCA Database." A consolidation of recent actual income and operating expense information collected through the Department's Annual Owner Financial Certification process, as required and described in Subchapter F of this title, and published on the Department's web site (www.tdhca.state.tx.us).

(1251~~14~~) Third Party--A Person who is not:

(A) an Applicant, General Partner, Developer, or General Contractor; or

(B) an Affiliate ~~or a Related Party~~ to the Applicant, General Partner, Developer or General Contractor; or

(C) anyone receiving any portion of the administration, contractor or Developer fees from the Development; or

(D) any individual that is an executive officer or member of the governing board or has greater than 10 percent ownership interest in any of the entities are identified in subparagraphs (A) – (C) of this paragraph.

(1261~~15~~) Total Housing Development Cost--The sum total of the acquisition cost, Hard Costs, soft costs, Developer fee and General Contractor fee incurred or to be incurred through lease-up by the Development Owner in the acquisition, construction, rehabilitation and financing of the Development.

(1271~~16~~) Transitional Housing--A Supportive Housing development that includes living Units with more limited individual kitchen facilities and is:

(A) used exclusively to facilitate the transition of homeless individuals and those at-risk of becoming homeless, to independent living within 24 months; and

(B) is owned by a Development Owner that includes a governmental entity or a qualified non-profit which provides temporary housing and supportive services to assist such individuals in, among other things, locating and retaining permanent housing. The limited kitchen facilities in individual Units must be appropriately augmented by suitable, accessible shared or common kitchen facilities.

(128~~17~~) Underwriter--The author(s) of the Credit Underwriting Analysis Report.

(118) Uniform Physical Condition Standards (UPCS)--As developed by the Real Estate Assessment Center of HUD.

(129~~19~~) Unit--Any residential rental unit in a Development consisting of an accommodation, including a single room used as an accommodation on a non-transient basis, that contains complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation.

(130~~20~~) Unit of General Local Government--A city, town, county, village, tribal reservation or other general purpose political subdivision of the State. For purposes of §11.9 of this title (related to Competitive HTC ~~s~~Selection Criteria) Unit of General Local Government shall ~~mean a city or county~~have the meaning given in that section.

(131~~21~~) Unit Type--Units will be considered different Unit Types if there is any variation in the number of bedroom, bathrooms or a square footage difference equal to or more than one-hundred twenty (120) square feet. For example: A two Bedroom/one bath Unit is considered a different Unit Type than a two Bedroom/two bath Unit. A three Bedroom/two bath Unit with 1,000 square feet is considered a different Unit Type than a three Bedroom/two bath Unit with 1,200 square feet. A one Bedroom/one bath Unit with 700 square feet will be considered an equivalent Unit Type to a one Bedroom/one bath Unit with 800 square feet.

(132~~22~~) Unstabilized Development--A development with Comparable Units that has been approved for funding by the Department's Board of Directors or is currently under construction or has not maintained a 90 percent occupancy level for at least twelve (12) consecutive months following construction completion. A development may be deemed stabilized by the Underwriter based on factors relating to a development's lease-up velocity, Sub-Market rents, Sub-Market occupancy trends and other information available to the Underwriter. The Market Analyst may not consider ~~a~~ such development stabilized in the Market Study.

(133~~23~~) Urban Area--The area that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than an area described by paragraph (102)(B) of this subsection or eligible for funding as described by paragraph (102)(C) of this subsection.

(134~~24~~) U.S. Department of Agriculture (USDA)--Texas Rural Development Office (TRDO) serving the State of Texas.

(135~~25~~) U.S. Department of Housing and Urban Development (HUD)-regulated Building--A building for which the rents and utility allowances of the building are reviewed by HUD.

(136~~26~~) Utility Allowance--The estimate of tenant-paid utilities made in accordance with Treasury Regulation §1.42-10 and §10.607 of this chapter (relating to Utility Allowances).

(137~~27~~) Work Out Development--A financially distressed Development for which the Owner and/or a primary financing participant is seeking a change in the terms of Department funding or program restrictions.

(b) Request for Staff Determinations. Where the definitions of Development, Development Site, New Construction, Rehabilitation, Reconstruction, Adaptive Re-use and Target Population fail to fully account for the activities proposed in an Application, an Applicant may request and Department staff may provide a determination to an Applicant explaining how staff will review an Application in relation to these specific terms and their usage within the applicable rules. Such request must be received by the Department prior to submission of the pre-application (if applicable to the program) or Application (if no pre-application was submitted). Staff's determination may take into account the purpose of or policies addressed by a particular

rule or requirement, materiality of elements, substantive elements of the development plan that relate to the term or definition, the common usage of the particular term, or other issues relevant to the rule or requirement. All such determinations will be conveyed in writing. If the determination is finalized after submission of the pre-application or Application, the Department may allow corrections to the pre-application or the Application that are directly related to the issues in the determination. It is an Applicant's sole responsibility to request a determination and an Applicant may not rely on any determination for another Application regardless of similarities in a particular fact pattern. For any Application that does not request and subsequently receive a determination, the definitions and applicable rules will be applied as used and defined herein. Such a determination is intended to provide clarity with regard to Applications proposing activities such as: scattered site development or combinations of construction activities (e.g. Rehabilitation with some New Construction). An Applicant may appeal a determination for their Application if the determination provides for a treatment that relies on factors other than the explicit definition. A determination cannot be challenged by any other party.

§10.4. Program Dates. This section reflects key dates for all multifamily development programs except for the Competitive Housing Tax Credit Program. A program calendar for the Competitive Housing Tax Credit Program is provided in Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan). Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Non-statutory deadlines specifically listed in this section may be extended for good cause by the Executive Director for a period of not more than five (5) business days provided; however, that the Applicant requests an extension prior to the date of the original deadline. Extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party.

(1) Full Application Neighborhood Organization Request Date. The request must be sent no later than fourteen (14) calendar days prior to the submission of Parts 5 and~~&~~ 6 of the Application for Tax Exempt Bond Developments or at Application for other programs.

(2) Full Application Delivery Date. The deadline by which the Application must be submitted to the Department. Such deadline will generally be defined in the applicable NOFA.

(3) Notice to Submit Lottery Application Delivery Date. No later than December 14, 2012, Applicants that receive an advance notice regarding a Certificate of Reservation must submit a notice to the Department, in the form prescribed by the Department.

(4) Applications Associated with Lottery Delivery Date. No later than December 28, 2012 Applicants that participated in the BRB Lottery must submit the complete tax credit Application to the Department.

(5) Administrative Deficiency Response Deadline. Such deadline shall be five (5) business days after the date on the deficiency notice without incurring a penalty fee pursuant to §10.901 of this chapter (relating to Fee Schedule).

(6) Third Party Report Delivery Date (Environmental Site Assessment (ESA), Property Condition Assessment (PCA), Appraisal (if applicable). For Direct Loan Applications, the Third Party reports must be submitted with the Application in order for it to be considered a complete Application. For Tax-Exempt Bond Developments the Third Party Reports must be submitted no later than seventy-five (75) calendar days prior to the Board meeting at which the tax credits will be considered. The seventy-five (75) calendar day deadlines are available on the Department's website.

(7) Market Analysis and Site Design and Development Feasibility Report ~~Civil Engineer Feasibility Study~~ Delivery Date. For Direct Loan Applications, the Market Analysis and Site Design and Development Feasibility Report must be submitted with the Application in order for it to be considered a complete Application. For Tax-Exempt Bond Developments the Market Analysis and Site Design and Development Feasibility Report must be submitted no later than seventy-five (75) calendar days prior to the Board meeting at which the tax credits will be considered. The seventy-five (75) calendar day deadlines are available on the Department's website.

Attachment B: Preamble, Reasoned Response, and New Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC, Chapter 10 Uniform Multifamily Rules, Subchapter B, §10.101 concerning Site and Development Restrictions and Requirements, with changes to text as published in the September 21, 2012 issue of the *Texas Register* (37 TexReg 7349).

REASONED JUSTIFICATION. The Department finds that the adoption of the section will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

The comments and responses include both administrative clarifications and corrections to the Uniform Multifamily Rule based on the comments received. After each comment title, numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the Uniform Multifamily Rule as presented to the Board in September, such changes are indicated. Public comments were accepted through October 22, 2012 with comments received from (6) Diana McIver, DMA Development Company, (8) Matt Hull, Texas Association of Community Development Corporations, (10) Lynn Blakeley, Blakeley Commercial Real Estate, (11) Claire Palmer, (13) Cynthia Bast, Locke Lord, (23) Walter Moreau, Foundation Communities, (25) Michael Daniel, Daniel & Beshara, P.C., (30) Nancy Sheppard, San Antonio Housing Authority, et al., (32) Michael Hartman, Tejas Housing Group, (36) Hal Fairbanks, HRI Properties, (37) Morgan Little, Texas Coalition of Veterans Organizations, (43) David Mark Koogler, Mark-Dana Corporation, (44) Donna Rickenbacker, Marque Real Estate Consultants (47) Stuart Shaw, Bonner Carrington, (51) Kelsey Mullen, United States Green Building Council (USGBC), (52) Barry Palmer, Coats Rose, (64) Michael Bodaken, National Housing Trust, (66) Texas Association of Affordable Housing Providers, and (68) Tony Sisk, Churchill Residential.

38. §10.101(a)(2) – Subchapter B – Mandatory Site Characteristics (6), (10), (47), (66), (68)
COMMENT SUMMARY: Commenter (6) indicated support for the radii regarding the mandatory site characteristics and further noted that any potential changes that would increase the distance will detract from the quality of the real estate.

Commenter (10) stated the radii noted in this section (1 mile for urban and 2 miles for rural) does not take into account that in many urban settings, services may be concentrated in an area where land is either not available due to a community's build-out or the land is too expensive due to proximity to mixed-use developments. Moreover, commenter (10) stated that in rural areas, services are frequently scattered along intersections where some services may be available, but may not allow for the requirement of 6 services within 2 miles and noted that this limitation is a function of restrictions on water and sewer service in these rural areas and cannot be overcome by the local jurisdiction. Commenter (10), (47), (66), (68) recommended the radii be changed to 2 miles for urban and commenter (10), (47), (66) recommended 3 miles for rural.

Commenter (47) recommended this requirement be removed for 4% HTC Developments, especially if the Department is not the Issuer and suggested the local issuer, lenders and investors should decide whether or not the market has amenities that are close by and that could serve the

community. Commenter (47) further suggested multiple points for multiple amenities that fall into the same category should be allowed since they are still considered amenities and also requested additional options be listed or a mechanism for the applicant to request approval for amenities that are not on the list.

Commenter (66) recommended public transportation be added as an option.

STAFF RESPONSE: Staff concurs with Commenter (6) and believes that proximity to amenities is a paramount concern. Staff notes that a majority of applications from the prior application round received full points under this scoring item and no changes in the number of services required have been recommended that would indicate the ability to meet this requirement for the 2013 program year would be a significant barrier to development high quality housing in high quality locations. In response to Commenter (66), staff recommends the addition of a public transportation stop to the list of amenities.

In response to commenter (47) staff does not see a clear policy reason why housing tax credit applications, regardless of if they are 4% or 9%, should be treated differently; therefore, no changes are recommended based on this comment.

39. §10.101(a)(3) – Subchapter B – Undesirable Site Features (8), (30), (36), (47), (66)
COMMENT SUMMARY: Commenter (8) recommended that an exception be made to (3)(B) of this section regarding developments located adjacent to or within 300 feet of active railroad tracks. Commenter (8), (66), with similar comments by commenter (47), suggested exempting those developments that mitigate the increased sound by using the official HUD sound attenuation standards. Commenter (30) suggested that this feature be eliminated as it should not be considered a negative and further stated that there are many ways in which to attenuate noise levels. Commenter (36), (44) reflected similar comments and recommended the following revision regarding the railroad track negative site feature:

> "(B) Developments located adjacent to or within 300 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail or unless the Development Site will comply with applicable site acceptability standards set forth in 24 CFR Part 51, Subpart B – Noise Abatement and Control."

Commenter (47) requested including an option to address proximity to junkyards by measuring from the nearest residential building to the junkyard to allow for places where an entry could be within 300 feet but the residential buildings are much farther away or allowing the distance to be measured from the junkyard to the mitigation method used (*e.g.* fences, landscaping, etc.). According to commenter (47) this is important because there could be revitalization areas that have junkyards.

Commenter (66) recommended a waiver process be developed for all undesirable site features; however, should the Department not pursue this recommendation then it should be clear that waivers should at least be allowed to be requested for the railroad tracks, industrial uses, high voltage transmission lines and cell towers and airport accident or clear zones.

STAFF RESPONSE: For any undesirable site feature that may be applicable to a site and therefore render the application ineligible, §10.207 (Waiver of Rules for Applications) of the Uniform Multifamily Rules provides for a waiver process should an applicant elect to pursue it.

Therefore, staff does not recommend any changes based on this comment. In response to commenter (47) requesting the distance be measured in terms of proximity to the nearest residential building instead of the boundary of the site, staff believes this requirement specifically addresses the site, not the buildings, and it would be inappropriate to measure from a building instead of from the site. In addition, site plans often change after application, so this could create a potential problem if sites were found eligible under this measurement and then built to another standard. Therefore, staff recommends no changes based on this comment.

Staff recommends the following language for purposes of clarifying the waiver process. This language also includes an additional subparagraph which was originally included under §10.101(a)(4), related to Undesirable Area Features, but was intended to be included in this section. That amendment is also reflected in the appropriate section of the reasoned response below.

> **"…Undesirable Site Features**. Development Sites with the undesirable features identified in subparagraphs (A) - (G) of this paragraph will be considered ineligible. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD or USDA are exempt. For purposes of this requirement, the term 'adjacent' means sharing a boundary with the Development Site. The distances are to be measured from the nearest boundary of the Development Site to the boundary of the undesirable feature. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (H) of this paragraph, staff may request a determination from the Board as to whether such feature is unacceptable. If the Board determines such feature or Site is ineligible the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.
>
> (A) Developments located adjacent to or within 300 feet of junkyards;
>
> (B) Developments located adjacent to or within 300 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail;
>
> (C) Developments located adjacent to or within 300 feet of heavy industrial uses such as manufacturing plants, refinery blast zones, etc.;
>
> (D) Developments located adjacent to or within 300 feet of a solid waste or sanitary landfills;
>
> (E) Developments in which the buildings are located within the easement of any overhead high voltage transmission line or inside the engineered fall distance of any support structure for high voltage transmission lines, radio antennae, satellite towers, etc. This does not apply to local service electric lines and poles;
>
> (F) Developments in which the buildings are located within the accident zones or clear zones for commercial or military airports; ~~or~~

(G) Developments located adjacent to or within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined as stated in Local Government Code, §243.002; or.

(H) Any other Site deemed unacceptable, which would include, without limitation, those containing an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated."

40. §10.101(a)(4) – Subchapter B – Undesirable Area Features (8), (13), (25), (30), (32), (47), (52), (66)

COMMENT SUMMARY: Commenter (8), (11), (30), (32), (47), (66) expressed concern that the language in this section is vague and commenter (8) further added that nonprofit developers will not know in advance if an area has such an undesirable feature that would count against them in an application. Commenter (8) shared that mission driven nonprofits often work in areas that have a history of such undesirable features because their mission is to address those very issues. Commenter (8) recommended the Department try to quantify this section so any applicant would be better able to score their own application. Commenter (30) stated that these features will only increase challenges for development that result in an improvement to the community and recommended that a waiver process for these features be initiated and once approved by the Board it is not challengeable.

Commenter (47) suggested the undesirable area features be removed, provide better definitions to the features listed or make it applicable to only Region 3. Moreover, if made only applicable to Region 3 then provide concise definitions or methods of determining how this would be applied and how to mitigate.

Commenter (52) stated the features noted in this section will effectively prevent severely distressed public housing site from participating in the Department's programs. Commenter (52) proposed the Department provide an exemption for any development that includes federal funding in its construction and financing sources and must comply with HUD environmental assessment or federal site and neighborhood regulations. Such exemption will allow the applicant to proceed instead of requiring pre-clearance through the Department. Moreover, commenter (52) proposed that allocations made pursuant to this exemption would not be subject to the challenge process under §11.10 of the Qualified Allocation Plan (QAP). Alternatively, commenter (52) suggested that in the event the Department does not allow such an exemption then exemptions should be considered for developments that are located in a city's revitalization area, as evidenced by a letter from the municipality's housing department. Commenter (66) also recommended that any area features disclosed under this section and/or any waivers or pre-clearance granted with respect to this section be excluded as grounds for challenges under §11.10 of the QAP.

Commenter (66) recommended the rules provide for an expedited review and appeals process for the undesirable area features and proposed the following:

"The Executive Director shall either grant or deny a waiver or pre-clearance within five (5) business days of receipt by the Department of disclosure of undesirable area features under this clause (4). If the Department does not respond within such five (5) business day period, the application will not be

terminated due to issues under this clause (4). Any denial of a waiver or pre-clearance may be immediately appealed to the Board at the next Board meeting regardless of any appeal filing deadlines set forth in §10.902 of this chapter (relating to the Appeals Process).”

Commenter (25) stated the undesirable area features listed in the published draft does not include several features that were part of the remedial plan. Specifically, commenter (25) recommended including the following under this section:

“…(E) A hazardous waste site or a source of localized hazardous emissions, whether remediated or not;
(F) Heavy industrial use;
(G) Active railways (other than commuter trains);
(H)Landing strips or heliports.”

Commenter (13) questioned the phrase “the applicant will be allowed an opportunity address any identified concerns” in this section and whether such opportunity is outside the context of either the administrative deficiency process or the appeals process. Commenter (13) suggested that should a site be deemed unacceptable to the Department the application should be terminated and the applicant should have the opportunity to appeal in the normal course and recommended the following revision:

“…If the Department makes such a determination, the Application will be terminated and subject to appeal, as provided herein.”

STAFF RESPONSE: In response to commenter (25) staff recommends the suggested revision per the Remedial Plan. In response to comments indicating subjectivity of the area features, the rules allow for a pre-clearance determination related to such feature and the pre-clearance, if denied or withheld, may be appealed to the Board for consideration. Moreover, staff disagrees with commenter (8) that a nonprofit developer should be any less aware of undesirable area features than a for-profit developer and recommends no changes based on the comment.

In response to commenter (8), regarding mission driven nonprofits working in undesirable areas, and commenter (52), staff does not believe that exceptions should be given to any Developments considering that this item is central to the Remedial Plan. However, applicants have the ability to choose to pursue a waiver. Staff recommends to changes based on this comment.

In response to commenter (66), pursuant to §11.10(5) of the QAP as currently posted, pre-clearance determinations for undesirable area features cannot be challenged. However, failure to disclose any undesirable features through the pre-clearance process can be challenged. Staff expects a large number of pre-clearance requests, and it is not reasonable to make determinations within 5 days. However, staff appreciates that these determinations are vital to developers and; therefore, staff is willing to accept the requests very early in the application process, outside of the pre-application submission if necessary. Staff will work to make determinations in an efficient manner and get appeals to the Board as quickly as possible, but staff does not believe it is practical to disregard the appeals process and timeline in this instance. Staff recommends no changes based on this comment.

In response to commenter (13) requesting clarification on how such unacceptable sites will be treated staff recommends the revision below. This revision also includes a deletion of language related to unacceptable sites which was intended to be included under §10.101(a)(3), related to Undesirable Site Features. Such change is also reflected in that section of the reasoned response above.

"…Undesirable Area Features. If the Development Site is located between 301 feet – 1,000 feet of any of the undesirable area features in subparagraphs (A) – (HD) of this paragraph then the Applicant must disclose the presence of such feature to the Department. The standard to be applied in making a determination under this paragraph is whether the undesirable area feature is of a nature that would not be typical in a neighborhood that would qualify under the Opportunity Index pursuant to §11.9(c)(4) of this title (relating to Competitive HTC selection Criteria). For a Housing Tax Credit Application the Applicant is required to disclose the presence of such feature at the time the pre-application (as applicable) is submitted to the Department so as to expedite the review of such information. For all other types of Applications, and for those Housing Tax Credit Applicants who did not submit a pre-application, the Applicant is required to disclose the presence of such feature at the time the Application is submitted to the Department. Disclosure of such features affords the Applicant the opportunity to obtain pre-clearance of a particular Site from the Department in accordance with §10.207 of this chapter (relating to Waiver of Rules for Applications). Non-disclosure of such information may result in the Department's withholding or denial of pre-clearance. Denial or withholding of pre-clearance deems the Site ineligible and is grounds for termination of the Application. Should Department staff withhold or deny pre-clearance, Applicants may appeal the decision to the Board pursuant to §10.902 of this chapter (relating to Appeals Process. (§2306.0321; §2306.6715)). Should the Board uphold staff's decision or initially withhold or deny pre-clearance, the resulting determination of sSite ineligibility and termination of the Application cannot be appealed. The Board's decision cannot be appealed.

(A) A history of significant or recurring flooding;

(B) Significant presence of blighted structures;

(C) Fire hazards that could impact the fire insurance premiums for the proposed Development; or

(D) Locally known presence of gang activity, prostitution, drug trafficking, or other significant criminal activity that rises to the level of frequent police reports;.

(E) A hazardous waste site or a source of localized hazardous emissions, whether corrected or not;

(F) Heavy industrial use;

(G) Active railways (other than commuter trains); or

(H) Landing strips or heliports.

~~(5) Unacceptable sites include, without limitation, those containing an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated. If the Department makes such a determination, the Applicant will be allowed an opportunity to address any identified concerns.~~"

41. §10.101(b)(1)(A) – Subchapter B – Development Requirements and Restrictions (36)
COMMENT SUMMARY: Commenter (36) stated the scope of public use requirements was clarified in the Housing and Economic Recovery Act of 2008 which specifically stated that a development does not fail to meet the public use requirement solely because of occupancy restrictions or preferences that favor tenants with special needs, who are members of a specified group under a State program or who are involved in artistic or literary activities. Commenter (36) recommended the following revision:

"…(A) General Ineligibility Criteria.

(v) A Development seeking Housing Tax Credits that is reasonably believed by staff to clearly not meet the general public use requirement under Treasury Regulation §1.42-9 unless the Applicant has obtained a private letter ruling that the proposed Development is permitted; however, HTC Developments serving special needs populations or specified groups as authorized under §3004(g) of the Housing and Economic Recovery Act of 2008, including Professional Educators or Texas Heroes as defined by the Texas State Affordable Housing Corporations Single Family Programs, shall be deemed to meet the public use requirement; or"

STAFF RESPONSE: Staff has and will continue to take into account the changes to the tax credit statute regarding the general public use requirement before considering any Application ineligible based on the tenant population it proposes to serve. Staff believes that if a proposed Development does not appear to meet such requirement it would be prudent to seek a private letter ruling rather than risk awarding credits to a Development it believes is in violation of the regulations. Inclusion of the above suggested language is not necessary and it is not entirely clear that the listed programs would meet the general use requirements. Staff recommends no change based on this comment.

42. §10.101(b)(3) – Subchapter B – Rehabilitation Costs (11), (13)
COMMENT SUMMARY: Commenter (13) asked for clarification regarding the language that rehabilitation costs must be "maintained through the issuance of IRS Form 8609." Commenter (13) indicated that such application could be submitted that does not involve the issuance of such Forms and suggested the language be revised to state such costs per unit be "supported in the Applicant's cost certification." Moreover, commenter (13) requested clarification on whether the funding would be lost entirely should such application not support the requisite level of rehabilitation costs. Commenter (11) suggested this requirement be tiered for all Developments, for example, a certain amount if the development is less than 20 years old and then $25,000 for all other developments.

STAFF RESPONSE: In response to commenter (13), staff believes the represented level of rehabilitation should be maintained through the issuance of IRS Form 8609 or at the time of close-out documentation, as applicable, and recommends changes to the language accordingly.

While the precise cost per unit is more difficult to maintain due to continuously changing construction costs, the department will require the minimum level ascribed to in the application to be met. At the time of cost certification or close-out documentation, staff would require the amount of rehabilitation to be verified prior to the issuance of IRS Form 8609. Any potential change in the credit or funding amount as a result of not meeting the minimum level required such determination will be made upon review of the cost certification or close-out documentation. Staff recommends no change based on this comment.

In response to commenter (11), staff has followed Board direction regarding the rehabilitation threshold requirements and specifically allowing a lower threshold for original 9% competitive HTC applications that are coming out of the compliance period that may need rehabilitation and are funded utilizing the 4% HTC program. Creating additional tiers based on the age of the property and its applicability to the funding source is a change that would certainly warrant additional discussion and public comment. Staff recommends no change based on this comment.

43. §10.101(b)(4)(J) – Subchapter B – Mandatory Development Amenities (43)
COMMENT SUMMARY: Commenter (43) recommended the Energy Star lighting in all Units which may include compact fluorescent bulbs item allow LED light bulbs to be acceptable.

STAFF RESPONSE: Staff agrees with commenter and recommends the following revision:

> "(J) Energy-Star rated lighting in all Units which may include compact fluorescent or LED light bulbs;"

44. §10.101(b)(5) – Subchapter B – Common Amenities (13), (23), (36), (43), (44), (51), (64)
COMMENT SUMMARY: Commenter (36), (44) stated that inner city urban tax credit developments usually involve zero-lot line or other land availability and cost constraints that would make the provision of many of the common amenities, particularly outdoor amenities, infeasible, or difficult at best. In contrast, proximity to employment centers and public amenities creates a high demand for downtown affordable housing. Commenter (36), (44) recommended the following revisions:

> "(A) All Developments must provide sufficient common amenities as described in subparagraph (C) of this paragraph to qualify for at least the minimum number of points with urban zero lot line Developments required to qualify for only 50% of the required points, required in accordance with…:"

Moreover, commenter (36) recommended the following clarifications and amenities as it relates to this section:

> "…(i) Full perimeter fencing (may include building walls in Urban Developments) 2 points);
> (xvi) Dog Park area that is fully enclosed and intended for tenant owned dogs to run off leash (or a dog wash station with plumbing for hot and cold water connections and tub drainage (requires that the Development allow dogs) (1 point);
> (xxxi) Rooftop viewing deck (2 points);
> (xxxii) High ceilings (<10 feet average) in common areas (1 point)."

Commenter (43) recommended adjusting the range for clause (iii) to be 41 to 80 units in order to more closely relate to the maximum number of units permitted for rural developments and adjusting clause (iv) to 81 to 99 units.

Commenter (51) stated there are vast differences in the minimum requirements of LEED and NAHB's National Green Building Standard (NGBS) and therefore should not be viewed as equal programs. Specifically, NGBS does not require performance testing to achieve certification. Performance tests are used in all certification levels of LEED to verify very important energy efficiency and indoor air quality measures and has become and industry standard; however, NGBS does not require performance tests for any level other than Emerald, their highest. Commenter (51) recommended the following change:

> "(IV) National Green Building Standard Emerald Level (NAHB Green) (4 points). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain ~~a~~ the Emerald Level NAHB Green Certification.~~, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).~~"

Commenter (23) indicated green building practices should be a meaningful threshold item and noted that affordable housing by definition includes affordable utility bills. Commenter (23) suggested at least 2 points in meeting this threshold requirement must come from the Green Building Certifications option.

Commenter (64) commended the Department for maintaining the green building options in the published draft and recommended such options remain in the final version. Commenter (64) further suggested the Department consider working with state utilities to create energy efficiency programs for multifamily developments.

Commenter (13) noted the presence of required amenities is observed at the time of final construction inspection and during the periodic compliance inspections and questioned, specifically, the amenity relating to "20% of the water needed annually for site irrigation is from a rain water harvesting/collection system…" Commenter (13) requested clarification on exactly how this would be evidenced and what would happen in times of drought.

STAFF RESPONSE: In response to commenter (36), (44) staff recommends the inclusion of the dog wash station and rooftop viewing deck to the list of common amenities as noted below. Staff does not believe a 10' ceiling in common areas produces a real benefit to tenants. Regarding the other recommendations by commenters (36), (44), should an applicant believe they cannot achieve the required point thresholds with the existing list of amenities and desire to propose an amenity not included on the list they are encouraged to contact the Department on pursuing the waiver and/or pre-clearance process.

> (xvi) Dog Park area that is fully enclosed and intended for tenant owned dogs to run off leash or a dog wash station with plumbing for hot and cold water connections and tub drainage (requires that the Development allow dogs) (1 point);
> (xxxi) Rooftop viewing deck (2 points);

In response to commenter (43), it is staff's preference to keep the unit ranges as proposed in the published draft. Based on the point values attributed to each amenity, achieving 10 points for a rural development has not historically proven difficult and would lend itself to a more

marketable development and better quality of life for the residents; therefore, no changes are commended based on this comment.

In response to commenter (51) regarding the change to the Emerald Level NGBS standard, such proposed change reflects one that is more restrictive and would certainly warrant additional public comment prior to implementation; therefore, no changes are recommended at this time.

45. §10.101(b)(6) – Subchapter B – Unit Amenities (11), (13), (36), (44), (47), (66)
COMMENT SUMMARY: Commenter (36), (44) suggested the following that would take into consideration an Adaptive Reuse development, especially those that involve historic preservation of older buildings.

> "Rehabilitation Developments will start with a base score of (3 points) and Supportive Housing and Adaptive Reuse Developments will start with a base score of (5 points)…"

Moreover, commenter (36) recommended the following change:

> (viii) Thirty (30) year shingle or metal roofing (or flat roof equivalent) (.5 point)."

Commenter (47) recommended these requirements be reduced to 6 points for 4% HTC applications or, as was also recommended by commenter (66), provide more options to arrive at the 7 points required. Commenter (11) noted the change in the point value now requires that almost all the amenities be selected which doesn't allow for many options. Commenter (66) recommended desk and computer nook be added to this list.

Commenter (13) suggested this section be clarified to indicate that such unit amenities should be maintained for the compliance period.

STAFF RESPONSE: Staff does not agree with the recommended revisions proposed by commenters (36), (44). Should an applicant believe they cannot achieve the required point thresholds with the existing list of amenities and desire to propose an amenity not included on the list they are encouraged to contact the Department on pursuing the waiver and/or pre-clearance process. In response to commenter (47) staff does not see a clear policy reason why 4% HTC applications should be treated any different than 9% HTC applications and therefore, does not recommend the change.

While the list of unit amenities in the published proposal reflects lower point values, the net effect over the prior year is essentially the same, resulting in at least half of the amenities being selected. Staff agrees with the recommendation of adding a desk or computer nook to the list as suggested by commenter (66). Staff recommends the following amended language:

> "…(x) Covered parking (including garages) of at least one covered space per Unit (1.5 points);
>
> (xi) 100 percent masonry on exterior (~~1.5~~2 points) (Applicants may not select this item if clause (xii) of this subparagraph is selected);

(xii) Greater than 75 percent masonry on exterior (~~0.5~~1 point) (Applicants may not select this item if clause (xi) of this subparagraph is selected);

(xiii) R-15 Walls / R-30 Ceilings (rating of wall/ceiling system) (1.5 points);

(xiv) 14 SEER HVAC (or greater) or evaporative coolers in dry climates for New Construction, Adaptive Reuse, and Reconstruction or radiant barrier in the attic for Rehabilitation (excluding Reconstruction) (1.5 points);

(xv) High Speed Internet service to all Units (1 point)~~;~~.

(xvi) Desk or computer nook (0.5 point)."

In response to commenter (13), current language indicates the points associated with the unit amenities selected at application must be maintained throughout the compliance period; therefore, no changes are recommended based on this comment.

46. §10.101(b)(7) – Subchapter B – Tenant Supportive Services (13), (37), (47)
COMMENT SUMMARY: Commenter (37) recommended the list of services be reviewed to ensure they address the needs and services related to Veterans. Commenter (47) requested "or other services as may be approved by the Department" be added to this section.

Commenter (13) suggested given current technology, references to a CD-Rom be changed to an online course. Lastly, commenter (13) questioned the point values attributed to quarterly health and nutritional courses compared to that of organized youth and sports programs and noted that the latter can be more time-intensive and require additional expenditure for equipment or supplies. Commenter (13) recommended the points for organized youth and sports program be increased to commensurate the effort and resources invested.

STAFF RESPONSE: The current list of supportive services contains services that would be conducive to both general population and elderly developments. While commenter (37) expressed an interest in expanding the list further to include services specific to veterans no specific suggestions were provided. In response to commenter (47), should an applicant identify a service they would like to provide they are encouraged to notify the Department prior to the implementation of such service for approval. Staff recommends no changes based on these comments.

In response to commenter (13), staff notes that the reference to CD-Rom is as an example as something that would not qualify; however, staff agrees with the revision for clarification since the rule clearly states that an on-site instructor is required for the points and recommends amended language. Staff disagrees with the comment regarding quarterly health and nutritional courses compared to organized youth and sports programs. Staff feels that both options allow for a wide range of resources in order to execute them effectively. Some nutritional courses are more intensive than others, while some sports programs also require more equipment and/or staff time than others. Therefore, no changes are recommended based on this comment.

47. §10.101(b)(8) – Subchapter B – Development Accessibility Requirements

Staff notes that as a result of public comment relating to §10.208 (relating to Forms and Templates), staff has incorporated the items listed on the Certification of Development Owner

and Certification of Principal in the rule where appropriate and subsequently removed the actual form from the rule itself. As a result, the changes to this section are the result of those items originally included in these certifications, specific to the development accessibility requirements.

STATUTORY AUTHORITY. The new section is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new section is adopted pursuant to §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

Subchapter B – Site and Development Requirements and Restrictions

§10.101. Site and Development Requirements and Restrictions.

(a) Site Requirements and Restrictions. The purpose of this section is to identify specific restrictions related to a Development Site seeking multifamily funding or assistance from the Department.

(1) Floodplain. New Construction or Reconstruction Developments located within the one-hundred (100) year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site so that all finished ground floor elevations are at least one foot above the floodplain and parking and drive areas are no lower than six inches below the floodplain, subject to more stringent local requirements. If no FEMA Flood Insurance Rate Maps are available for the proposed Development Site, flood zone documentation must be provided from the local government with jurisdiction identifying the one-hundred (100) year floodplain. Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from the U.S. Department of Housing and Urban Development (HUD) or U.S. Department of Agriculture (USDA) are exempt from this requirement. However, where existing and ongoing federal assistance is not applicable such Rehabilitation (excluding Reconstruction) Developments will be allowed in the one-hundred (100) year floodplain provided the Unit of General Local Government has undertaken and can substantiate sufficient mitigation efforts and such documentation is submitted in the Application or the existing structures meet the requirements that are applicable for New Construction or Reconstruction Developments.

(2) Mandatory Site Characteristics. Developments Sites must be located within a one mile radius (two-mile radius for Developments located in a Rural Area) of at least six (6) services. Only one service of each type listed in subparagraphs (A) - (S~~R~~) of this paragraph will count towards the number of services required. A map must be included identifying the Development Site and the location of the services by name. All services must exist or, if under construction, must be under active construction, post pad (*e.g.* framing the structure) by the date the Application is submitted:

(A) full service grocery store;

(B) pharmacy;

(C) convenience store/mini-market;

(D) department or retail merchandise store;

(E) bank/credit union;

(F) restaurant (including fast food);

(G) indoor public recreation facilities, such as civic centers, community centers, and libraries;

(H) outdoor public recreation facilities such as parks, golf courses, and swimming pools;

(I) medical offices (physician, dentistry, optometry) or hospital/medical clinic;

(J) public schools (only eligible for Developments that are not Qualified Elderly Developments);

(K) senior center;

(L) religious institutions;

(M) day care services (must be licensed - only eligible for Developments that are not Qualified Elderly Developments);

(N) post office;

(O) city hall;

(P) county courthouse;

(Q) fire station; ~~or~~

(R) police station; or

(S) public transportation stop.

(3) Undesirable Site Features. Development Sites with the undesirable features identified in subparagraphs (A) - (G) of this paragraph will be considered ineligible. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD or USDA are exempt. For purposes of this requirement, the term 'adjacent' means sharing a boundary with the Development Site. The distances are to be measured from the nearest boundary of the Development Site to the boundary of the undesirable feature. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (H) of this paragraph, staff may request a determination from the Board as to whether such feature is unacceptable. If the Board determines such feature or Site is ineligible the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

(A) Developments located adjacent to or within 300 feet of junkyards;

(B) Developments located adjacent to or within 300 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail;

(C) Developments located adjacent to or within 300 feet of heavy industrial uses such as manufacturing plants, refinery blast zones, etc.;

(D) Developments located adjacent to or within 300 feet of a solid waste or sanitary landfills;

(E) Developments in which the buildings are located within the easement of any overhead high voltage transmission line or inside the engineered fall distance of any support structure for high voltage transmission lines, radio antennae, satellite towers, etc. This does not apply to local service electric lines and poles;

(F) Developments in which the buildings are located within the accident zones or clear zones for commercial or military airports; ~~or~~

(G) Developments located adjacent to or within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined as stated in Local Government Code, §243.002; or~~.~~

(H) Any other Site deemed unacceptable, which would include, without limitation, those containing an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated.

(4) Undesirable Area Features. If the Development Site is located between 301 feet – 1,000 feet of any of the undesirable area features in subparagraphs (A) – (H~~D~~) of this paragraph then the Applicant must disclose the presence of such feature to the Department. The standard to be applied in making a determination under this paragraph is whether the undesirable area feature is of a nature that would not be typical in a neighborhood that would qualify under the Opportunity Index pursuant to §11.9(c)(4) of this title (relating to Competitive HTC selection Criteria). For a Housing Tax Credit Application the Applicant is required to disclose the presence of such feature at the time the pre-application (as applicable) is submitted to the Department so as to expedite the review of such information. For all other types of Applications, and for those Housing Tax Credit Applicants who did not submit a pre-application, the Applicant is required to disclose the presence of such feature at the time the Application is submitted to the Department. Disclosure of such features affords the Applicant the opportunity to obtain pre-clearance of a particular Site from the Department in accordance with §10.207 of this chapter (relating to Waiver of Rules for Applications). Non-disclosure of such information may result in the Department's withholding or denial of pre-clearance. Denial or withholding of pre-clearance deems the Site ineligible and is grounds for termination of the Application. Should Department staff withhold or deny pre-clearance, Applicants may appeal the decision to the

Board pursuant to §10.902 of this chapter (relating to Appeals Process. (§2306.0321; §2306.6715)). Should the Board uphold staff's decision or initially withhold or deny pre-clearance, the resulting determination of ~~s~~Site ineligibility and termination of the Application cannot be appealed. ~~The Board's decision cannot be appealed.~~

(A) A history of significant or recurring flooding;

(B) Significant presence of blighted structures;

(C) Fire hazards that could impact the fire insurance premiums for the proposed Development; ~~or~~

(D) Locally known presence of gang activity, prostitution, drug trafficking, or other significant criminal activity that rises to the level of frequent police reports; ~~.~~

(E) A hazardous waste site or a source of localized hazardous emissions, whether corrected or not;

(F) Heavy industrial use;

(G) Active railways (other than commuter trains); or

(H) Landing strips or heliports.

~~(5) Unacceptable sites include, without limitation, those containing an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated. If the Department makes such a determination, the Applicant will be allowed an opportunity to address any identified concerns.~~

(b) Development Requirements and Restrictions. The purpose of this section is to identify specific restrictions on a proposed Development submitted for multifamily funding by the Department.

(1) Ineligible Developments. A Development shall be ineligible if any of the criteria in subparagraphs (A) and (B) of this paragraph are deemed to apply.

(A) General Ineligibility Criteria.

(i) Developments comprised of hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities which are usually classified as transient housing (as provided in the §42(i)(3)(B)(iii) and (iv) of the Code); ~~.~~

(ii) Any Development with any building(s) with four or more stories that does not include an elevator;

(iii) A Housing Tax Credit Development that provides continual or frequent nursing, medical or psychiatric services. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living;

(iv) A Development that violates §1.15 of this title (relating to Integrated Housing Rule);

(v) A Development seeking Housing Tax Credits that is reasonably believed by staff to clearly not meet the general public use requirement under Treasury Regulation §1.42-9 unless the Applicant has obtained a private letter ruling that the proposed Development is permitted; or

(vi) A Development utilizing a Direct Loan that is subject to the Housing and Community Development Act, §104(d), requirements and proposing Rehabilitation or Reconstruction, if the Applicant is not proposing the one-for-one replacement of the existing unit mix. Adding additional units would not violate this provision.

(B) Ineligibility of Qualified Elderly Developments.

(i) Any Qualified Elderly Development of two stories or more that does not include elevator service for any Units or living space above the first floor;

(ii) Any Qualified Elderly Development with any Units having more than two bedrooms with the exception of up to three employee Units reserved for the use of the manager, maintenance, and/or security officer. These employee Units must be specifically designated as such; or

(iii) Any Qualified Elderly Development (including Qualified Elderly in a Rural Area) proposing more than 70 percent two-bedroom Units.

(2) **Development Size Limitations**. The minimum Development size will be 16 Units. New Construction or Adaptive Reuse Developments in Rural Areas will be limited to 80 Units. Other Developments do not have a limitation as to the number of Units.

(3) **Rehabilitation Costs**. Developments involving Rehabilitation must establish a scope of work that will substantially improve the interiors of all units and exterior deferred maintenance, at a minimum, and will involve at least $25,000 per Unit in Building Costs and Site Work. If financed with USDA the minimum is $19,000 and for Tax-Exempt Bond Developments, less than twenty (20) years old, the minimum is $15,000 per Unit. These levels must be maintained through the issuance of IRS Forms 8609 or at the time of the close-out documentation, as applicable.

(4) **Mandatory Development Amenities**. (§2306.187) New Construction, Reconstruction or Adaptive Reuse Units must provide all of the amenities in subparagraphs (A) - (M) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs (C) - (M) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), (I), or (M) of this paragraph; however, access must be provided to a comparable amenity in a common area. These amenities must be at no charge to the tenants.

(A) All Units must be wired with RG-6/U COAX or better and CAT3 phone cable or better, wired to each bedroom, dining room and living room;

(B) Laundry Connections;

(C) Blinds or window coverings for all windows;

(D) Screens on all operable windows;

(E) Disposal and Energy-Star rated dishwasher (not required for USDA; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit);

(F) Energy-Star rated refrigerator;

(G) Oven/Range;

(H) Exhaust/vent fans (vented to the outside) in bathrooms;

(I) At least one Energy-Star rated ceiling fan per Unit;

(J) Energy-Star rated lighting in all Units which may include compact fluorescent or LED light bulbs;

(K) Plumbing fixtures (toilets and faucets) must meet design standards at 30 TAC §290.252 (relating to Design Standards);

(L) All Units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units in Supportive Housing Developments only); and

(M) Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be one and a half (1.5) spaces per Unit for non-Qualified Elderly Developments and one (1) space per Unit for Qualified Elderly.

(5) **Common Amenities.**

(A) All Developments must provide sufficient common amenities as described in subparagraph (C) of this paragraph to qualify for at least the minimum number of points required in accordance with:

(i) Developments with 16 Units must qualify for one (1) point;

(ii)Developments with 17 to 40 Units must qualify for four (4) points;

(iii) Developments with 41 to 76 Units must qualify for seven (7) points;

(iv) Developments with 77 to 99 Units must qualify for ten (10) points;

(v) Developments with 100 to 149 Units must qualify for fourteen (14) points;

(vi) Developments with 150 to 199 Units must qualify for eighteen (18) points; or

(vii) Developments with 200 or more Units must qualify for twenty-two (22) points.

(B) These points are not associated with any selection criteria points. The amenities must be for the benefit of all tenants and made available throughout normal business hours and maintained throughout the Compliance Period. If fees in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy the requirement. All amenities must meet accessibility standards and spaces for activities must be sized appropriately to serve the proposed Target Population. Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the test applied based on the number of Units per individual site.

(C) The common amenities and respective point values are set out in clauses (i) - (xxix) of this subparagraph. Some amenities may be restricted to a specific Target Population. An Application can only count an amenity once; therefore combined functions (a library which is part of a community room) will only qualify for points under one category:

(i) Full perimeter fencing (2 points);

(ii) Controlled gate access (2 points);

(iii) Gazebo w/sitting area (1 point);

(iv) Accessible walking/jogging path separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point);

(v) Community laundry room with at least one washer and dryer for each 25 Units (3 points);

(vi) Barbecue grill and picnic table with at least one of each for every 50 Units (1 point);

(vii) Covered pavilion that includes barbecue grills and tables with at least one grill and table for every 50 Units (2 points);

(viii) Swimming pool (3 points);

(ix) Splash pad/water feature play area (1 point);

(x) Furnished fitness center. Equipped with fitness equipment options with at least one option per every 40 Units or partial increment of 40 Units: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, sauna, stair-climber, or other similar equipment. Equipment shall be commercial use grade or quality. All Developments must have at least two equipment options but are not required to have more than five equipment options regardless of number of Units (2 points);

(xi) Equipped and functioning business center or equipped computer learning center. Must be equipped with 1 computer for every 30 Units loaded with basic programs, 1 laser printer for every 3 computers (minimum of one printer) and at least one scanner which may be integrated with printer (2 points);

(xii) Furnished Community room (2 points);

(xiii) Library with an accessible sitting area (separate from the community room) (1 point);

(xiv) Enclosed community sun porch or covered community porch/patio (1 point);

(xv) Service coordinator office in addition to leasing offices (1 point);

(xvi) Senior Activity Room stocked with supplies (Arts and Crafts, etc.) (2 points);

(xvii) Health Screening Room (1 point);

(xviii) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point);

(xix) Horseshoe pit, putting green or shuffleboard court (1 point);

(xx) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points);

(xxi) One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot; (1 point). Can only select this item if clause (xxii) of this subparagraph is not selected; or

(xxii) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each (2 points). Can only select this item if clause (xxi) of this subparagraph is not selected;

(xxiii) Sport Court (Tennis, Basketball or Volleyball) (2 points);

(xxiv) Furnished and staffed Children's Activity Center that must have age appropriate furnishings and equipment. Appropriate levels of staffing must be provided during after-school hours and during school vacations (3 points);

(xxv) Community Theater Room equipped with a 52 inch or larger screen with surround sound equipment; DVD player; and theater seating (3 points);

(xvi) Dog Park area that is fully enclosed and intended for tenant owned dogs to run off leash or a dog wash station with plumbing for hot and cold water connections and tub drainage (requires that the Development allow dogs) (1 point);

(xvii) Common area Wi-Fi (1 point); ~~or~~

(xviii) Twenty-four hour monitored camera/security system in each building (3 points);

(xxix) Secured bicycle parking (1 point);

(xxxi) Rooftop viewing deck (2 points); or

(xxxii) Green Building Certifications. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Points may be selected from only one of four categories: Limited Green Amenities, Enterprise Green Communities, Leadership in Energy and Environmental Design (LEED) and National Green Building Standard (NAHB) Green. A Development may qualify for no more than four (4) points total under this clause.

(I) Limited Green Amenities (2 points). The items listed in subclauses (I) – (IV) of this clause constitute the minimum requirements for demonstrating green building of multifamily Developments. Six (6) of the nine (9) items listed under items (-a-) - (-i-) of this subclause must be met in order to qualify for the maximum number of two (2) points under this item;

(-a-) at least 20 percent of the water needed annually for site irrigation is from a rain water harvesting/collection system and/or locally approved greywater collection system. This can include rainwater harvested from gutters and downspouts to a storage tank or cistern where it can be treated or filtered for potable uses; untreated rainwater may be used for non-potable uses;

(-b-) native trees and plants installed that are appropriate to the Development Site's soil and microclimate to allow for shading in the summer and heat gain in the winter;

(-c-) install water-conserving fixtures that meet the EPA's WaterSense Label. Such fixtures must include low-flow or high efficiency toilets, bathroom lavatory faucets, showerheads and kitchen faucets. Rehabilitation Developments may install compliant faucet aerators instead of replacing the entire faucets;

(-d-) all of the HVAC condenser units are located so they are fully shaded 75 percent of the time during summer months (i.e. May through August);

(-e-) install Energy-Star qualified hot water heaters or install those that are part of an overall Energy-Star efficient system;

(-f-) install individual or sub-metered utility meters. Rehabilitation Developments may claim sub-meter only if not already sub-metered at the time of Application;

(-g-) healthy finish materials including the use of paints, stains, adhesives and sealants consistent with the Green Seal 11 standard or other applicable Green Seal standard;

(-h-) install daylight sensor, motion sensors or timers on all exterior lighting and install fixtures that include automatic switching on timers or photocell controls for all lighting not intended for 24-hour operation or required for security;

(-i-) recycling service provided throughout the compliance period.

(II) Enterprise Green Communities (4 points). The Development must incorporate all mandatory and optional items applicable to the construction type (i.e. New Construction, Rehabilitation, etc.) as provided in the most recent version of the Enterprise Green Communities Criteria found at http://www.greencommunitiesonline.org.

(III) LEED (4 points). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a LEED Certification, regardless of the rating level achieved (i.e. Certified, Silver, Gold or Platinum).

(IV) National Green Building Standard (NAHB Green) (4 points). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NAHB Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(6) **Unit Requirements**.

(A) **Unit Sizes**. Developments proposing New Construction or Reconstruction will be required to meet the minimum sizes of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with any selection criteria. Developments proposing Rehabilitation (excluding Reconstruction) or Supportive Housing Developments will not be subject to the requirements of this subparagraph.

(i) five hundred (500) square feet for an Efficiency Unit;

(ii) six hundred (600) square feet for a one Bedroom Unit;

(iii) eight hundred (800) square feet for a two Bedroom Unit;

(iv) one thousand (1,000) square feet for a three Bedroom Unit; and

(v) one thousand, two-hundred (1,200) square feet for a four Bedroom Unit;

(B) **Unit Amenities**. Housing Tax Credit Applications may select amenities for scoring under this section but must maintain the points associated with those amenities by maintaining the amenity selected or providing substitute amenities with equal or higher point values. Tax Exempt Bond Developments must include enough amenities to meet a minimum of (7 points). Applications not funded with Housing Tax Credits (*e.g.* HOME Program) must include enough amenities to meet a minimum of (4 points). The amenity shall be for every Unit at no extra charge to the tenant. The points selected at Application and corresponding list of amenities will be required to be identified in the LURA, and the points selected at Application must be maintained throughout the Compliance Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of (3 points) and Supportive Housing Developments will start with a base score of (5 points).

(i) Covered entries (0.5 point);

(ii) Nine foot ceilings in living room and all bedrooms (at minimum) (0.5 point);

(iii) Microwave ovens (0.5 point);

(iv) Self-cleaning or continuous cleaning ovens (0.5 point);

(v) Refrigerator with icemaker (0.5 point);

(vi) Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the property site (0.5 point);

(vii) Laundry equipment (washers and dryers) for each individual Unit including a front loading washer and dryer in required UFAS compliant Units (1.5 points);

(viii) Thirty (30) year shingle or metal roofing (0.5 point);

(ix) Covered patios or covered balconies (0.5 point);

(x) Covered parking (including garages) of at least one covered space per Unit (1.5 points);

(xi) 100 percent masonry on exterior (~~1.5~~2 points) (Applicants may not select this item if clause (xii) of this subparagraph is selected);

(xii) Greater than 75 percent masonry on exterior (~~0.5~~1 point) (Applicants may not select this item if clause (xi) of this subparagraph is selected);

(xiii) R-15 Walls / R-30 Ceilings (rating of wall/ceiling system) (1.5 points);

(xiv) 14 SEER HVAC (or greater) or evaporative coolers in dry climates for New Construction, Adaptive Reuse, and Reconstruction or radiant barrier in the attic for Rehabilitation (excluding Reconstruction) (1.5 points);

(xv) High Speed Internet service to all Units (1 point);~~.~~

(xvi) Desk or computer nook (0.5 point)

(7) **Tenant Supportive Services**. The supportive services include those listed in subparagraphs (A) – (T) of this paragraph. Tax Exempt Bond Developments must select a minimum of (8 points); Applications not funded with Housing Tax Credits (e.g. HOME Program or other Direct Loans) must include enough amenities to meet a minimum of (4 points). The points selected and complete list of supportive services will be included in the LURA and the timeframe by which services are offered must be in accordance with §10.614 of this chapter (relating to Monitoring for Social Services) and maintained throughout the Compliance Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. No fees may be charged to the tenants for any of the services and there must be adequate space for the intended services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item.

(A) joint use library center, as evidenced by a written agreement with the local school district (2 points);

(B) weekday character building program (shall include at least on a monthly basis a curriculum based character building presentation on relevant topics, for example teen dating violence, drug prevention, teambuilding, internet dangers, stranger danger, etc. (2 points);

(C) daily transportation such as bus passes, cab vouchers, specialized van on-site (4 points);

(D) Food pantry/common household items accessible to residents at least on a monthly basis (1 point);

(E) GED preparation classes (shall include an instructor providing on-site coursework and exam) (1 point);

(F) English as a second language classes (shall include an instructor providing on-site coursework and exam) (1 point);

(G) quarterly financial planning courses (i.e. homebuyer education, credit counseling, investing advice, retirement plans, etc.). Courses must be offered through an on-site instructor; a CD-Rom or online course is not acceptable (1 point);

(H) annual health fair (1 point);

(I) quarterly health and nutritional courses (1 point);

(J) organized team sports programs or youth programs offered by the Development (1 point);

(K) scholastic tutoring (shall include weekday homework help or other focus on academics) (3 points);

(L) Notary Public Services during regular business hours (§2306.6710(b)(3)) (1 point);

(M) weekly exercise classes (2 points);

(N) twice monthly arts, crafts and other recreational activities such as Book Clubs and creative writing classes (2 points);

(O) annual income tax preparation (offered by an income tax prep service) (1 point);

(P) monthly transportation to community/social events such as lawful gaming sites, mall trips, community theatre, bowling, organized tours, etc. (1 point);

(Q) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, etc.) (1 point);

(R) specific and pre-approved caseworker services for seniors, Persons with Disabilities or Supportive Housing (1 point);

(S) weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc. and quarterly preventative maintenance including light bulb replacement) for seniors and Persons with Disabilities (2 points); and

(T) any of the programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601, et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of unplanned pregnancies; and encourages the formation and maintenance of two-parent families (1 point).

(8) **Development Accessibility Requirements**. All Developments must meet all specifications and accessibility requirements as identified in subparagraphs (A) – (C) of this paragraph and any other applicable state or federal rules and requirements. The accessibility requirements are further identified in ~~reflected in~~ the Certification of Development Owner as provided in the Application. ~~as set forth in §10.208 of this chapter (relating to Forms and Templates) and any other applicable state or federal rules and requirements.~~

(A) The Development shall comply with the accessibility standards that are required under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), and specified under 24 C.F.R. Part 8, Subpart C.

(B) New Construction (excluding New Construction of non-residential buildings) Developments where some Units are two-stories or single family design and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e., one bedroom, two bedroom, three bedroom) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level.

(C) The Development Owner is and will remain in compliance with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. §§2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §§701 et seq.); Fair Housing Accessibility; the Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, the Code Requirements for Housing

Accessibility 2000 (or as amended from time to time) produced by the International Code Council and the Texas Accessibility Standards. (§2306.257; §2306.6705(7)).

Attachment C: Preamble, Reasoned Response, and New Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC, Chapter 10 Uniform Multifamily Rules, Subchapter C, §§10.201 – 10.208 concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules with changes to text as published in the September 21, 2012 issue of the *Texas Register* (37 TexReg 7355).

REASONED JUSTIFICATION. The Department finds that the adoption of the rule will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

The comments and responses include both administrative clarifications and corrections to the Uniform Multifamily Rule based on the comments received. After each comment title, numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the Draft Uniform Multifamily Rule as presented to the Board in September, such changes are indicated. Public comments were accepted through October 22, 2012 with comments received from (6) Diana McIver, DMA Development Company, (11) Claire Palmer, (13) Cynthia Bast, Locke Lord, (22) Sean Brady, Rea Ventures Group, LLC, (34) Deborah Sherrill, Corpus Christi Housing Authority, (43) David Mark Koogler, Mark-Dana Corporation, (44) Donna Rickenbacker, Marque Real Estate Consultants (47) Stuart Shaw, Bonner Carrington, (66) Texas Association of Affordable Housing Providers.

48. §10.201 – Subchapter C – Procedural Requirements for Application Submission (13)
COMMENT SUMMARY: Commenter (13) indicated there is a reference to "fees for withdrawn Applications" in the opening paragraph of this section; however, there is no such fee established in §10.901. Commenter (13) further recommended the following revision to 10.201(1)(B):

> "…As a result of the competitive nature of some funding sources an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived or extended except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that makes timely adherence impossible."

STAFF RESPONSE: Staff does not recommend the revision recommended by commenter (13) because there are provisions for extensions of some deadlines with other standards for evaluation and granting of requests. However, staff is recommending the following change regarding fees for withdrawn applications:

> **"…**Procedural Requirements for Application Submission.
>
> The purpose of this section is to identify the procedural requirements for Application submission. Only one Application may be submitted for a Development Site in an Application Round. While the Application Acceptance

Period is open or prior to the Application deadline, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original pre-application fee (as applicable) that was paid as long as no evaluation was performed by the Department. ~~Competitive Housing Tax Credit (HTC) Applications may be subject to fees for withdrawn Applications.~~ Applicants are subject to the schedule of fees as set forth in §10.901 of this chapter (relating to Fee Schedule)."

49. §10.201(2)(B) – Subchapter C – Procedural Requirements for Application Submission (13)

COMMENT SUMMARY: Commenter (13) recommended the following revision in this section:

"Waiting List Applications. Applications designated as Priority 1 or 2 by the TBRB and ~~receive~~ receiving advance notice of a Certificate of Reservation for private activity bond volume cap must submit Parts 1 - 4 of the Application and the Application fee described in §10.901 of this chapter prior to the issuance of the Certificate of Reservation by the TBRB."

STAFF RESPONSE: Staff agrees with the suggested revision and recommends the amended language.

50. §10.201(5) – Subchapter C – Procedural Requirements for Application Submission (13)

COMMENT SUMMARY: Commenter (13) questioned whether the following cross-reference in this section is correct as no such section could be found.

"Applications will undergo a previous participation review in accordance with §1.5 of this title (relating to Previous Participation Reviews) and Development Site conditions may be evaluated through a physical site inspection by the Department or its agents."

STAFF RESPONSE: The reference to §1.5 is the correct reference in the Texas Administrative Code as the section was proposed concurrently with this subchapter. Staff recommends no change based on this comment.

51. §10.201(7) – Subchapter C – Procedural Requirements for Application Submission (13)

COMMENT SUMMARY: Commenter (13) suggested the following revision to this section; assuming commenter's earlier recommendations regarding the Administrative Deficiency definition are accepted, would create consistency.

"…The purpose of the Administrative Deficiency process is to allow the Applicant an opportunity to provide clarification, correction or non-material missing information to resolve inconsistencies or omissions" in the original Application."

STAFF RESPONSE: Staff believes including the word "omissions" as recommended by commenter (13) would allow for the submission of material information that may affect, for competitive HTC applications, the scoring of the application that could rise to the level of point deductions associated with §11.9(f) of the QAP. Staff maintains that substantially complete

applications should be submitted and the review of those applications should consist of clarifications or inconsistencies that do not rise to the level of being material in nature. Staff recommends no change based on this comment.

52. §10.201(7)(A) – Subchapter C – Procedural Requirements for Application Submission (13)

COMMENT SUMMARY: Commenter (13) indicated the phrase "as a result of an Administrative Deficiency" (text provided below for reference, emphasis added) in this section is not entirely true. Specifically, commenter (13) stated that an application may be modified after submission as a result of the limited review opportunity process and changes can be made during the underwriting review process; both of which are outside of a request in the administrative deficiency process.

> "An Applicant may not change or supplement any part of an Application in any manner after the filing deadline or while the Application is under consideration for an award, and may not add any set-asides, increase the requested credit amount, revise the Unit mix (both income levels and Bedroom mixes), or adjust their self-score except in response to a direct request from the Department to do so *as a result of an Administrative Deficiency*."

STAFF RESPONSE: Staff agrees and recommends the following language for clarification:

> "…Limited Priority Reviews. If, after the submission of the Application, an Applicant identifies an error in the Application that would generally be the subject of an Administrative Deficiency, the Applicant may request a limited priority review of the specific and limited issues in need of clarification or correction. The issue may not relate to the score of an Application. This limited priority review may only cover the specific issue and not the entire Application. If the limited priority review results in the identification of an issue that does indeed need correction or clarification, staff will request such through the Administrative Deficiency process as stated in paragraph (7) of this subsection if deemed appropriate. A limited priority review is intended to address…"

53. §10.201(9) – Subchapter C –Challenges to Opposition for Tax-Exempt Bond Developments (25)

COMMENT SUMMARY: Commenter (25) noted pursuant to the proposed Remedial Plan and Judgment the published draft fails to address a mechanism by which public opposition on 4% HTC applications can be challenged.

STAFF RESPONSE:

In response to commenter (25) staff recommends adding the following to §10.201:

> **"Challenges to Opposition for Tax-Exempt Bond Developments.** Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local governmental entity. If any such comment is challenged, the

challenger must declare the basis for the challenge. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any support for accuracy of its assertions. All such materials and the analysis of the Department's staff will be provided to a fact finder, chose by the Department, for review and a determination. The determination will be final and may not be waived or appealed."

54. §10.202(1)(L) – Subchapter C – Ineligible Applicants and Applications (13)
COMMENT SUMMARY: Commenter (13) stated this section requires disclosure in the application and questioned whether it should also refer to the pre-application since addressing such issues earlier in the process is preferred. Moreover, commenter (13) questioned if a denial is brought before the Board, what is the consequence if the Board determines certain individuals may not be involved with the application. The consequences, whether it be termination of the application or changing out the individuals involved, are not explicitly stated.

STAFF RESPONSE: Staff will accept disclosure at any time during the application acceptance period. The process for such disclosure will be included in the multifamily application procedures manual. Regarding consequences of staff or Board decisions regarding ineligible applicants, they will be determined on a case-by-case basis and will not necessarily result in termination of an application. Although staff wants to ensure that development owners have a compliant history, staff also does not want to discourage disclosure and will take into account the self-reporting nature of the disclosure when making any determinations based upon the disclosure. Staff recommends no change based on this comment.

55. §10.202(1)(D) – Subchapter C – Ineligible Applicants and Applications (11)
COMMENT SUMMARY: Commenter (11) suggested the ineligibility item "has breached a contract with a public agency and failed to cure that breach" should not render an application ineligible if the applicant is in the process of curing.

STAFF RESPONSE: While the specific item referenced by commenter (11) is included in the rule and would therefore be subject to termination, this section also states that prior to sending such termination the Applicant will be sent a notice allowing them an opportunity to explain how they believe they or their application is not ineligible. The Department will evaluate the specific ineligibility item in conjunction with the response provided by the applicant and the surrounding circumstances and determine a course of action at that time. Staff recommends no change based on this comment.

56. §10.202(1)(G) – Subchapter C – Ineligible Applicants and Applications (11)
COMMENT SUMMARY: Commenter (11) suggested the ineligibility item "is delinquent in any loan, fee, or escrow payments to the Department in accordance with the terms of the loan, as amended, or is otherwise in default with any provisions of such loans" should not prohibit the application because there may be a dispute over the amount owed.

STAFF RESPONSE: While the specific item referenced by commenter (11) is included in the rule and would therefore be subject to termination, this section also states that prior to sending such termination the Applicant will be sent a notice allowing them an opportunity to explain how they believe they or their application is not ineligible. The Department will evaluate the specific

ineligibility item in conjunction with the response provided by the applicant and the surrounding circumstances and determine a course of action at that time. Staff recommends no change based on this comment.

57. §10.202(1)(M) – Subchapter C – Ineligible Applicants and Applications (13)
COMMENT SUMMARY: Commenter (13) suggested it should be made clear that filing a permitted challenge does not constitute "creating opposition to any Application" as it relates to this paragraph (text added below for reference).

> "has worked or works to create opposition to any Application, has formed a Neighborhood Organization (excluding any allowable technical assistance), has given money or a gift to cause the Neighborhood Organization to take its position as it relates to §11.9(d)(1) of this title (relating to Competitive HTC Selection Criteria)."

STAFF RESPONSE: Staff agrees and recommends the following amendment:

> "has worked or works to create opposition to any Application, excluding any challenges filed pursuant to §11.10 of this title (relating to Challenges of Competitive HTC Applications), has formed a Neighborhood Organization (excluding any allowable technical assistance), has given money or a gift to cause the Neighborhood Organization to take its position as it relates to §11.9(d)(1) of this title (relating to Competitive HTC Selection Criteria)."

58. §10.202(2)(A) – Subchapter C – Ineligible Applicants and Applications (13)
COMMENT SUMMARY: Commenter (13) suggested the following revision to this section:

> "…An ex parte communication occurs, when an Applicant or Person representing an Applicant initiates substantive contact (other than permitted social contact) with a board member, or vice versa, in a setting other than a duly posted and convened public meeting, in any manner not specifically permitted by Texas Government Code, §2306.1113(b). Such action is prohibited. For Applicants seeking funding after initial awards have been made, such as waiting list Applicants, the ex parte communication prohibition remains in effect so long as the Application remains eligible for funding."

STAFF RESPONSE: Staff agrees with the suggested revision and recommends the amended language.

59. §10.204(1) – Subchapter C – Certification of Development Owner
Staff notes that in response to comment received relating to §10.208 (Forms and Templates) staff has incorporated those requirements in the Certification of Development Owner form into §10.204(1) as appropriate and removed the actual form from the rule.

60. §10.204(4) – Subchapter C – Designation as Rural or Urban (47)
COMMENT SUMMARY: Commenter (47) requested this section be revised to include a clear policy on how to request verification for urban or rural.

STAFF RESPONSE: The rule as proposed indicates that staff will produce a "list of places meeting the requirements of Texas Government Code, §2306.004(28-a)(A) and (B) for designation as a Rural Area and those that are an Urban Area in the Site Demographics Characteristics Report." Applicants should refer to this list to determine whether their site will be

considered rural or urban. There is a specific exception related to this rule, but the documentation required to qualify for that exception, namely a letter from the USDA, is also mentioned in the current draft. Staff recommends no change based on this comment.

61. §10.204(5)(A) – Subchapter C – Experience Requirement (13), (34), (43)
COMMENT SUMMARY: Commenter (34) recommended the Department allow experience certificates to be issued in the name of an entity as opposed to an individual suggesting that, for housing authorities in particular, the CEO's come and go and the one's actually doing the work relating to the tax credit allocation cannot get the experience certificate.

Commenter (43) recommended this section be revised to allow experience certificates that were issued by the Department in the past three years to count instead of the published draft language that only allows certificates issued in the past two years.

Commenter (13) suggested this section refers to 150 units, but doesn't describe what kind of units can qualify or if it requires the completion of 150 units. A party that has developed but not completed 150 units could provide a Construction Contract or a Development Agreement; therefore, commenter (13) recommended the Department tighten up the language and clarify exactly what is required for an experience certification. Moreover, commenter (13) recommended the following revision:

> "A Principal of the Developer, Development Owner, or General Partner must establish that they have experience in the development of 150 units or more. Acceptable documentation to meet this requirement shall include:…"
>
> (i) an experience certificate issued by the Department in the past two (2) years prior to the first date of the Application Acceptance period; or"

STAFF RESPONSE: In response to commenter (34), the reason experience requirements are issued to individuals is precisely because an experienced individual may leave a particular organization. Staff recommends no change based on this comment.

In response to commenter (43), experience requirements routinely change and staff is proposing 2 years as opposed to 3 in order to continue ensuring newer experience requirements are met and refreshing source data to support such experience. Staff recommends no change based on this comment.

In response to commenter (13), staff agrees and recommends the following language:

> "(A) A Principal of the Developer, Development Owner, or General Partner must establish that they have experience in the development and placement in service of 150 units or more. Acceptable documentation to meet this requirement shall include:
>
> (i) an experience certificate issued by the Department in the past two (2) years prior to the beginning of the Application Acceptance Period; or
>
> (ii) any of the items in subclauses (I) – (IX) of this clause:
>
> (I) American Institute of Architects (AIA) Document (A102) or (A103) 2007 - Standard Form of Agreement between Owner and Contractor;

(II) AIA Document G704--Certificate of Substantial Completion;

(III) AIA Document G702--Application and Certificate for Payment;

(IV) Certificate of Occupancy;

(V) IRS Form 8609, (only one per development is required);

(VI) HUD Form 9822;

(VII) Development agreements;

(VIII) Partnership agreements; or

(IX) other documentation satisfactory to the Department verifying that the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals have the required experience."

62. §10.204(6)(A)(i)(II) – Subchapter C – Financing Requirements (11), (13)
COMMENT SUMMARY: Commenter (13) recommended the following revision for clarity:

"(A) Non-Department Debt Financing….

(i) Financing is in place as evidenced by:

(I) a valid and binding loan agreement; and

(II) deed(s) of trust on the Development in the name of the Development Owner as grantor covered by a lender's policy of title insurance; or

(ii) Term sheets for interim and permanent loans issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money must:…"

Commenter (11) noted this section indicates financing must be in place at the time of application and questioned whether that meant loan commitments or term sheets.

STAFF RESPONSE: Staff agrees with the suggested revision by commenter (13). In response to commenter (11) the financing requirements of this section (§10.204(6)(A)(ii)) makes reference to term sheets. However, to the extent loan commitments are required as they relate to competitive HTC applications for which the applicant is requesting points then the requirements of those scoring items must be met. Staff recommends no changes based on this comment.

63. §10.204(6)(A)(ii)(III) – Subchapter C – Financing Requirements (13)
COMMENT SUMMARY: Commenter (13) noted this subsection asks for term sheets for interim and permanent loans; however, to indicate the term sheet must include a minimum loan term of 15 years is inconsistent with the concept of an interim; therefore, the following revision is recommended:

"(ii) Term sheets for interim and permanent loans…

(I) have been executed by the lender;

(II) be addressed to the Development Owner;

(III) for the permanent loan, include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization;"

STAFF RESPONSE: Staff agrees with the suggested revision and recommends the amended language.

64. §10.204(6)(A)(ii)(VI) – Subchapter C – Financing Requirements (13)
COMMENT SUMMARY: Commenter (13) suggested the following revision to accommodate multifamily funding that does not include tax credits:

> "(ii) Term sheets for interim and permanent loans…:
>
> (VI) include and address any other terms and conditions applicable to the financing. The term sheet may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits, if applicable."

STAFF RESPONSE: Staff agrees with the suggested revision and recommends the amended language.

65. §10.204(6)(B) – Subchapter C –Gap Financing (13)
COMMENT SUMMARY: Commenter (13) recommended the following revision to this paragraph:

> "Any anticipated federal, state, ~~or~~ local or private gap financing, whether soft or hard debt, must be identified in the Application."

STAFF RESPONSE: Staff agrees with the suggested revision and recommends the amended language.

66. §10.204(7)(E)(i) – Subchapter C – Operating and Development Cost Documentation (43)
COMMENT SUMMARY: Commenter (43) stated that the way the site work section is worded it suggests that a third party engineer prepare a detailed cost breakdown of projected site work costs in all circumstances where there are site work costs which would increase the cost of preparing the application even further. Commenter (43) recommended this section be revised to reflect a third party engineer certification of site work costs if they exceed a threshold of $15,000 per unit in addition to the CPA letter for allocating site work costs as part of eligible basis.

STAFF RESPONSE: Applicants for Competitive Housing Tax Credits were provided optional scoring incentives for the provision of a site work cost estimate from a third party engineer in the 2012 QAP and virtually all applicants elected points for this item. Site work costs are very difficult for staff to assess due to the site specific nature of these costs. Historically, site work costs are one of the most volatile line items between application and cost certification as a result of the lack of due diligence previously required. Staff believes it is in the best interests of the Department and all applicants to require the third party estimate as drafted. Staff recommends no change based on this comment.

67. §10.204(7)(G) – Subchapter C – Occupied Rehabilitation Developments (11)
COMMENT SUMMARY: Commenter (11) noted that occupied rehabilitation developments now require a relocation plan with the application which could trigger some unintended consequences and further stated the clock shouldn't start on such item at the time of application.

STAFF RESPONSE: The requirement for a relocation plan is include as a requirement of the application in order to facilitate compliance with Texas Government Code §2306.6705, the

Uniform Relocation Act and §104(d) relocation requirements applicable to many federal resources administered by the Department, HUD, and many local jurisdictions. Staff recommends no change based on this comment.

68. §10.204(10) – Subchapter C – Zoning (22)
COMMENT SUMMARY: Commenter (22) recommended the zoning requirement be changed to require the applicant to submit proof of final zoning at the time of full application so as to avoid allocating tax credits to developments that cannot be built due to denied rezoning requests. Commenter (2) further added that most states require an applicant to submit proof of final zoning at the time of pre-application or full application in order to avoid this situation.

STAFF RESPONSE: The statutory provision Texas Government Code §2306.6705 that is the basis for this rule explicitly allows applicants in the process of requesting a zoning change to submit evidence of such re-zoning process with the application. Additionally, staff believes that should an applicant not be able to provide evidence of final zoning at commitment there is still sufficient time to award the next application in line on the waiting list and for that applicant to meet the appropriate deadlines associated with receiving an allocation at that point in time. Moreover, this opens up many high quality sites that may not otherwise be eligible due to current zoning restrictions. Staff recommends no change based on this comment.

69. §10.204(13) – Subchapter C – Nonprofit Ownership (13)
COMMENT SUMMARY: Commenter (13) recommended the following revision to paragraphs (A) and (B) of this section to accommodate HOME-only transactions where a limited partnership structure will likely not be used.

> "Applications that involve a §501(c)(3) or (4) nonprofit General Partner or Owner shall submit the documentation identified in subparagraph (A) or (B) of this paragraph as applicable."

Moreover, commenter (13) suggested that in addition to receiving the determination letter from the IRS, it may be helpful for the Department to have a copy of the nonprofit organization's Certificate of Formation filed with the Secretary of State in order to cross-check the organization's exempt purpose and ensure it includes housing activities.

STAFF RESPONSE: Staff agrees with the suggested revision to include "Owner" and recommends the change accordingly. Staff does not at this time believe the addition of a requirement for the Certificate of Formation is necessary to implement Nonprofit Set-Aside requirements.

70. §10.205 – Subchapter C – Required Third Party Reports (13)
COMMENT SUMMARY: Commenter (13) stated the opening paragraph of this section states "the Department may request additional information from the report provider or revisions to the report as needed" and questioned whether this happens during the administrative deficiency process.

STAFF RESPONSE: Such requests made by the Department are typically made directly to the report provider at the discretion of appropriate staff and are outside of the administrative deficiency process. Staff recommends no change based on this comment.

71. §10.205(3) – Subchapter C – Required Third Party Reports (13)
COMMENT SUMMARY: Commenter (13) noted the definition of Rehabilitation includes Reconstruction and questioned whether it makes sense for a Reconstruction development to obtain a property condition assessment.

STAFF RESPONSE: An application characterized as Reconstruction will not be required to submit a property condition assessment. Staff recommends the following revision to ensure clarity.

> "(3) Property Condition Assessment (PCA). This report, required for Rehabilitation (excluding Reconstruction) and Adaptive Reuse Developments and prepared in accordance with the requirements of §10.306 of this chapter (relating to Property Condition Assessment Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If this timeframe is exceeded then an updated PCA from the Person or organization which prepared the initial report must be submitted. The Department will not accept any PCA which is more than twelve (12) months old as of the first day of the Application Acceptance Period. For Developments which require a capital needs assessment from USDA, the capital needs assessment may be substituted and may be more than six (6) months old, as long as USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §10.306 of this chapter."

72. §10.205(5) – Subchapter C – Required Third Party Reports (6), (13), (43), (66)
COMMENT SUMMARY: Commenter (6) stated the requirements for the Civil Engineering Feasibility Study are too extensive and recommended that instead of requiring a study in the form of a narrative and/or report this item be revised to require the following:

> ~~"(A) Executive Summary.~~
> (AB) Survey or current plat. ~~as defined by the Texas Society of Professional Surveyors in their Manual of Practice for Land Surveying in Texas (Category 1A – Land Title Survey no older than six (6) months to the beginning of the Application Acceptance Period; or Category 1B – Standard Land Boundary Survey no older than twelve (12) months from the beginning of the Application Acceptance Period).~~
> (BC) Preliminary site plan identifying all structures, site amenities, parking and driveways, topography, drainage and detention, water and waste water utility distribution, retaining walls and any other typical or required items, including off-site requirements. The site plan needs to adhere to all applicable zoning, site development, and building code ordinances.
> (CD) A soil borings report.~~Review of the Environmental Site Assessment.~~
> ~~(E) Review of Geotechnical Report/Study (attachment).~~
> ~~(F) Storm Water Management (Detention/Retention/Drainage).~~
> ~~(G) Topography Review (provide existing topography survey or USGS Topography).~~
> ~~(H) Site Ingress/Egress Requirements (Fire/TxDot/Median Cuts, Deceleration Lanes).~~
> ~~(I) Off-Site requirements (Utilities/Roadways/Other).~~
> ~~(J) Water/Sanitary Sewer Service Summary (attach distribution maps).~~
> ~~(K) Electric, Gas, and Telephone Service Summary (attach distribution maps).~~

~~(L) Zoning/Site Development Ordinances (do not include copies of ordinances).~~
~~(M) Building Codes/Ordinances/Design Requirements Summary (do not include copies of ordinances).~~
~~(N) Entitlement/Site Development/Building Permit Process Summary, Fees and Timing.~~
~~(O) Other Considerations, Conditions, Issues or Topics Relevant to Development of the Site as proposed.~~"

Commenter (43) similarly suggested that many of the items in this report are items that should be the function of the developer and are not items that the civil engineer typically performs. Commenter (43), (66) recommended that if the Department does not delete the requirement of this report, that it consider narrowing the scope of the report to reduce the time and cost and also clarify that it is a preliminary study since the published draft reflects it as a full and final study. Commenter (43) recommended the following revision:

"…~~(A) Executive Summary.~~
(B) Survey~~ or current plat as defined by the Texas Society of Professional Surveyors in their Manual of Practice for Land Surveying in Texas (Category 1A - Land Title Survey no older than six (6) months to the beginning of the Application Acceptance Period; or Category 1B - Standard Land Boundary Survey no older than twelve (12) months from the beginning of the Application Acceptance Period).~~
(C) Preliminary site plan identifying all structures, site amenities, parking and driveways, ~~topography~~, drainage and detention, ~~water and waste water utility distribution, retaining walls~~ and any other typical or required items.
~~(D) Review of the Environmental Site Assessment.~~
~~(E) Review of Geotechnical Report/Study (attachment).~~
(F) Storm Water Management (Detention/Retention/Drainage).
~~(G) Topography Review (provide existing topography survey or USGS Topography).~~ (suggest deletion unless, topography is generally available from online databases which is of no additional cost)
(H) Site Ingress/Egress Requirements (Fire/TxDot/Median Cuts, Deceleration Lanes).
(I) Off-Site requirements (Utilities/Roadways/Other).
(J) Water/Sanitary Sewer Service Summary (attach distribution maps).
~~(K) Electric, Gas, and Telephone Service Summary (attach distribution maps).~~
~~(L) Zoning/Site Development Ordinances (do not include copies of ordinances).~~
(M) Building Codes/Ordinances/Design Requirements Summary (do not include copies of ordinances).
(N) Entitlement/Site Development/~~Building Permit~~ Process Summary~~, Fees and Timing.~~
(O) Other Considerations, Conditions, Issues or Topics Relevant to Development of the Site as proposed."

Commenter (13) questioned whether a civil engineer feasibility study should be required for Reconstruction in any context and consequently noted that no guidance is provided on the intent of the items listed in (A) – (O). Commenter (13) provided the following revised language:

"This report, required for any New Construction Development, prepared in accordance with this paragraph, which reviews site conditions and development requirements of the proposed Development. This report shall include an Executive summary and shall evidence the engineer's review and conclusions regarding the following;

~~(A) Executive Summary.~~

(A~~B~~) Survey or current plat…

(B~~C~~) Preliminary site plan… "

[no recommended changes to rest of list]

STAFF RESPONSE: In consideration of the comments received staff recommends the following revisions to this section:

"~~Civil Engineer Feasibility Study~~Site Design and Development Feasibility Report. This report, compiled by the Applicant or Third Party Consultant, is required for any New Construction Development, prepared in accordance with this paragraph, which reviews site conditions and development requirements of the proposed Development.

(A) Executive Summary, as a narrative overview of the Development in sufficient detail that would help a reviewer of the Application better understand the site, the site plan, off site requirements (including discussion of any seller contributions or reimbursements), any other unique development requirements and their impact on Site Work and Off Site Construction costs. The summary should contain a general statement regarding the level of due diligence that has been done relating to site development (including discussions with local government development offices). Additionally, the overview should contain a summary of zoning requirements, subdivision requirements, development ordinances, fire department requirements, site ingress and egress requirements, building codes and local design requirements impacting the Development (do not attach ordinances). Careful focus and attention should be made regarding any atypical items materially impacting costs.

(B) Survey or current plat as defined by the Texas Society of Professional Surveyors in their Manual of Practice for Land Surveying in Texas (Category 1A - Land Title Survey no older than six (6) months to the beginning of the Application Acceptance Period; or Category 1B - Standard Land Boundary Survey no older than twelve (12) months from the beginning of the Application Acceptance Period).

(C) Preliminary site plan prepared by the civil engineer with a statement that the plan materially adheres to all applicable zoning, site development and building code ordinances. The site plan must identify ~~identifying~~ all structures, site amenities, parking spaces (include handicap spaces and ramps) and driveways, topography (using either existing seller topographic survey or United States Geological Survey (USGS)/or other database topography), site drainage and detention, water and waste water utility ~~distribution~~tie-ins, general placement of~~,~~ retaining walls, set-back requirements and any other typical or locally required

items. Off-site improvements required for utilities, detention, access or other requirement must be shown on the site plan or ancillary drawings.

(D) Architect or civil engineer prepared statement describing the entitlement, site development permitting process and timing, building permitting process and timing and an itemization specific to the Development of total anticipated impact, site development permit, building permit and other required fees.

~~(D) Review of the Environmental Site Assessment.~~

~~(E) Review of Geotechnical Report/Study (attachment).~~

~~(F) Storm Water Management (Detention/Retention/Drainage).~~

~~(G) Topography Review (provide existing topography survey or USGS Topography).~~

~~(H) Site Ingress/Egress Requirements (Fire/TxDot/Median Cuts, Deceleration Lanes).~~

~~(I) Off-Site requirements (Utilities/Roadways/Other).~~

~~(J) Water/Sanitary Sewer Service Summary (attach distribution maps).~~

~~(K) Electric, Gas, and Telephone Service Summary (attach distribution maps).~~

~~(L) Zoning/Site Development Ordinances (do not include copies of ordinances).~~

~~(M) Building Codes/Ordinances/Design Requirements Summary (do not include copies of ordinances).~~

~~(N) Entitlement/Site Development/Building Permit Process Summary, Fees and Timing.~~

~~(O) Other Considerations, Conditions, Issues or Topics Relevant to Development of the Site as proposed."~~

73. §10.206 – Subchapter C – Board Decisions (13)
COMMENT SUMMARY: Commenter (13) stated this section opens with a broad statement about the Board's decisions, but doesn't specify what those decisions relate to (e.g. awards, ineligibility, appeals). Commenter (13) suggested this section be tightened up to avoid having it apply to contexts unintended.

STAFF RESPONSE: Staff agrees with commenter and recommends clarifying the language as it relates to awards.

74. §10.207(a) – Subchapter C – Waiver of Rules for Applications (13)
COMMENT SUMMARY: Commenter (13) questioned whether a pre-clearance determination referring to the same process described in §10.3(b) of Subchapter A.

STAFF RESPONSE: A pre-clearance determination refers a process to gain staff's input regarding of the acceptability of a site under §10.101(a)(4) or a community revitalization plan submitted under 10 TAC §11.9(d)(6) early in the application process. This is distinct and separate from the staff determination process described in §10.3(b). Staff recommends no change based on this comment.

75. §10.207(c) – Subchapter C – Waiver of Rules for Applications (13)
COMMENT SUMMARY: Commenter (13) stated §10.207(a) says the waive provisions apply to Subchapter B and C; however, §10.207(c) refers to waiver of the rules in Subchapters A through C, E and G and questioned the discrepancy.

STAFF RESPONSE: Staff agrees with commenter and recommends amended language to clarify that this section is applicable for subchapters (B), (C), (E), and (G).

76. §10.208 – Subchapter C – Forms and Templates (13), (44), (47)
COMMENT SUMMARY: Commenter (47) requested the word "low-income" be removed from the public notification template and be replaced with "low-income to moderate-income" citing basic marketing and honesty that necessitates the change. Many communities have a negative reaction to the word "low-income" and the notification should more accurately portray the income levels served. Commenter (13) expressed opposition to including application forms in the rules for the following reasons: the forms in the published draft utilize terms and definitions inconsistently, they contain duplicative provisions, and from time to time an applicant needs to be able to make some changes to the form to accommodate unique circumstances. Commenter (13), (44) suggested that if the forms are promulgated by rule, the ability to make changes is lessened and could be problematic for applicants.

STAFF RESPONSE: Staff agrees with commenters (13), (44), (47) and recommends the removal of the forms and templates from the rule with the exception of the requirements contained in the Certification of Development Owner form. Such requirements have been incorporated into the rule and all other forms and templates have been removed and will be provided as supplemental information to the application.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the new section is adopted pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

Subchapter C
Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules

§10.201. Procedural Requirements for Application Submission.

The purpose of this section is to identify the procedural requirements for Application submission. Only one Application may be submitted for a Development Site in an Application Round. While the Application Acceptance Period is open or prior to the Application deadline, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original pre-application fee (as applicable) that was paid as long as no evaluation was performed by the Department. ~~Competitive Housing Tax Credit (HTC) Applications may be subject to fees for withdrawn Applications.~~ Applicants are subject to the schedule of fees as set forth in §10.901 of this chapter (relating to Fee Schedule).

(1) General Requirements.

(A) An Applicant requesting funding from the Department must submit an Application in order to be considered for an award. An Application must be complete and receipted and meet all of the Department's criteria with all the required information and exhibits provided pursuant to the Multifamily Programs Procedures Manual and submitted by the required program deadline. If an Application, including the corresponding Application fee as described in §10.901 of this chapter is not submitted to the Department on or before the applicable deadline, the Applicant will be deemed to have not made an Application.

(B) Applying for multifamily funds from the Department is a technical process that must be followed completely. As a result of the competitive nature of some funding sources an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that makes timely adherence impossible. If an Applicant chooses to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Applicants should ensure that all documents are legible, properly organized and tabbed and that digital media is fully readable by the Department.

(C) The Applicant must deliver one (1) CD-R containing a PDF copy and Excel copy of the complete Application to the Department. Each copy should be in a single file and individually bookmarked in the order as required by the Multifamily Programs Procedures Manual. Additional files required for Application submission (e.g. Third Party Reports) outside of the Uniform Application may be included on the same CD-R or a separate CD-R as the Applicant sees fit.

(D) Applications must include materials addressing each and all of the items enumerated in this chapter and other chapters as applicable. If an Applicant does not believe that a specific item should be applied, the Applicant must include, in its place, a statement identifying the required item, stating that it is not being supplied, and a statement as to why the Applicant does not believe it should be required.

(2) Filing of Application for Tax-Exempt Bond Developments. Applications may be submitted to the Department as described in subparagraphs (A) and (B) of this paragraph. Multiple site applications will be considered to be one Application as identified in Texas Government Code, Chapter 1372. Applications that receive a Certificate of Reservation from the Texas Bond Review Board (TBRB) on or before November 15 of the prior program year will be required to satisfy the requirements of the prior year QAP and Uniform Multifamily Rules. Applications that receive a Certificate a Reservation from the TBRB on or after January 2 of the current program year will be required to satisfy the requirements of the current program year QAP and Uniform Multifamily Rules.

(A) Lottery Applications. For Applicants participating in the TBRB lottery for private activity bond volume cap and whereby advance notice is given regarding a Certificate of Reservation, the Applicant must submit a Notice to Submit Lottery Application form to the Department no later than the Notice to Submit Lottery Application Delivery Date described in §10.4 of this chapter (relating to Program Dates). The complete Application, accompanied by the Application fee described §10.901 of this chapter must

be submitted no later than the Applications Associated with Lottery Delivery Date described in §10.4 of this chapter.

(B) Waiting List Applications. Applications designated as Priority 1 or 2 by the TBRB and ~~receive~~ receiving advance notice of a Certificate of Reservation for private activity bond volume cap must submit Parts 1 - 4 of the Application and the Application fee described in §10.901 of this chapter prior to the issuance of the Certificate of Reservation by the TBRB. Those Applications designated as Priority 3 must submit Parts 1 - 4 within fourteen (14) calendar days of the Certificate of Reservation date if the Applicant intends to apply for tax credits regardless of the Issuer. The remaining parts of the Application and any other outstanding documentation, regardless of TBRB Priority designation, must be submitted to the Department at least seventy-five (75) calendar days prior to the Board meeting at which the decision to issue a Determination Notice would be made.

(3) Certification of Tax Exempt Bond Applications with New Docket Numbers. Applications that receive an affirmative Board Determination, but do not close the bonds prior to the Certificate of Reservation expiration date, and subsequently have that docket number withdrawn from the TBRB, may have their Determination Notice reinstated. The Applicant would need to receive a new docket number from the TBRB and meet the requirements described in subparagraphs (A) and (B) of this paragraph:

(A) the new docket number must be issued in the same program year as the original docket number and must not be more than four (4) months from the date the original application was withdrawn from the TBRB. The Application must remain unchanged which means that at a minimum, the following cannot have changed: Site Control, total number of Units, unit mix (bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and Housing Tax Credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, Target Population, scoring criteria (TDHCA issues) or TBRB priority status including the effect on the inclusive capture rate. Note that the entities involved in the Applicant entity and Developer cannot change; however, the certification can be submitted even if the lender, syndicator or issuer changes, as long as the financing structure and terms remain unchanged. Notifications under §10.203 of this chapter (relating to Public Notifications. (§2306.6705(9))) are not required to be reissued. A revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable. This certification must be submitted no later than thirty (30) calendar days after the date the TBRB issues the new docket number. In the event that the Department's Board has not yet approved the Application, the Application will continue to be processed and ultimately provided to the Board for consideration; or

(B) if there are changes to the Application as referenced in subparagraph (A) of this paragraph or if there is public opposition, the Applicant will be required to submit a new Application in full, along with the applicable fees, to be reviewed and evaluated in its entirety for a new Determination Notice to be issued.

(4) Withdrawal of Application. An Applicant may withdraw an Application prior to or after receiving an award of funding by submitting to the Department written notice of the withdrawal or cancellation. An Applicant may be subject to a fee associated with a withdrawal if warranted and allowable under §10.901 of this chapter.

(5) Evaluation Process. Priority Applications will undergo a program review for compliance with submission requirements and selection criteria, as applicable. In general, Application reviews by the Department shall be prioritized based upon the likelihood that an Application will be competitive for an award based upon the set-aside, self score, received date, or other ranking factors. Thus, non-competitive or lower scoring Applications may never be reviewed. Applications believed likely to be competitive are sometimes referred to as Priority Applications. The Director of Multifamily Finance will identify those Applications that will receive a full program review based upon a reasonable assessment of each Application's priority but no Application with a competitive ranking shall be skipped or otherwise overlooked. This initial assessment may be a high level assessment, not a full assessment. Applications deemed to be Priority Applications may change from time to time. The Department shall underwrite Applications that received a full program review and remain competitive to determine financial feasibility

and an appropriate funding amount. In making this determination, the Department will use §10.302 of this chapter (relating to Underwriting Rules and Guidelines) and §10.307 of this chapter (relating to Direct Loan Requirements). The Department may have an external party perform all or part or none of the underwriting evaluation to the extent it determines appropriate. The expense of any external underwriting shall be paid by the Applicant prior to the commencement of the aforementioned evaluation. Applications will undergo a previous participation review in accordance with §1.5 of this title (relating to Previous Participation Reviews) and Development Site conditions may be evaluated through a physical site inspection by the Department or its agents.

(6) Prioritization of Applications under various Programs. This paragraph identifies how ties or other prioritization matters will be handled when dealing with de-concentration requirements, capture rate calculations, and general review priority of Applications submitted under different programs.

(A) De-concentration and Capture Rate. Priority will be established based on the earlier date associated with an Application. The dates that will be used to establish priority are as follows:

(i) For Tax-Exempt Bond Developments, the issuance date of the Certificate of Reservation issued by the Texas Bond Review Board (TBRB); and

(ii) For all other Developments, the date the Application is received by the Department; and

(iii) Notwithstanding the foregoing, after July 31 a Tax-Exempt Bond Development with a Certificate of Reservation from the TBRB will take precedence over any Housing Tax Credit Application from the current Application Round on the waiting list.

(B) General Review Priority. Review priority for Applications under various multifamily programs will be established based on Department staff's consideration of any statutory timeframes associated with a program or Application in relation to the volume of Applications being processed. In general, those with statutory deadlines or more restrictive deadlines will be prioritized for review and processing ahead of those that are not subject to the same constraints.

(7) Administrative Deficiency Process. The purpose of the Administrative Deficiency process is to allow the Applicant an opportunity to provide clarification, correction or non-material missing information to resolve inconsistencies in the original Application. Staff will request the deficient information via a deficiency notice. The review may occur in several phases and deficiency notices may be issued during any of these phases. Staff will send the deficiency notice via an e-mail, or if an e-mail address is not provided in the Application, by facsimile to the Applicant and one other contact party if identified by the Applicant in the Application. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period and may also be sent in response to reviews on post award submissions. Issues initially identified as an Administrative Deficiency may ultimately be determined to be beyond the scope of an Administrative Deficiency, based upon a review of the response provided by the Applicant. Department staff may in good faith provide an Applicant confirmation that an Administrative Deficiency response has been received or that such response is satisfactory. However, final determinations regarding the sufficiency of documentation submitted to cure an Administrative Deficiency as well as the distinction between material and non-material missing information are reserved for the Director of Multifamily Finance, Executive Director, and Board.

(A) Administrative Deficiencies for Competitive HTC and Rural Rescue Applications. Unless an extension has been timely requested and granted; and if Administrative Deficiencies are not resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then (5 points) shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not resolved by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline or while the Application is under consideration for an award, and may not add any set-asides, increase the requested credit amount, revise the Unit mix (both income levels and Bedroom mixes), or adjust their self-score except in response to a direct request from the Department to do so as a result of an Administrative Deficiency. (§2306.6708(b); §2306.6708) To the extent that the review of

Administrative Deficiency documentation alters the score assigned to the Application, Applicants will be re-notified of their final adjusted score.

(B) Administrative Deficiencies for all other Applications or sources of funds. If Administrative Deficiencies are not resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice then a late fee of $500 for each business day the deficiency remains unresolved will be assessed and the Application will not be presented to the Board for consideration until all outstanding fees have been paid. Applications with unresolved deficiencies after 5:00 p.m. on the tenth day following the date of the deficiency notice will be terminated. The Applicant will be responsible for the payment of fees accrued pursuant to this paragraph regardless of any termination.

(8) Limited Priority Reviews. If, after the submission of the Application, an Applicant identifies an error in the Application that would generally be the subject of an Administrative Deficiency, the Applicant may request a limited priority review of the specific and limited issues in need of clarification or correction. The issue may not relate to the score of an Application. This limited priority review may only cover the specific issue and not the entire Application. If the limited priority review results in the identification of an issue that does indeed need correction or clarification, staff will request such through the Administrative Deficiency process as stated in paragraph (7) of this subsection if deemed appropirate. A limited priority review is intended to address:

(A) clarification of issues that Department staff would have difficulty identifying due to the omission of information that the Department may have access to only through Applicant disclosure, such as a prior removal from a tax credit transaction or participation in a Development that is not identified in the previous participation portion of the Application; or

(B) technical correction of non-material information that would cause an Application deemed non-competitive to be deemed competitive and therefore subject to a staff review. For example, failure to mark the Nonprofit Set-Aside in an Application that otherwise included complete submission of documentation for participation in the Nonprofit Set-Aside.

(9) Challenges to Opposition for Tax-Exempt Bond Developments. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local governmental entity. If any such comment is challenged, the challenger must declare the basis for the challenge. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any support for accuracy of its assertions. All such materials and the analysis of the Department's staff will be provided to a fact finder, chose by the Department, for review and a determination. The determination will be final and may not be waived or appealed.

§10.202. Ineligible Applicants and Applications.

The purpose of this section is to identify those situations in which an Application or Applicant may be considered ineligible for Department funding and subsequently terminated. If such ineligibility is determined by staff to exist, then prior to termination the Department will send a notice to the Applicant and provide them the opportunity to explain how they believe they or their Application is eligible. The items listed below include those requirements in §42 of the Internal Revenue Code, Texas Government Code, Chapter 2306 and other criteria considered important by the Department and does not represent an exhaustive list of ineligibility criteria that may otherwise be identified in applicable rules or a NOFA specific to the programmatic funding.

(1) Applicants. An Applicant shall be considered ineligible if any of the criteria in subparagraphs (A) – (M) of this paragraph apply to the Applicant. If any of the criteria apply to any other member of the Development Team, the Applicant will also be deemed ineligible unless a substitution of that Development Team member is specifically allowable under the Department's rules and sought by the Applicant or appropriate corrective action has been accepted and approved by the Department. An Applicant is ineligible if the Applicant:

(A) has been or is barred, suspended, or terminated from procurement in a state or Federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs; (§2306.6721(c)(2))

(B) has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within fifteen (15) years preceding the Application ~~deadline~~submission;

(C) is, at the time of Application, subject to an enforcement or disciplinary action under state or federal securities law or by the NASD; subject to a federal tax lien; or the subject of a proceeding in which a Governmental Entity has issued an order to impose penalties, suspend funding, or take adverse action based on an allegation of financial misconduct or uncured violation of material laws, rules, or other legal requirements governing activities considered relevant by the Governmental Entity;

(D) has breached a contract with a public agency and failed to cure that breach;

(E) has misrepresented to a subcontractor the extent to which the Developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Developer's participation in contracts with the agency and the amount of financial assistance awarded to the Developer by the agency;

(F) has been identified by the Department as being in Material Noncompliance ~~with~~ or has repeatedly violated the LURA or ~~if~~ such Material Noncompliance or repeated violation is identified during the Application review or the program rules in effect for such property as further described in ~~Chapter 60~~ Subchapter F of this ~~title~~chapter (relating to Compliance Administration) and remains unresolved; (§2306.6721(c)(3))

(G) is delinquent in any loan, fee, or escrow payments to the Department in accordance with the terms of the loan, as amended, or is otherwise in default with any provisions of such loans;

(H) has failed to cure any past due fees owed to the Department at least ten (10) days prior to the Board meeting at which the decision for an ~~Application~~award is to be made;

(I) is in violation of a state revolving door or other standard of conduct or conflict of interest statute, including ~~Texas Government Code,~~ §2306.6733 of the Texas Government Code, or a provision of ~~Texas Government Code,~~ Chapter 572 of the Texas Government Code, in making, advancing, or supporting the Application;

(J) has previous Contracts or Commitments that have been partially or fully deobligated during the twelve (12) months prior to the submission of the Application and through the date of final allocation due to a failure to meet contractual obligations and the Party is on notice that such deobligation results in ineligibility under these rules;

(K) has provided fraudulent information, knowingly falsified documentation, or other intentional or negligent material misrepresentation or omission in an Application or Commitment, as part of a challenge to another Application or any other information provided to the Department for any reason. The conduct described in this subparagraph is also a violation of these rules and will subject the Applicant to the assessment of administrative penalties under ~~Texas Government Code,~~ Chapter 2306 of the Texas Government Code and this title; or

(L) fails to disclose, in the Application, any Principal or any entity or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction, voluntarily or involuntarily, that has terminated within the past ten (10) years or plans to or is negotiating to terminate their relationship with any other affordable housing development. Failure to disclose is grounds for termination. The disclosure must identify the person or persons and development involved, the identity of each other development and contact information for the other Principals of each such development, a narrative description of the facts and circumstances of the termination or proposed termination, and any appropriate supporting documents. An Application may be terminated based upon factors in the disclosure. If, not later than 30 days after the date on which the Applicant has made full disclosure, including providing information responsive to any supplemental

Department staff requests, the Executive Director makes an initial determination that the person or persons should not be involved in the Application, that initial determination shall be brought to the Board for a hearing and final determination. If the Executive Director has not made and issued such an initial determination on or before the day thirty (30) days after the date on which the Applicant has made full disclosure, including providing information responsive to any supplemental Department staff requests, the person or persons made the subject of the disclosure shall be presumptively fit to proceed in their current role or roles. Such presumption in no way affects or limits the ability of the Department staff to initiate debarment proceedings under the Department's debarment rules at a future time if it finds that facts and circumstances warranting debarment exist. In the Executive Director's making an initial determination or the Board's making a final determination as to a person's fitness to be involved as a principal with respect to an Application, the factors described in clauses (i) – (v) of this subsection shall be considered:

(i) the amount of resources in a development and the amount of the benefit received from the development;

(ii) the legal and practical ability to address issues that may have precipitated the termination or propose termination of the relationship;

(iii) the role of the person in causing or materially contributing to any problems with the success of the development;

(iv) the person's compliance history, including compliance history on other developments; and

(v) any other facts or circumstances that have a material bearing on the question of the person's ability to be a compliant and effective participant in their proposed role as described in the Application.

(M) has worked or works to create opposition to any Application, excluding any challenges filed pursuant to §11.10 of this title (relating to Challenges of Competitive HTC Applications), has formed a Neighborhood Organization (excluding any allowable technical assistance), has given money or a gift to cause the Neighborhood Organization to take its position as it relates to §11.9(d)(1) of this title (relating to Competitive HTC Selection Criteria).

(2) Applications. An Application shall be ineligible if any of the criteria in subparagraphs (A) – (C) of this paragraph apply to the Application:

(A) a violation of Texas Government Code, §2306.1113 exists relating to Ex Parte Communication. (§2306.1113) An ex parte communication occurs, when an Applicant or Person representing an Applicant initiates substantive contact (other than permitted social contact) with a board member, or vice versa, in a setting other than a duly posted and convened public meeting, in any manner not specifically permitted by Texas Government Code, §2306.1113(b). Such action is prohibited. For Applicants seeking funding after initial awards have been made, such as waiting list Applicants, the ex parte communication prohibition remains in effect so long as the Application remains eligible for funding. The ex parte provision does not prohibit the Board from participating in social events at which a Person with whom communications are prohibited may, or will be present; provided that no matters related to any Application being considered by the Board may be discussed. An attempted but unsuccessful prohibited ex parte communication, such as a letter sent to one or more board members but not opened, may be cured by full disclosure in a public meeting, and the Board may reinstate the Application and establish appropriate consequences for cured actions, such as denial of the matters made the subject to the communication.

(B) the Application is submitted after the Application submission deadline (time or date); is missing multiple parts of the Application; or has a Material Deficiency; or

(C) for any Development utilizing Housing Tax Credits or Tax-Exempt Bonds:

(i) at the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a

Related Party is or has been a member of the Board or employed by the Department as the Executive Director, Chief of Staff, General Counsel, a Deputy Executive Director, the Director of Multifamily Finance, the Chief of Compliance, the Director of Real Estate Analysis, a manager over the program for which an Application has been submitted, or any person exercising such responsibilities regardless of job title; (§2306.6703(a)(1)); or

(ii) the Applicant proposes to replace in less than fifteen (15) years any private activity bond financing of the Development described by the Application, unless the exceptions in ~~Texas Government Code,~~ §2306.6703(a)(2) of the Texas Government Code are met.

§10.203. Public Notifications. (§2306.6705(9))

A certification, as provided in the Application, that the Applicant met the requirements and deadlines identified in paragraphs (1) - (3) of this section must be submitted with the Application. For Applications utilizing Competitive Housing Tax Credits, notifications must not be older than three (3) months from the first day of the Application Acceptance Period. For Tax Exempt Bond Developments notifications and proof thereof must not be older than three (3) months prior to the date Parts 5 and 6 of the Application are submitted and for all other Applications no older than three (3) months prior to the date the Application is submitted. If evidence of these notifications was submitted with the pre-application (if applicable to the program) for the same Application and satisfied the Department's review of the pre-application threshold, then no additional notification is required at Application. However, re-notification is required by all Applicants who have submitted a change in the Application, whether from pre-application to Application or as a result of an Administrative Deficiency that reflects a total Unit increase of greater than 10 percent. In addition, should a change in elected official occur between the submission of a pre-application and the submission of an Application, Applicants are required to notify the newly elected (or appointed) official.

(1) Neighborhood Organization Requests.

(A) In accordance with the requirements of this subparagraph, the Applicant must request from local elected officials a list of Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site. No later than the Full Application Neighborhood Organization Request Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) or §10.4 of this chapter (relating to Program Dates), as applicable, the Applicant must email, fax, or mail with return receipt requested a completed Neighborhood Organization Request letter as provided in the Application to the local elected official, as applicable, based on ~~for the city and county~~ where the Development is proposed to be located. If the Development is located in an area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located in an area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or its ETJ, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format.

(B) The Applicant must list, in the certification form provided in the Application, all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as outlined by the local elected officials, or that the Applicant has knowledge of (regardless of whether the organization is on record with the county or state) as of the submission of the Application.

(2) Notification Recipients. No later than the date the Application is submitted, notification must be sent to all of the persons or entities identified in subparagraphs (A) – (H) of this paragraph whose jurisdiction is over or whose boundaries include the Development Site. Developments located in an ETJ of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with return receipt requested or similar tracking mechanism in the format required in the Application Notification Template provided in the Application. Evidence of notification is required in the form of a certification provided in the Application. The Applicant is encouraged to retain proof of delivery in the event it is requested by the Department. Evidence of proof of delivery is demonstrated by a signed receipt

for mail or courier delivery and confirmation of receipt by recipient for fax and e-mail. Officials to be notified are those officials in office at the time the Application is submitted.

(A) Neighborhood Organizations on record with the state or county whose boundaries include the proposed Development Site;

(B) Superintendent of the school district;

(C) Presiding officer of the board of trustees of the school district;

(D) Mayor of the municipality;

(E) All elected members of the Governing Body of the municipality;

(F) Presiding officer of the Governing Body of the county;

(G) All elected members of the Governing Body of the county; and

(H) State Senator and State Representative.

(3) Contents of Notification. The notification must include, at a minimum, all information described in subparagraphs (A) – (F) of this paragraph:

(A) the Applicant's name, address, individual contact name and phone number;

(B) the Development name, address, city and county;

(C) a statement indicating the program(s) to which the Applicant is applying with the Texas Department of Housing and Community Affairs;

(D) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse or Rehabilitation;

(E) the type of Development being proposed (single family homes, duplex, apartments, townhomes, high-rise etc.); and

(F) the total number of Units proposed and total number of low-income Units proposed.

§10.204. Required Documentation for Application Submission.

The purpose of this section is to identify the documentation that is required at the time of Application submission unless specifically indicated or otherwise required by Department rule. If any of the documentation indicated below is not resolved, clarified or corrected to the satisfaction of the Department through either original Application submission or the Administrative Deficiency process, the Application will be terminated. Unless stated otherwise, all documentation identified in this section must not be dated more than six (6) months prior to the close of the Application Acceptance Period or the date of Application submission as applicable to the program. The Application may include documentation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, Development Site, or Development.

(1) Certification of Development Owner. This form, as provided in the Application, ~~included in §10.208 of this chapter (relating to Forms and Templates),~~ must be executed by the Development Owner and addresses the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification. Applicants are encouraged to read the certification carefully as it contains certain construction and Development specifications that each Development must meet.

(A) The Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or, if no local building codes are in place, then to the most recent version of the International Building Code.

(B) This Application and all materials submitted to the Department constitute records of the Department subject to Chapter 552, Texas Government Code, and the Texas Public Information Act.

~~(B) The Application is in compliance with all requirements related to the eligibility of an Applicant, Application and Development as further defined in this chapter.~~

(C) All representations, undertakings and commitments made by Applicant in the Application process for a Development expressly constitute conditions to any Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment for such Development which the Department may issue or award, and the violation of any such condition shall be sufficient cause for the cancellation and rescission of such Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment by the Department. If any such representations, undertakings and commitments concern or relate to the ongoing features or operation of the Development, they shall each and all shall be enforceable even if not reflected in the Land Use Restriction Agreement. All such representations, undertakings and commitments are also enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform, in accordance with the Land Use Restriction Agreement.

(D) The Development Owner has read and understands the Department's fair housing educational materials posted on the Department's website as of the beginning of the Application Acceptance Period.

(E)The Development Owner will contract with a Management Company throughout the Compliance Period that will perform criminal background checks on all adult tenants, head and co-head of households.

(F)The Development Owner agrees to implement a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Development Owner will be required to submit a report of the success of the plan as part of the cost certification documentation, in order to receive IRS Forms 8609 or, if the Development does not have Housing Tax Credits, release of retainage.

(G)The Applicant will attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in §2306.6734 of the Texas Government Code.

(H)The Development Owner will affirmatively market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner will be required to identify how they will affirmatively market to veterans and report to the Department in the annual housing report on the results of the marketing efforts to veterans. Exceptions to this requirement must be approved by the Department.

(I)The Development Owner will comply with any and all notices required by the Department.

(2) Certification of Principal. This form, ~~included in §10.208 of this chapter~~as provided in the Application, must be executed by all Principals and identifies the various criteria relating to eligibility requirements associated with multifamily funding from the Department, including but not limited to the criteria identified under §10.202 of this chapter (relating to Ineligible Applicants and Applications).

(3) Architect Certification Form. This form, ~~included in §10.208 of this chapter~~as provided in the Application, must be executed by the Development engineer, an accredited architect or Department-approved Third Party accessibility specialist. (§2306.6722 and §2306.6730)

(4) Designation as Rural or Urban. Each Application must identify whether the Development Site is located in an Urban Area or Rural Area of a Uniform State Service Region. The Department shall make available a list of places meeting the requirements of Texas Government Code, §2306.004(28-a)(A) and (B) for designation as a Rural Area and those that are an Urban Area in the Site Demographics Characteristics Report. Notwithstanding the foregoing, an Applicant proposing a Development in a place listed as urban by the Department may be designated as located in a Rural Area if the municipality has less than 50,000 persons, as reflected in Site Demographics and Characteristics Report, and a letter or other documentation from USDA is submitted in the Application that indicates the Site is located in an area eligible for funding from USDA in accordance with Texas Government Code, §2306.004(28-a)(C). For any Development not located within the boundaries of a municipality, the applicable designation is that of the closest municipality or place.

(5) Experience Requirement. Evidence that meets the criteria as stated in subparagraph (A) of this paragraph must be provided in the Application. Experience of multiple parties may not be aggregated to meet this requirement.

(A) A Principal of the Developer, Development Owner, or General Partner must establish that they have experience in the development and placement in service of 150 units or more. Acceptable documentation to meet this requirement shall include:

(i) an experience certificate issued by the Department in the past two (2) years prior to the beginning of the Application Acceptance Period; or

(ii) any of the items in subclauses (I) – (IX) of this clause:

(I) American Institute of Architects (AIA) Document (A102) or (A103) 2007 - Standard Form of Agreement between Owner and Contractor;

(II) AIA Document G704--Certificate of Substantial Completion;

(III) AIA Document G702--Application and Certificate for Payment;

(IV) Certificate of Occupancy;

(V) IRS Form 8609, (only one per development is required);

(VI) HUD Form 9822;

(VII) Development agreements;

(VIII) Partnership agreements; or

(IX) other documentation satisfactory to the Department verifying that the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals have the required experience.

(B) For purposes of this requirement any individual attempting to use the experience of another individual must demonstrate they have or had the authority to act on their behalf that substantiates the minimum 150 unit requirement.

(i) The names on the forms and agreements in subparagraph (A)(ii) of this paragraph must tie back to the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals as listed in the Application.

(ii) Experience may not be established for a Person who at any time within the preceding three years has been involved with affordable housing that has been in material non-compliance under the Department's rules or for affordable housing in another state, has been the subject of issued IRS Form 8823 citing non-compliance that has not been or is not being corrected with reasonable due diligence.

(iii) If a Principal is determined by the Department to not have the required experience, an acceptable replacement for that Principal must be identified prior to the date the award is made by the Board.

(iv) Notwithstanding the foregoing, no person may be used to establish such required experience if that Person or an Affiliate of that Person would not be eligible to be an Applicant themselves.

(6) Financing Requirements.

(A) Non-Department Debt Financing. Interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department must be included in the Application. Any local, state or federal financing identified in this section which restricts household incomes at any level that is lower than restrictions required pursuant to this chapter or elected in accordance with Chapter 11 of this title (relating to Housing Tax Credit Qualified Allocation Plan) must be identified in the rent schedule and the local, state or federal income restrictions must include corresponding rent levels in accordance with §42(g) of the Code. The income and corresponding rent restrictions will be imposed by the LURA and monitored for compliance. Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) and (ii) of this subparagraph.

(i) Financing is in place as evidenced by:

(I) a valid and binding loan agreement; and

(II) deed(s) of trust on the Development in the name of the Development Owner as grantor covered by a lender's policy of title insurance; or

(ii) Term sheets for interim and permanent loans issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money must:

(I) have been executed by the lender;

(II) be addressed to the Development Owner;

(III) for the permanent loan, include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization;

(IV) include anticipated interest rate, including the mechanism for determining the interest rate;

(V) include any required Guarantors; and

(VI) include and address any other terms and conditions applicable to the financing. The term sheet may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits, if applicable.

(B) Gap Financing. Any anticipated federal, state, ~~or~~ local or private gap financing, whether soft or hard debt, must be identified in the Application. Acceptable documentation shall include a term sheet from the lending agency which clearly describes the amount and terms of the financing. Other Department funding requested with Housing Tax Credit Applications must be on a concurrent funding period with the Housing Tax Credit Application.

(C) Owner Contributions. If the Development will be financed through more than 5 percent of Development Owner contributions, a letter from a Third Party CPA must be submitted that verifies the capacity of the Development Owner to provide the proposed financing with funds that are not otherwise committed. Additionally, a letter from the Development Owner's bank or banks must be submitted that confirms sufficient funds are available to the Development Owner.

(D) Equity Financing. (§2306.6705(2) and (3)) If applicable to the program, the Application must include a term sheet from a syndicator that, at a minimum, includes:

(i) an estimate of the amount of equity dollars expected to be raised for the Development;

(ii) the amount of Housing Tax Credits requested for allocation to the Development Owner;

(iii) pay-in schedules;

(iv) anticipated developer fees paid during construction and anticipated deferred developer fees; and

(v) syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis.

(E) Financing Narrative. (§2306.6705(1)) A narrative must be submitted that describes the complete financing plan for the Development, including but not limited to, the sources and uses of funds; construction, permanent and bridge loans, rents, operating subsidies, and replacement reserves; and the status of commitments for all funding sources. The information provided must be consistent with all other documentation in the Application.

(7) Operating and Development Cost Documentation.

(A) 15-year Pro forma. All Applications must include a 15-year pro forma estimate of operating expenses, in the form provided by the Department. Any "other" debt service included in the pro forma must include a description.

(B) Utility Allowances. This exhibit, as provided in the Application, must be submitted along with documentation from the source of the utility allowance estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate and must comply with the requirements of §10.607 of this chapter (relating to Utility Allowances).

(C) Operating Expenses. This exhibit, as provided in the Application, must be submitted indicating the anticipated operating expenses associated with the Development. Any expenses noted as "other" in any of the categories must be identified. "Miscellaneous" or other non-descript designations are not acceptable.

(D) Rent Schedule. This exhibit, as provided in the Application, must indicate the type of Unit designation based on the Unit's rent and income restrictions. The rent and utility limits available at the time the Application is submitted should be used to complete this exhibit. Gross rents cannot exceed the maximum rent limits unless documentation of project-based rental assistance is provided. The unit mix and net rentable square footages must be consistent with the site plan and architectural drawings. For Units restricted in connection with Direct Loans, the restricted Units will generally be designated "floating" unless specifically disallowed under the program specific rules.

(E) Development Costs. This exhibit, as provided in the Application, must include the contact information for the person providing the cost estimate and must meet the requirements of clauses (i) and (ii) of this subparagraph.

(i) Applicants must also provide a detailed cost breakdown of projected Site Work costs, if any, prepared by a Third Party engineer. If any Site Work costs exceed $15,000 per Unit and are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis.

(ii) If costs for Off-Site Construction are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then the Off-Site Cost Breakdown prepared by a Third Party engineer must be provided. If any Off-Site Construction costs are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those costs should be included in Eligible Basis. The certification from a Third Party engineer must describe the necessity of the off-site improvements, including the relevant requirements of the local jurisdiction with authority over building codes. If off-site costs are included in Eligible Basis based on PLR 200916007, a statement of findings from a CPA must be provided which describes the facts relevant to the Development and affirmatively certifies that the fact pattern of the Development matches the fact pattern in PLR 200916007.

(F) Rental Assistance/Subsidy. (§2306.6705(4)) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related

contract or other agreement securing those funds or proof of application for such funds must be provided. Such documentation shall, at a minimum, identify the source and annual amount of the funds, the number of units receiving the funds, and the term and expiration date of the contract or other agreement.

(G) Occupied Rehabilitation Developments. The items identified in clauses (i) – (vii) of this subparagraph must be submitted with any Application where any structure on the Development Site is occupied or if the Application proposes the demolition of any occupied housing. If the current property owner is unwilling to provide the required documentation then a signed statement from the Applicant attesting to that fact must be submitted. If one or more of the items described in clauses (i) – (vii) of this subparagraph is not applicable based upon the type of occupied structures on the Development Site, the Applicant must provide an explanation of such non-applicability. Applicant must submit:

(i) at least one of the items identified in subclauses (I) – (IV) of this clause:

(I) historical monthly operating statements of the Development for twelve (12) consecutive months ending not more than three (3) months from the first day of the Application Acceptance Period;

(II) the two (2) most recent consecutive annual operating statement summaries;

(III) the most recent consecutive six (6) months of operating statements and the most recent available annual operating summary; or

(IV) all monthly or annual operating summaries available; and

(ii) a rent roll not more than six (6) months old as of the first day the Application Acceptance Period that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, and tenant names or vacancy;

(iii) a written explanation of the process used to notify and consult with the tenants in preparing the Application; (§2306.6705(6))

(iv) for Qualified Elderly or Supportive Housing Developments, identification of the number of existing tenants qualified under the Target Population elected under this chapter;

(v) a relocation plan outlining relocation requirements and a budget with an identified funding source; (§2306.6705(6))

(vi) any documentation necessary for the Department to facilitate, or advise an Applicant with respect to or ensure compliance with the Uniform Relocation Act and any other relocation laws or regulations as may be applicable; and

(vii) if applicable, evidence that the relocation plan has been submitted to the appropriate legal or governmental agency. (§2306.6705(6))

(8) Architectural Drawings. All Developments must provide the items identified in subparagraphs (A) - (D) of this paragraph unless specifically stated otherwise and must be consistent with all applicable exhibits throughout the Application. The drawings must have a legible scale and show the dimensions of each perimeter wall and floor heights. Developments must provide:

(A) A site plan which:

(i) includes a unit and building type table matrix that is consistent with the Rent Schedule and Building/Unit Configuration forms provided in the Application;

(ii) identifies all residential and common buildings;

(iii) clearly delineates the flood plain boundary lines and shows all easements;

(iv) if applicable, indicates possible placement of detention/retention pond(s); and

(v) indicates the location of the parking spaces.

(B) Building floor plans. Submitted for each building type and include square footage. Adaptive Reuse Developments are only required to provide building plans delineating each Unit by number and type; and

(C) Unit floor plans for each type of Unit. Adaptive Reuse Developments are only required to provide Unit floor plans for each distinct typical Unit type such as one-bedroom, two-bedroom and for all Unit types that vary in Net Rentable Area by 10 percent from the typical Unit; and

(D) Elevations. Elevations must be submitted for each building type and include a percentage estimate of the exterior composition and proposed roof pitch. Rehabilitation and Adaptive Reuse Developments may submit photographs if the Unit configurations are not being altered and after renovation drawings must be submitted if Unit configurations are proposed to be altered.

(9) Site Control.

(A) Evidence that the Development Owner has the ability to compel legal title to a developable interest in the Development Site or, Site Control must be submitted. If the evidence is not in the name of the Development Owner, then the documentation should reflect an expressed ability to transfer the rights to the Development Owner. All of the sellers of the proposed Property for the thirty-six (36) months prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development Team must be identified at the time of Application. The Department may request documentation at any time after submission of an Application of the Development Owner's ability to compel title and the Development Owner must be able to promptly provide such documentation or the Application, award, or Commitment may be terminated. The Department acknowledges and understands that the Property may have one or more encumbrances at the time of Application submission and the Department will use a reasonableness standard in determining whether such encumbrance is likely to impede an Applicant's ability to meet the program's requirements. Tax-Exempt Bond Lottery Applications must have Site Control valid through December 1 of the prior program year with the option to extend through March 1 of the current program year.

(B) In order to establish Site Control, one of the items described in clauses (i) – (iii) of this subparagraph must be provided:

(i) a recorded warranty deed with corresponding executed settlement statement; or

(ii) a contract for lease with a minimum term of forty-five (45) years and is valid for the entire period the Development is under consideration for Department funding; or

(iii) a contract for sale, an option to purchase or a lease that includes an effective date; price; address and/or legal description; proof of consideration in the form specified in the contract; and expiration date;

(C) If the acquisition can be characterized as an identity of interest transaction, as described in §10.302 of this chapter (relating to Underwriting Rules and Guidelines), then the documentation as further described therein must be submitted in addition to that of subparagraph (B) of this paragraph.

(10) Zoning. (§2306.6705(5)) Acceptable evidence of zoning for all Developments must include one of subparagraphs (A) – (D) of this paragraph.

(A) No Zoning Ordinance in Effect. The Application must include a letter from the chief executive officer of the Unit of General Local Government or another local official with appropriate jurisdiction stating that the Development is located within the boundaries of a Unit of General Local Government that has no zoning.

(B) Zoning Ordinance in Effect. The Application must include a letter from the chief executive officer of the Unit of General Local Government or another local official with appropriate jurisdiction stating the Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development.

(C) Requesting a Zoning Change. The Application must include a signed release that was provided to the Unit of General Local Government agreeing to hold the Unit of General Local Government and all

other parties harmless in the event that the appropriate zoning is denied. Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice.

(D) Zoning for Rehabilitation Developments. The Application must include documentation of current zoning. If the Property is currently conforming but with an overlay that would make it a non-conforming use as presently zoned, a letter from the chief executive officer of the Unit of General Local Government or another local official with appropriate jurisdiction which addresses the items in clauses (i) - (iv) of this subparagraph:

(i) a detailed narrative of the nature of non-conformance;

(ii) the applicable destruction threshold;

(iii) Owner's rights to reconstruct in the event of damage; and

(iv) penalties for noncompliance.

(11) Title Commitment/Policy. A title commitment or title policy must be submitted that includes a legal description that is consistent with the Site Control. If the title commitment or policy is dated more than six (6) months old as of the close of the Application Acceptance Period then a letter from the title company indicating that nothing further has transpired on the commitment or policy must be submitted.

(A) The title commitment must list the name of the Development Owner as the proposed insured and lists the seller or lessor as the current owner of the Development Site.

(B) The title policy must show that the ownership (or leasehold) of the Development Site is vested in the name of the Development Owner.

(12) Ownership Structure.

(A) Organizational Charts. A chart must be submitted that clearly illustrates the complete organizational structure of the final proposed Development Owner and of any Developer or Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner or the Developer or Guarantor, as applicable, whether directly or through one or more subsidiaries. Nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors must be included in this exhibit and trusts must list all beneficiaries that have the legal ability to control or direct activities of the trust and are not just financial beneficiaries.

(B) Previous Participation. Evidence must be submitted that each entity shown on the organizational chart described in subparagraph (A) of this paragraph that has ownership interest in the Development Owner, Developer or Guarantor, has provided a copy of the completed and executed Previous Participation and Background Certification Form to the Department. Nonprofit entities, public housing authorities and publicly traded corporations are required to submit documentation for the entities involved. Documentation for individual board members and executive directors, any Person (regardless of any Ownership interest or lack thereof) receiving more than 10 percent of the Developer fee and Units of General Local Government are all required to submit this document. The form must include a list of all developments that are, or were, previously under ownership or Control of the Applicant and each Principal, including any Person providing the required experience. All participation in any Department funded or monitored activity, including non-housing activities, as well as Housing Tax Credit developments or other programs administered by other states using state or federal programs must be disclosed and authorize the parties overseeing such assistance to release compliance histories to the Department.

(13) Nonprofit Ownership. Applications that involve a §501(c)(3) or (4) nonprofit General Partner or Owner shall submit the documentation identified in subparagraph~~s~~ (A) or (B) of this paragraph as applicable.

(A) Competitive HTC Applications. Applications for Competitive Housing tax Credits involving a §501(c)(3) or (4) nonprofit General Partner and which meet the Nonprofit Set-Aside requirements,

must submit all of the documents described in this subparagraph and indicate the nonprofit status on the carryover documentation and IRS Forms 8609. (§2306.6706) Applications that include an affirmative election to not be treated under the set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit only need to submit the documentation in subparagraph (B) of this paragraph.

(i) An IRS determination letter which states that the nonprofit organization is a §501(c)(3) or (4) entity;

(ii) The Nonprofit Participation exhibit as provided in the Application;

(iii) A Third Party legal opinion stating:

(I) that the nonprofit organization is not affiliated with or Controlled by a for-profit organization and the basis for that opinion;

(II) that the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit Set-Aside pursuant to §42(h)(5) of the Code and the basis for that opinion;

(III) that one of the exempt purposes of the nonprofit organization is to provide low-income housing;

(IV) that the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board;

(V) that the Qualified Nonprofit Development will have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or co-Developer as evidenced in the development agreement;

(VI) a copy of the nonprofit organization's most recent financial statement as prepared by a Certified Public Accountant; and

(VII) evidence in the form of a certification that a majority of the members of the nonprofit organization's board of directors principally reside:

(-a-) in this state, if the Development is located in a Rural Area; or

(-b-) not more than ninety (90) miles from the Development, if the Development is not located in a Rural Area.

(B) All Other Applications. Applications that involve a §501(c)(3) or (4) nonprofit General Partner or Owner must submit an IRS determination letter which states that the nonprofit organization is a §501(c)(3) or (4) entity and the Nonprofit Participation exhibit as provided in the Application. If the Application involves a nonprofit that is not a §501(c)(3) or (4) then they must disclose in the Application the basis of their nonprofit status.

§10.205. Required Third Party Reports.

The Environmental Site Assessment, Property Condition Assessment and Appraisal (if applicable) must be submitted no later than the Third Party Report Delivery Date as identified in §10.4 of this chapter (relating to Program Dates) and §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) and the Market Analysis Report and ~~Civil Engineer Feasibility Study~~Site Design and Development Feasibility Report must be submitted no later than the Market Analysis and ~~Civil Engineer Feasibility Study~~Site Design and Development Feasibility Report Delivery Date as identified in §10.4 of this chapter and §11.2 of this title. For Competitive HTC Applications, if the reports, in their entirety, are not received by the deadline the Application will be terminated. A searchable electronic copy of the report in the format of a single file containing all information and exhibits clearly labeled with the report type, Development name and Development location are required. All Third Party reports must be prepared in accordance with Subchapter D of this chapter (relating to Underwriting and Loan Policy). The Department may request

additional information from the report provider or revisions to the report as needed. In instances of non-response by the report provider, the Department may substitute in-house analysis. The Department is not bound by any opinions expressed in the report.

(1) Environmental Site Assessment. This report, required for all Developments and prepared in accordance with the requirements of §10.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines), must not be dated more than twelve (12) months prior to the first day of the Application Acceptance Period. If this timeframe is exceeded then a letter or updated report must be submitted, dated not more than three (3) months prior to the first day of the Application Acceptance Period from the Person or organization which prepared the initial assessment confirming that the site has been re-inspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report.

(A) Developments funded by USDA will not be required to supply this information; however, it is the Applicant's responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(B) If the report includes a recommendation that an additional assessment be performed then a statement from the Applicant must be submitted with the Application indicating those additional assessments and recommendations will be performed prior to closing. If the assessments require further mitigating recommendations then evidence indicating the mitigating recommendations have been carried out must be submitted at cost certification.

(2) Market Analysis. This report, required for all Developments and prepared in accordance with the requirements of §10.303 of this chapter (relating to Market Analysis Rules and Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If this timeframe is exceeded then an updated Market Analysis from the Person or organization which prepared the initial report must be submitted. The Department will not accept any Market Analysis which is more than twelve (12) months old as of the first day of the Application Acceptance Period.

(A) The report must be prepared by a Qualified Market Analyst approved by the Department in accordance with the approval process outlined in §10.303 of this chapter;

(B) Applications in the USDA Set-Aside proposing acquisition and Rehabilitation with residential structures at or above 80 percent occupancy at the time of Application submission, the appraisal, required for Rehabilitation Developments and Identity of Interest transactions prepared in accordance with §10.304 of this chapter (relating to Appraisal Rules and Guidelines), will satisfy the requirement for a Market Analysis; however, the Department may request additional information as needed. (§2306.67055; §42(m)(1)(A)(iii))

(C) It is the responsibility of the Applicant to ensure that this analysis forms a sufficient basis for the Applicant to be able to use the information obtained to ensure that the Development will comply with fair housing laws.

(3) Property Condition Assessment (PCA). This report, required for Rehabilitation (excluding Reconstruction) and Adaptive Reuse Developments and prepared in accordance with the requirements of §10.306 of this chapter (relating to Property Condition Assessment Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If this timeframe is exceeded then an updated PCA from the Person or organization which prepared the initial report must be submitted. The Department will not accept any PCA which is more than twelve (12) months old as of the first day of the Application Acceptance Period. For Developments which require a capital needs assessment from USDA, the capital needs assessment may be substituted and may be more than six (6) months old, as long as USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §10.306 of this chapter.

(4) Appraisal. This report, required for all Rehabilitation Developments and prepared in accordance with the requirements of §10.304 of this chapter, any Application claiming any portion of the building acquisition in Eligible Basis, and Identity of Interest transactions pursuant to Subchapter D of this chapter, must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If this timeframe

is exceeded, then an updated appraisal from the Person or organization which prepared the initial report must be submitted. The Department will not accept any appraisal which is more than twelve (12) months old as of the first day of the Application Acceptance Period. For Developments that require an appraisal from USDA, the appraisal may be more than six (6) months old, as long as USDA has confirmed in writing that the existing appraisal is still acceptable.

(5) ~~**Civil Engineer Feasibility Study**~~**Site Design and Development Feasibility Report**. This report, compiled by the Applicant or Third Party Consultant, is required for any New Construction Development, prepared in accordance with this paragraph, which reviews site conditions and development requirements of the proposed Development.

(A) Executive Summary as a narrative overview of the Development in sufficient detail that would help a reviewer of the Application better understand the site, the site plan, off site requirements (including discussion of any seller contributions or reimbursements), any other unique development requirements and their impact on Site Work and Off Site Construction costs. The summary should contain a general statement regarding the level of due diligence that has been done relating to site development (including discussions with local government development offices). Additionally, the overview should contain a summary of zoning requirements, subdivision requirements, development ordinances, fire department requirements, site ingress and egress requirements, building codes and local design requirements impacting the Development (do not attach ordinances). Careful focus and attention should be made regarding any atypical items materially impacting costs.

(B) Survey or current plat as defined by the Texas Society of Professional Surveyors in their Manual of Practice for Land Surveying in Texas (Category 1A - Land Title Survey no older than six (6) months to the beginning of the Application Acceptance Period; or Category 1B - Standard Land Boundary Survey no older than twelve (12) months from the beginning of the Application Acceptance Period).

(C) Preliminary site plan prepared by the civil engineer with a statement that the plan materially adheres to all applicable zoning, site development and building coded ordinances. The site plan must identify ~~identifying~~ all structures, site amenities, parking spaces (include handicap spaces and ramps) and driveways, topography (using either existing seller topographic survey or United States Geological Survey (USGS)/other database topography), site drainage and detention, water and waste water utility ~~distribution~~tie-ins, general placement of, retaining walls, set-back requirements and any other typical or locally required items. Off-site improvements required for utilities, detention, access or other requirement must be shown on the site plan or ancillary drawings.

(D) Architect or civil engineer prepared statement describing the entitlement, site development permitting process and timing, building permitting process and timing and an itemization specific to the Development of total anticipated impact, site development permit, building permit and other required fees.

~~(D) Review of the Environmental Site Assessment.~~

~~(E) Review of Geotechnical Report/Study (attachment).~~

~~(F) Storm Water Management (Detention/Retention/Drainage).~~

~~(G) Topography Review (provide existing topography survey or USGS Topography).~~

~~(H) Site Ingress/Egress Requirements (Fire/TxDot/Median Cuts, Deceleration Lanes).~~

~~(I) Off-Site requirements (Utilities/Roadways/Other).~~

~~(J) Water/Sanitary Sewer Service Summary (attach distribution maps).~~

~~(K) Electric, Gas, and Telephone Service Summary (attach distribution maps).~~

~~(L) Zoning/Site Development Ordinances (do not include copies of ordinances).~~

~~(M) Building Codes/Ordinances/Design Requirements Summary (do not include copies of ordinances).~~

~~(N) Entitlement/Site Development/Building Permit Process Summary, Fees and Timing.~~

~~(O) Other Considerations, Conditions, Issues or Topics Relevant to Development of the Site as proposed.~~

§10.206. Board Decisions. (§§2306.6725(c); 2306.6731; and 42(m)(1)(A)(iv))

The Board's decisions regarding awards shall be based upon the Department's and the Board's evaluation of the proposed Developments' consistency with the criteria and requirements set forth in this chapter, Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) and other applicable Department rules. The Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, including good cause and the reasons for any decision that conflicts with the recommendations made by Department staff. Good cause includes the Board's decision to apply discretionary factors where authorized. The Department reserves the right to reduce the amount of funds requested in an Application, condition the award recommendation or terminate the Application based on the Applicant's inability to demonstrate compliance with program requirements. The recommendation with amendments, if any, approved by the Board, will supersede any conflicting information in the Application.

§10.207. Waiver of Rules for Applications.

(a) General Process. This waiver section is applicable only to Subchapters (B), ~~and~~ (C), (E), and (G) of this chapter and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan). An Applicant must request a waiver or pre-clearance, as applicable based on the requirements stated herein, in writing at or prior to the submission of the pre-application for Competitive Housing Tax Credit Applications and Tax Exempt Bond Developments where the Department is the Issuer. For all other Applications, the waiver request must be submitted at the time of Application submission. Regarding waivers, the request must establish how it is necessary to address circumstances beyond the Applicant's control and how, if the waiver is not granted, the Department will not fulfill some specific requirement of law. In this regard the policies and purposes articulated in Texas Government Code, §§2306.001, 2306.002, 2306.359, and 2306.6701 are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program. Regarding pre-clearance determinations, the request should include sufficient documentation in order for the Board to make a determination (e.g. detailed information regarding site features or community revitalization plans) and should reference the section of the rules which calls for such determination. Where appropriate the Applicant is encouraged to submit with the requested waiver or pre-clearance any plans for mitigation or alternative solutions. Any such request for waiver must be specific to the unique facts and circumstances of an actual proposed Development. Any waiver or pre-clearance, if granted, shall apply solely to the Application and shall not constitute a general modification or waiver of the rule involved.

(b) Waivers and/or Pre-Clearance Granted by the Executive Director. The Executive Director may waive or grant pre-clearance as provided in this rule. Even if this rule grants the Executive Director authority to waive or pre-clear a given item, the Executive Director may present the matter to the Board for consideration and action. Neither the Executive Director nor the Board shall grant any waiver or pre-clear any item to the extent such requirement is mandated by statute. Denial of a waiver and/or pre-clearance by the Executive Director may be appealed to the Board in accordance with §10.902 of this chapter (relating to Appeals Process. (§2306.0321; §2306.6715)). Applicants should expect that waivers granted by the Executive Director will generally be very limited. The Executive Director's decision to defer to the Board will not automatically be deemed an adverse staff position with regard to the waiver request as public vetting of such requests is generally appropriate and preferred. However, this does not preclude a staff recommendation to approve or deny any specific request for a waiver.

(c) Waivers Granted by the Board. The Board, in its discretion, may waive any one or more of the rules in Subchapters ~~(A)~~ (B), (C), (E), and (G) of this chapter except no waiver shall be granted to provide forward commitments or if it is prohibited by statute (i.e., statutory requirements may not be waived). The Board, in its discretion, may grant a waiver that is in response to a natural, federally declared disaster that occurs after the adoption of the multifamily rules. A requested waiver must establish how the waiver is necessary to address circumstances beyond the Applicant's control and how, if the waiver is not granted, the

Department will not fulfill some specific requirement of law or purpose or policy set forth in Texas Government Code, Chapter 2306. In this regard, the policies and purposes articulated in Texas Government Code, §§2306.001, 2306.002, and 2306.6701 are general in nature and apply to the role of the Department and its programs, including the tax credit program, taken as a whole and the Board does not view the fact that an outcome requiring a waiver would be consistent with any of those enumerated policies or purposes as establishing a presumption that specific transaction must be granted a waiver in order for the program, as a whole, to be consistent with those policies and purposes.

~~§10.208. Forms and Templates.~~

~~This section includes forms and templates to be used in the Uniform Application.~~ ,

Attachment D: Preamble, Reasoned Response, and New Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC, Chapter 10 Uniform Multifamily Rules, Subchapter G, §§10.901 – 10.904 concerning Fee Schedule, Appeals and Other Provisions. Sections 10.901 - 10.903 are adopted with changes to text as published in the September 21, 2012 issue of the *Texas Register* (37 TexReg 7407). Section 10.904 is adopted without changes and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the rule will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

The comments and responses include both administrative clarifications and corrections to the Uniform Multifamily Rule based on the comments received. After each comment title, numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the proposed Uniform Multifamily Rule as presented to the Board in September, such changes are indicated. Public comments were accepted through October 22, 2012 with comments received from (13) Cynthia Bast, Locke Lord.

77. §10.901(12) – Subchapter G – Fee Schedule – Extension Fees (13)
COMMENT SUMMARY: Commenter (13) noted this section allows an owner to be exempt from paying a fee if it requests the extension 30 days in advance of the deadline and requires the fee if it's after the deadline; however, it does not address the period consisting of the 30 days before the deadline. Commenter (13) recommended the following revision:

> **"…**All extension requests for deadlines relating to the Carryover, 10 Percent Test (submission and expenditure), or Cost Certification requirements ~~that are submitted after the applicable deadline must be accompanied by an extension fee of $2,500. Extension requests~~ submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee. Any extension request submitted fewer than thirty (30) days in advance or after the applicable deadline must be accompanied by an extension fee of $2,500."

STAFF RESPONSE: Staff agrees with the suggested language and recommends the amended language.

78. §10.901(14) – Subchapter G – Fee Schedule – Right of First Refusal (13)
COMMENT SUMMARY: Commenter (13) noted it may be necessary or appropriate for an owner to go through a second right of first refusal process and recommended that in such unusual circumstances a fee waiver be allowed.

STAFF RESPONSE: Staff generally agrees with commenter (13). Section 10.901 provides for a process by which the Executive Director may grant a waiver of fees for specific extenuating and extraordinary circumstances. Staff recommends no change based on this comment.

79. §10.901(18) – Subchapter G – Fee Schedule – Unused Credit or Penalty Fee (13)
COMMENT SUMMARY: Commenter (13) suggested it may not be appropriate for a point penalty associated with the tax credit program to be included in this rule, but rather in the Qualified Allocation Plan (QAP) and further suggested it could remain but should be cross-referenced in the QAP.

STAFF RESPONSE: Staff believes the language within this provision fully describes the applicability of the fee and that its inclusion in the fee schedule of the uniform rule is appropriate. Staff recommends no change based on this comment.

80. §10.901(19) – Subchapter G – Fee Schedule – Compliance Monitoring Fee (13)
COMMENT SUMMARY: Commenter (13) noted that the heading of this section indicates that it is applicable to HTC developments only and stated that such reference is helpful. Commenter (13) suggested this system be used throughout the rules in order to better distinguish those that are only applicable to the housing tax credit program.

STAFF RESPONSE: Where there is a requirement unique to a specific funding source, whether it be competitive HTC applications, tax-exempt bond applications or direct loan applications, staff tried to specify the extent to which the requirement was applicable. Staff recommends no change based on this comment.

81. §10.902(a) – Subchapter G – Appeals Process (13)
COMMENT SUMMARY: Commenter (13) indicated that §10.407(f) of Subchapter G allows for an appeal on right of first refusal matters; however, such provision is not reflected in this section. Commenter (13) proposed a new subsection (9) be added that reads "any other matter for which an appeal is permitted under this chapter." Commenter (13) further recommended the following revisions in this section to correct grammatical errors:

> "(b) An Applicant or Development Owner may not appeal a decision made regarding an Application ~~or~~ filed by or an issue related to another Applicant or Development Owner."
>
> (d)… While additional information can be provided in accordance with any rules related to public comment before the Board, the Department expects that a full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal be disclosed in the appeal documentation filed with the Executive Director. Full disclosure allows the Executive Director to make a fully informed decision based on a complete analysis of the circumstances and verification of any information that may warrant a granting of the appeal in the Applicant's or Development Owner's favor;"

Moreover, Commenter (13) pointed out two inconsistencies in this section, specifically, §10.902(f) states that the Board "may not review any information not contained in or filed with the original Application" which appears to be inconsistent with language in §10.902(d) which states "…additional information can be provided in accordance with any rules related to public comment before the Board." Commenter (13) suggested the Department reconcile these provisions to provide clarity regarding the kind of information that can be included in an appeal.

STAFF RESPONSE: Staff agrees with the suggestions to correct the grammatical errors. Additionally, staff proposes the following revision for clarification purposes:

"…(1) A determination regarding the Application's satisfaction of applicable requirements, Subchapters B and C, pre-application ~~or Application~~ threshold criteria, underwriting criteria;"

Staff agrees with commenter (13) regarding the appeal on right of first refusal matters and recommends a new paragraph as was recommended.

Staff agrees with commenter (13) regarding the inconsistencies and recommends the following change.

"(f) Board review of an Application related appeal will be based on the original Application~~. The Board may not review any information not contained in or filed with the original Application~~;"

82. §10.903(2) – Subchapter G – Adherence to Obligations (13)

COMMENT SUMMARY: Commenter (13) noted several issues with this section, specifically; this policy should apply to all of the funding programs administered by the Department; however, subsections (A) and (B) refer to prohibiting an owner from applying in the tax credit program. The other issue is the last phrase of subsections (A) and (B) which states "…the date that the non-conforming aspect, or lack of financing, was recognized by the Department of the need for the amendment; the placed in service date; or the date the amendment is accepted by the Board" does not make sense and needs to be clarified. Commenter (13) specifically noted the phrase "recognized by the Department of the need for the amendment" as needing clarification. Commenter (13) recommended this provision be revised so that it adequately accommodates all of the Department's funding programs and is consistent with other provisions of the rules relating to similar consequences, including the provisions for administrative penalties and the compliance rules.

STAFF RESPONSE: Staff recommends the following amended language to this section for clarification.

"Any Applicant, Development Owner, or other Person that fails to adhere to its obligations with regard to the programs of the Department, whether contractual or otherwise, made false or misleading representations to the Department with regard to an Application, request for funding, or compliance requirements, or otherwise violated a provision of Texas Government Code, Chapter 2306 or a rule adopted under that chapter, may be subject to:

(1) Assessment of administrative penalties in accordance with the Department's rules regarding the assessment of such penalties. Each day the violation continues or occurs is a separate violation for purposes of imposing a penalty; and/or,

(2) In the case of the competitive Low Income Housing Tax Credit Program, a point reduction of up to ten (10) points for any Application involving that Applicant over the next two Application Rounds succeeding the date on which the Department first gives written notice of any such failure to adhere to obligations or false or misleading representations. Point reductions under this section may be appealed to the Board.

~~Compliance with representations, undertakings and commitments made by an Applicant in the Application process for a Development, whether with respect to Threshold Criteria, selection criteria or otherwise, including the timely submittal and completion of cost certification for housing tax credit allocations (except for Department approved extensions), shall be deemed to be a condition to any Commitment, Determination Notice, Contract, or Carryover Allocation for such Development, the violation of which shall be cause for cancellation of such Commitment, Determination Notice, Contract or Carryover Allocation by the Department, and if concerning the ongoing features or operation of the Development, shall be enforceable even if not reflected in the LURA. All such representations are enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform, as stated in the representations and in accordance with the LURA. If a Development Owner does not produce the Development as represented in the Application; does not receive approval for an amendment to the Application by the Department prior to implementation of such amendment; or does not provide the necessary evidence for any points received by the required deadline:~~

~~(1) the Development Owner must provide a plan to the Department, for approval and subsequent implementation, that incorporates additional amenities to compensate for the non-conforming components; and~~

~~(2) the Board will opt either to terminate the Application and rescind the Commitment, Determination Notice, Contract or Carryover Allocation Agreement as applicable or the Department must:~~

~~(A) reduce the score for Applications for Competitive Housing Tax Credits that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development by up to (10 points) for the two Application Rounds concurrent to, or following, the date that the non-conforming aspect, or lack of financing, was recognized by the Department of the need for the amendment; the placed in service date; or the date the amendment is accepted by the Board;~~

~~(B) prohibit eligibility to apply for Housing Tax Credits for a Tax Exempt Bond Development that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development for up to twenty four (24) months from the date that the non-conforming aspect, or lack of financing, was recognized by the Department of the need for the amendment; the placed in service date; or the date the amendment is accepted by the Board, less any time delay caused by the Department;~~

~~(C) in addition to, or in lieu of, the penalty in subparagraph (A) or (B) of this paragraph, the Board may assess a penalty fee of up to $1,000 per day for each violation.~~

~~(3) For amendments approved administratively by the Executive Director, the penalties in paragraph (2) of this subsection will not be imposed.~~"

83. §10.904 – Subchapter G – Alternative Dispute Resolution Policy (ADR) (13)
COMMENT SUMMARY: Commenter (13) questioned whether it should be clarified if a party must exhaust administrative appeals before pursuing the ADR policy and asked whether the "informal conference with staff" permitted in this section is considered an ADR proceeding.

STAFF RESPONSE: As the rule indicates, persons may send a proposal for ADR "at any time" and the Department's Dispute Resolution Coordinator will determine whether ADR would be appropriate or beneficial under the circumstances presented. Staff recommends no change based on this comment.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are proposed pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan, and Texas Government Code, §2306.144, §2306.147, and §2306.6716.

Subchapter G – Fee Schedule, Appeals and Other Provisions

§10.901. Fee Schedule. Any fees, as stated in this section, not paid will cause an Applicant to be ineligible to apply for Department funding, ineligible to receive additional Department funding associated with a Commitment, Determination Notice or Contract and ineligible to submit extension requests, ownership transfers and Application amendments until such time the Department receives payment. Payments of the fees shall be in the form of a check and to the extent there are insufficient funds are available, it may cause the Application, Commitment, Determination Notice or Contract to be terminated or Allocation rescinded. The Executive Director may grant a waiver for specific extenuating and extraordinary circumstances provided the Applicant submits a written request for a waiver no later than ten (10) business days prior to the deadline associated with the particular fee.

(1) Competitive Housing Tax Credit Pre-Application Fee. A pre-application fee, in the amount of $10 per Unit, based on the total number of Units, must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Pre-applications in which a Community Housing Development Corporation (CHDO) or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, will receive a discount of 10 percent off the calculated pre-application fee. (§2306.6716(d))

(2) Refunds of Pre-application Fees. (§2306.6716(c)) Upon written request from the Applicant, the Department shall refund the balance of the pre-application fee for a pre-application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Intake and data entry will constitute 50 percent of the review, threshold review prior to a deficiency issued will constitute 30 percent of the review and deficiencies submitted and reviewed constitute 20 percent of the review.

(3) Application Fee. Each Application must be accompanied by an Application fee.

(A) Housing Tax Credit Applications. The fee will be $30 per Unit based on the total number of Units. For Applicants having submitted a competitive housing tax credit pre-application which met the pre-application threshold requirements and for which a pre-application fee was paid, the Application fee will be $20 per Unit. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, will receive a discount of 10 percent off the calculated Application fee. (§2306.6716(d))

(B) Direct Loan Applications. The fee will be $1,000 per Application. Pursuant to Texas Government Code, §2306.147(b) the Department is required to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. In lieu of the Application fee, these organizations must include proof of their exempt status and a description of their supportive services as part of the Application. An Application fee is not required for Applications that have an existing Housing Tax Credit Allocation or HOME Contract with the Department and construction on the development has not begun or if requesting an increase in the existing HOME award. The Application fee is not a reimbursable cost under the HOME Program.

(4) Refunds of Application Fees. Upon written request from the Applicant, the Department shall refund the balance of the Application fee for an Application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Intake and data entry will constitute 20 percent, the site visit will constitute 20 percent, eligibility and selection review will constitute 20 percent, threshold review will constitute 20 percent, and underwriting review will constitute 20 percent.

(5) Third Party Underwriting Fee. Applicants will be notified in writing prior to the evaluation in whole or in part of a Development by an independent external underwriter in accordance with §10.201(5) of this chapter (relating to Procedural Requirements for Application Submission) if such a review is required. The fee must be received by the Department prior to the engagement of the underwriter. The fees paid by the Development Owner to the Department for the external underwriting will be credited against the

Commitment or Determination Notice Fee, as applicable, established in paragraphs (7) and (8) of this subsection, in the event that a Commitment or Determination Notice is issued by the Department to the Development Owner.

(6) Administrative Deficiency Notice Late Fee. (Not applicable for Competitive Housing Tax Credit Applications). Applications that fail to resolve Administrative Deficiencies pursuant to §10.201(6) of this chapter shall incur a late fee in the amount of $500 for each business day the deficiency remains unresolved.

(7) Challenge Processing Fee. For Competitive Housing Tax Credits (HTC) Applications, a fee equal to $500 for challenges submitted per Application.

(8) Housing Tax Credit Commitment Fee. No later than the expiration date in the Commitment, a fee equal to 4 percent of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and returns the credits by November 1 of the current Application Round then a refund of 50 percent of the Commitment Fee may be issued upon request.

(9) Tax Exempt Bond Development Determination Notice Fee. No later than the expiration date in the Determination Notice, a fee equal to 4 percent of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and is not able close on the bonds within ninety (90) days of the issuance date of the Determination Notice then a refund of 50 percent of the Determination Notice Fee may be issued upon request.

(10) Building Inspection Fee. (For Housing Tax Credit and Tax-Exempt Bond Developments only.) No later than the expiration date on the Commitment or Determination Notice, a fee of $750 must be submitted. Building inspection fees in excess of $750 may be charged to the Development Owner not to exceed an additional $250 per Development.

(11) Tax-Exempt Bond Credit Increase Request Fee. Requests for increases to the credit amounts to be issued on IRS Forms 8609 for Tax-Exempt Bond Developments must be submitted with a request fee equal to 4 percent of the amount of the credit increase for one (1) year.

(12) Extension Fees. All extension requests for deadlines relating to the Carryover, 10 Percent Test (submission and expenditure), or Cost Certification requirements ~~that are submitted after the applicable deadline must be accompanied by an extension fee of $2,500. Extension requests~~ submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee. Any extension request submitted fewer than thirty (30) days in advance or after the applicable deadline must be accompanied by an extension fee of $2,500. An extension fee will not be required for extensions requested on Developments that involved Rehabilitation when the Department is the primary lender, or for Developments that involve U.S. Department of Agriculture (USDA) as a lender if USDA or the Department is the cause for the Applicant not meeting the deadline.

(13) Amendment Fees. An amendment request to be considered non-material that has not been implemented will not be required to pay an amendment fee. Material or non-material amendment requests that have already been implemented will be required to submit an amendment fee of $2,500. Amendment fees are not required for the Direct Loan programs.

(14) Right of First Refusal Fee. Requests to offer a property for sale under a Right of First Refusal provision of the Land Use Restriction Agreement (LURA) must be accompanied by a non-refundable fee of $2,500.

(15) Qualified Contract Pre-Request Fee. A Development Owner must file a preliminary Qualified Contract Request to confirm eligibility to submit a Qualified Contract request. The Pre-Request must be accompanied by a non-refundable processing fee of $250.

(16) Qualified Contract Fee. Upon eligibility approval of the Qualified Contract Pre-Request, the Development Owner may file a Qualified Contract Request. Such request must be accompanied by a non-refundable processing fee in an amount equal to the lesser of $3,000 or one-fourth (1/4) of 1 percent of the Qualified Contract Price determined by the Certified Public Accountant.

(17) Ownership Transfer Fee. Requests to approve an ownership transfer must be accompanied by a non-refundable processing fee of $500.

(18) Unused Credit or Penalty Fee. Development Owners who have more tax credits allocated to them than they can substantiate through Cost Certification will return those excess tax credits prior to issuance of IRS Form 8609. For Competitive Housing Tax Credit Developments, a penalty fee equal to the one year credit amount of the lost credits (10 percent of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of IRS Form 8609 if the tax credits are not returned, and 8609's issued, within one hundred eighty (180) days of the end of the first year of the credit period. This penalty fee may be waived without further Board action if the Department recaptures and re-issues the returned tax credits in accordance with Internal Revenue Code, §42. If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Executive Director will recommend to the Board the imposition of a penalty on the score for any Competitive Housing Tax Credit Applications submitted by that Applicant or any Affiliate for any Application in an Application Round occurring concurrent to the return of credits or if no Application Round is pending, the Application Round immediately following the return of credits. If any such point penalty is recommended to be assessed and presented for final determination by the Board, it must include notice from the Department to the affected party not less than fourteen (14) calendar days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point penalties. The penalty will be assessed in an amount that reduces the Applicant's final awarded score by an additional 20 percent.

(19) Compliance Monitoring Fee. (HTC Developments Only.) Upon receipt of the cost certification, the Department will invoice the Development Owner for compliance monitoring fees. The amount due will equal $40 per tax credit Unit. The fee will be collected, retroactively if applicable, beginning with the first year of the credit period. The invoice must be paid prior to the issuance of IRS Form 8609. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service. For Tax-Exempt Bond Developments with the Department as the issuer, the tax credit compliance fee will be paid annually in advance (for the duration of the compliance or affordability period) and is equal to $40/Unit beginning two (2) years from the first payment date of the bonds. Compliance fees may be adjusted from time to time by the Department.

(20) Public Information Request Fee. Public information requests are processed by the Department in accordance with the provisions of the Texas Government Code, Chapter 552. The Department uses the guidelines promulgated by the Office of the Attorney General to determine the cost of copying and other costs of production.

(21) Adjustment of Fees by the Department and Notification of Fees. (§2306.6716(b)) All fees charged by the Department in the administration of the tax credit program will be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. Unless otherwise determined by the Department, all revised fees shall apply to all Applications in process and all Developments in operation at the time of such revisions.

§10.902. Appeals Process. (§2306.0321; §2306.6715)

(a) An Applicant or Development Owner may appeal decisions made by the Department pursuant to the process identified in this section. Matters that can be appealed include:

(1) A determination regarding the Application's satisfaction of applicable requirements, Subchapters B and C, pre-application ~~or Application~~ threshold criteria, underwriting criteria;

(2) The scoring of the Application under the applicable selection criteria;

(3) A recommendation as to the amount of Department funding to be allocated to the Application;

(4) Misplacement of an Application or parts of an Application, mathematical errors in scoring an Application, or procedural errors resulting in unequal consideration of the Applicant's proposal;

(5) Denial of a change to a Commitment or Determination Notice;

(6) Denial of a change to a loan agreement;

(7) Denial of a change to a LURA;

(8) Any Department decision that results in the erroneous termination of an Application unless the termination is based on Material Noncompliance;

(9) Any other matter for which an appeal is permitted under this chapter;

(b) An Applicant or Development Owner may not appeal a decision made regarding an Application ~~or~~ filed by or an issue related to another Applicant or Development Owner;

(c) An Applicant or Development Owner must file its appeal in writing with the Department not later than seven (7) calendar days after the date the Department publishes the results of any stage of the Application evaluation or otherwise notifies the Applicant or Development Owner of a decision subject to appeal. The appeal must be signed by the person designated to act on behalf of the Applicant or an attorney that represents the Applicant. For Application related appeals, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application as supplemented in accordance with the limitations and requirements of this chapter;

(d) The Executive Director may respond in writing not later than fourteen (14) calendar days after the date of actual receipt of the appeal by the Department. If the Applicant is not satisfied with the Executive Director's response to the appeal or the Executive Director does not respond, the Applicant may appeal directly in writing to the Board. While additional information can be provided in accordance with any rules related to public comment before the Board, the Department expects that a full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal be disclosed in the appeal documentation filed with the Executive Director. Full disclosure allows the Executive Director to make a fully informed decision based on a complete analysis of the circumstances and verification of any information that may warrant a granting of the appeal in the Applicant's or Development Owner's favor;

(e) An appeal filed with the Board must be received by Department staff not more than seven (7) days after a response from the Executive Director and at least seven (7) days prior to the applicable Board meeting or if the period for an Executive Director response has elapsed the appeal can be heard by the Board if filed at least three (3) days prior to the applicable meeting;

(f) Board review of an Application related appeal will be based on the original Application~~. The Board may not review any information not contained in or filed with the original Application~~;

(g) The decision of the Board regarding an appeal is the final decision of the Department; and

(h) The Department will post to its website an appeal filed with the Department or Board and any other document relating to the processing of an Application related appeal. (§2306.6717(a)(5))

§10.903. Adherence to Obligations. (§2306.6720) Any Applicant, Development Owner, or other Person that fails to adhere to its obligations with regard to the programs of the Department, whether contractual or otherwise, made false or misleading representations to the Department with regard to an Application, request for funding, or compliance requirements, or otherwise violated a provision of Texas Government Code, Chapter 2306 or a rule adopted under that chapter, may be subject to:

(1) Assessment of administrative penalties in accordance with the Department's rules regarding the assessment of such penalties. Each day the violation continues or occurs is a separate violation for purposes of imposing a penalty; and/or,

(2) In the case of the competitive Low Income Housing Tax Credit Program, a point reduction of up to ten (10) points for any Application involving that Applicant over the next two Application Rounds succeeding the date on which the Department first gives written notice of any such failure to adhere to obligations or false or misleading representations. Point reductions under this section may be appealed to the Board.

~~Compliance with representations, undertakings and commitments made by an Applicant in the Application process for a Development, whether with respect to Threshold Criteria, selection criteria or otherwise, including the timely submittal and completion of cost certification for housing tax credit allocations (except for Department approved extensions), shall be deemed to be a condition to any Commitment, Determination Notice, Contract, or Carryover Allocation for such Development, the violation of which shall be cause for cancellation of such Commitment, Determination Notice, Contract or Carryover Allocation by the Department, and if concerning the ongoing features or operation of the Development, shall be enforceable even if not reflected in the LURA. All such representations are enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform, as stated in the representations and in accordance with the LURA. If a Development Owner does not produce the Development as represented in the Application; does not receive approval for an amendment to the Application by the Department prior to implementation of such amendment; or does not provide the necessary evidence for any points received by the required deadline:~~

~~(1) the Development Owner must provide a plan to the Department, for approval and subsequent implementation, that incorporates additional amenities to compensate for the non-conforming components; and~~

~~(2) the Board will opt either to terminate the Application and rescind the Commitment, Determination Notice, Contract or Carryover Allocation Agreement as applicable or the Department must:~~

~~(A) reduce the score for Applications for Competitive Housing Tax Credits that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development by up to (10 points) for the two Application Rounds concurrent to, or following, the date that the non-conforming aspect, or lack of financing, was recognized by the Department of the need for the amendment; the placed in service date; or the date the amendment is accepted by the Board;~~

~~(B) prohibit eligibility to apply for Housing Tax Credits for a Tax-Exempt Bond Development that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development for up to twenty-four (24) months from the date that the non-conforming aspect, or lack of financing, was recognized by the Department of the need for the amendment; the placed in service date; or the date the amendment is accepted by the Board, less any time delay caused by the Department;~~

~~(C) in addition to, or in lieu of, the penalty in subparagraph (A) or (B) of this paragraph, the Board may assess a penalty fee of up to $1,000 per day for each violation.~~

~~(3) For amendments approved administratively by the Executive Director, the penalties in paragraph (2) of this subsection will not be imposed.~~

§10.904. Alternative Dispute Resolution (ADR) Policy. In accordance with Texas Government Code, §2306.082, it is the Department's policy to encourage the use of appropriate ADR procedures under the Governmental Dispute Resolution Act, Texas Government Code, Chapter 2010, to assist in resolving disputes under the Department's jurisdiction. As described in Civil Practices and Remedies Code, Chapter 154, ADR procedures include mediation. Except as prohibited by law and the Department's Ex Parte Communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title. Any Applicant may request an informal conference with staff to attempt to resolve any appealable matter, and the Executive Director may toll the running of periods for appeal to accommodate such meetings. In the event a successful resolution cannot be reached, the statements made in the meeting process may not be used by the Department as admissions.

Index of all Commenters on Subchapters A, B, C and G

Comment #	Commenter
6	Diana McIver, DMA Development Company
8	Matt Hull, Texas Association of Community Development Corporations
10	Lynn Blakeley, Blakeley Commercial Real Estate
11	Claire Palmer
13	Cynthia Bast, Locke Lord
19	Benjamin Farmer, Rural Rental Housing Association
22	Sean Brady, Rea Ventures Group, LLC
23	Walter Moreau, Foundation Communities
25	Michael Daniel, Daniel & Beshara, P.C.
30	San Antonio Housing Authority, El Paso Housing Authority, Fort Worth Housing Authority, Houston Housing Authority
32	Michael Hartman, Tejas Housing Group
34	Deborah Sherrill, Corpus Christi Housing Authority
36	Hal Fairbanks, HRI Properties
37	Morgan Little, Texas Coalition of Veterans Organizations
43	David Mark Koogler, Mark-Dana Corporation
44	Donna Rickenbacker, Marque Real Estate Consultants
47	Stuart Shaw, Bonner Carrington
51	Kelsey Mullen, United States Green Building Council (USGBC)
52	Barry Palmer, Coats | Rose
64	Michael Bodaken, National Housing Trust
66	Texas Association of Affordable Housing Providers (TAAHP)
68	Tony Sisk, Churchill Residential

Attachment E: Preamble, Reasoned Response, and Repealed Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC, Chapter 1, Section 1.1, concerning 2012 Definitions and Amenities for Housing Program Activities, without changes to the proposed text as published in the September 21, 2012 of the *Texas Register* (37 TexReg 7336) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs. Accordingly, the repeal provides for consistency and minimizes repetition among the programs.

The Department accepted public comments between September 21, 2012 and October 22, 2012. Comments regarding the repeal section(s) were accepted in writing and by fax. No comments were received concerning the repeal section.

The Board approved the final order adopting the repeal section on November 13, 2012.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code§2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is adopted to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

§*1.1. Definitions and Amenities for Housing Program Activities.*

Attachment F: Preamble, Reasoned Response, and Repealed Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC, Chapter 53, §§53.1 – 53.2, concerning the HOME Program Rule without changes to the proposed text as published in the September 21, 2012 issue of the *Texas Register* (37 TexReg 7432) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs. Accordingly, the repeal provides for consistency and minimizes repetition among the programs.

The Department accepted public comments between September 21, 2012 and October 22, 2012. Comments regarding the repeal section(s) were accepted in writing and by fax. No comments were received concerning the repeal section.

The Board approved the final order adopting the repeal section on November 13, 2012.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code§2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is adopted to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

§*53.1. Purpose.*
§*53.2. Definitions.*

Attachment G: Preamble, Reasoned Response, and Repealed Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC, Chapter 53, §§53.20 – 53.28, concerning the HOME Program Rule without changes to the proposed text as published in the September 21, 2012 issue of the *Texas Register* (37 TexReg 7432) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs. Accordingly, the repeal provides for consistency and minimizes repetition among the programs.

The Department accepted public comments between September 21, 2012 and October 22, 2012. Comments regarding the repeal section(s) were accepted in writing and by fax. No comments were received concerning the repeal section.

The Board approved the final order adopting the repeal section on November 13, 2012.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code§2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is adopted to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

§*53.20. Availability of Funds.*
§*53.21. Application Forms and Materials and Deadlines.*
§53.22. Contract Award Application Review Process.
§53.23. Reservation System Participant Review Process.
§53.24. General Threshold and Selection Criteria.
§53.25. Contract Award Limitations.
§53.26. Reservation System Participant (RSP) Agreements.
§53.27. Procurement of Contractor.
§53.28. General Administrative Requirements.

Attachment H: Preamble, Reasoned Response, and Repealed Rule

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC, Chapter 53, §§53.80 – 53.82, concerning the HOME Program Rule, without changes to the proposed text as published in the September 21, 2012 issue of the *Texas Register* (37 TexReg 7433) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs. Accordingly, the repeal provides for consistency and minimizes repetition among the programs.

The Department accepted public comments between September 21, 2012 and October 22, 2012. Comments regarding the repeal section(s) were accepted in writing and by fax. No comments were received concerning the repeal section.

The Board approved the final order adopting the repeal section on November 13, 2012.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code§2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is adopted to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

§*53.80. Multifamily (Rental Housing) Development (MFD) Threshold and Selection Criteria.*
§*53.81. Multifamily (Rental Housing) Development (MFD) Program Requirements.*
§*53.82. Multifamily (Rental Housing) Development (MFD) Administrative Requirements.*

Attachment I: Preamble, Reasoned Response, and Repealed Rule

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC, Chapter 53, Subchapter I §§53.90 – 53.91, concerning the HOME Program Rule, without changes to the proposed text as published in the September 21, 2012 issue of the *Texas Register* (37 TexReg 7434) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs. Accordingly, the repeal provides for consistency and minimizes repetition among the programs.

The Department accepted public comments between September 21, 2012 and October 22, 2012. Comments regarding the repeal section(s) were accepted in writing and by fax. No comments were received concerning the repeal section.

The Board approved the final order adopting the repeal section on November 13, 2012.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code§2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is adopted to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

§53.90. Application Procedures for Certification of Community Housing Development Organization (CHDO).
§53.91. Recertification of Community Housing Development Organization (CHDO).

2013

Official Public Comment

for the

Qualified Allocation Plan

and

Uniform Multifamily Rules

October 9, 2012 Board Meeting
Public Comment

Comment (1)

Michael Ash
Commonwealth Development

Comment (2)
Ginger McGuire

Comment (3)
Brett Johnson, Overland Property Group

Comment (4)
Bobken Simonians, Houston Housing Authority

Comment (5)
Craig Litner, Pedcor

Comment (6)
Diana McIver, DMA Development Company

Comment (7)
Mark Mayfield

Comment (8)
Matt Hull
Texas Association of Community Development Corporations

Comment (9)
Sarah Andre

Comment (21)
Scott McGuire, McGuire Development

Comment (72)
Prestwick Development

that in. When you come to the microphone, state who you are and who you represent and the item that you're commenting on.

Good morning.

Comment (1)

MR. ASH: Good morning. Thank you all for your time. My name is Michael Ash from Irving, Texas. I represent Commonwealth Development. We are new tax credit developer to the state so the thing I'm speaking specifically on is the sponsorship characteristic language that essentially would require us to partner with a developer with three Texas projects. I understand it's not a requirement, but given the fact that there are three points involved, essentially it is a requirement.

To give you a little bit of background about my company and myself, because I think it's important in terms of our position, the company I work for is Commonwealth Development. We've been in business ten years, owned by a gentleman named Louis Lange. Over that ten years, all of our practice has been in Wisconsin. We've developed 22 tax credit projects, over a thousand units at this point. We were named developer of the year in Wisconsin by the Wisconsin Builders Association. We're typically one of Wisconsin's highest scoring developers. They score the development team and we've done very well. So we have a great depth of

experience just in terms of numbers. We also have broad experience in terms of what we've done. We've done new construction, adaptive reuse, acquisition rehab, we've partnered with housing authorities, we've partnered with cities, so a very broad experience.

In terms of the people involved, my principal, the company owner is named Louis Lange. He is a retired Marine officer, spent three years working for another for-profit developer and his own company for ten years. He is very cautious, he is very conservative, he's a very smart guy. He walks me back from the ledges of lots of stupid projects that I look at that I really like. So he's done a great job with that.

I have been in the tax credit business for probably 16 years now. I'm a recovering attorney. It took me about nine years to figure out that there were lots of people that --

MR. OXER: You understand that's like amoebic dysentery, you never really get rid of it.

(General laughter.)

MR. ASH: I don't know that I would use that comparison, but I understand what you're saying.

MR. OXER: And the counsel on my left here and the one behind me.

MR. ASH: I realize there were a lot of people

who were better suited to practicing law than I was.

MR. OXER: I'm surrounded by attorneys up here.

MR. ASH: I'm sorry about that.

MR. OXER: Talk about walking you back from the ledge, trust me, I'm the one who gets walked back frequently.

MR. ASH: I worked at the Wisconsin Housing Economic Development Authority for twelve years, including a number of years as a multifamily and tax credit underwriter, and a number a years as director of multifamily tax credits and our lending programs. So the fact that I'm appearing in opposition to language that staff has drafted, I apologize to the Board and to Cameron. This is the first time I've been here and I don't necessarily want to speak in opposition, but I feel like I have to.

I've worked for a year for this company. Prior to that I worked for three years for another for-profit developer in Wisconsin. They were also a very good developer, they were also picked as developer of the year by the Wisconsin Builders Association. The only thing in common those two companies ever had was me, and I don't say that to prove anything except for the fact that there's a big difference between correlation and causation. They were both excellent companies, I was lucky to work there, and they've done a lot of good work.

Some of the projects that I've worked on include the rehabilitation of a 239-unit Section 8 project in inner city Milwaukee. It was a combination 9 percent tax credits, 4 percent tax credits, and bonds. Also worked on a private-public partnership between the City of La Crosse and the former company I was with that involved them building the shell of the building, there was a transit station and retail on the first floor, there was condominiumized low income units on the second, third and fourth floor, and then there was condominiumized condos on the top floor. Those eventually became apartments in the 2008-2009 crash. But really what I'm trying to point out is we've dealt with an extreme variety of projects and very difficult projects too, not simple project.

The real point I want to get to -- and I'm sorry it's taken this long -- is that I'm not sure the language as drafted really accomplishes any of the state's goals. The language that would require our firm to partner with someone who has done three projects in Texas I don't think is going to create any additional housing, I don't think it's going to create better housing, I don't think it's going to serve any additional geographic markets, I don't think it's going to serve any additional use markets, special needs, families, senior, anything like that.

What I do think it's going to do, I think it's going to add to the complexity of the transaction, I think it's going to add to the risk of the transaction, I think it's going to add somewhat to the costs of the transaction, both in terms of legal and accounting fees, and I don't know that it's going to get what I think the state wants to get through that language.

So I'm speaking in opposition. I guess my suggestion -- and we're a member of TAAHP, this is certainly not TAAHP's position, I don't' know what their position would be -- would be to make it a threshold item that can be addressed by partnership with someone if we don't have adequate experience. If you're looking for a bright line that you have to have X amount of experience, I would not relate it to the State of Texas, I would relate it to tax credit projects of a similar nature. And if you're looking for a number, given that we have 22 projects under our belt, I'd say the number ought to be about 20 or 21 projects, something like that.

So thank you for your time. I appreciate it.

MR. OXER: Indeed. Thank you.

Hold on, Cameron. Is there anybody else that wants to speak on the sponsorship characteristics? We'll start from the left over here; we have three ringers in there.

And that way you can respond to all of them in kind at one time, Cameron.

Comment (2)

MS. McGUIRE: Good morning. My name is Ginger McGuire. I'm speaking on behalf of the Rural Rental Housing Association of Texas.

And I, first of all, want to agree with the previous speaker regarding the out-of-state requirements and the three projects with 8609s and 85 percent compliance score. The 85 percent is fine, the three projects with the 8609s actually, in our opinion, does not do what it's intended because it freezes out a lot of the Texas rural developers that don't have 8609s. They're very capable, they've done a number of projects, and this particular provision would prevent them from getting additional tax credits or getting tax credits. This is in rural areas where the funds are really limited and tax credits are just about the only resource they have for rehab in those areas.

Secondly, on the award limits, do you want me to stop here so he can address all of those, or do you want me to continue?

MR. OXER: Continue. We'll get all the sponsorship, but go ahead with your comments.

MS. McGUIRE: Okay. And secondly, the Rural Rental Housing wants to note that seniors in rural areas have

been identified in the statewide housing analysis as the stable and growing population in rural Texas, and so we really do not agree with penalizing elderly, particularly in rural Texas where that's going to be the stable population for a lot of these communities. We'd like to see the rural projects receive parity always in scoring points with family developments because they're so needed in rural areas, and the rehab is just tremendously needed.

MR. OXER: Eventually all of us get to be in one of those special needs groups with age. I'm hoping, anyway, I hope I get there.

(General laughter.)

MS. McGUIRE: That's right, that's a good scenario.

And tie-breaker factors, they're first measured by opportunity index and then by the greatest distance from the nearest housing tax credit. We would like to see more clarification on that. If it's 9 percent that you intend there, we'd like to see that clarification; if not, then we want to see that clarification as well.

In addition, last legislative session the legislature clarified some unintended language on the 538 program and made it permissible to use the 538 in the set-asides, the at-risk and the USDA, as long as there is

a 515 -- which is the original Farmers Home projects -- retained with that loan. So it would be rehab only, and again, that's one of the few sources, tax credits are one of the few sources of funds that these projects have for their developments.

And lastly from me, special needs, we would like to see the definition of special needs expanded. For example, Wounded Warriors, as defined by the Wounded Warriors Act of 2008, that's just one example. But applicants should have the opportunity to obtain agency approval of other categories, unanticipated at this time, of special needs not specifically listed at the time of cost certification.

Thank you.

MR. OXER: Good. Any questions of the Board?

(No response.)

MR. OXER: Okay. Thanks very much. And everybody make sure you sign in up here just so we have your name spelled correctly for the record.

Good morning. Welcome back.

Comment (14). Additional Letter provided behind #14.

MR. HOOVER: Good morning. Thank you.

My name is Dennis Hoover. I'm going to start off, I'm in at least two capacities here this morning, the first one being speaking for the Housing Authority of the City of Edinburg on an application they helped to make this year.

They bought property about four or five years ago and I want to speak to the opportunity index.

I've been participating in the program since '87 and I want to applaud TDHCA and the staff for the job they do every year, not just this year, on trying to tweak these rules, and it's been a bigger job this year. And I think everybody here knows you make a rule this year, it's not till next year that you discover all the unintended consequences, and that's not saying we don't need rules. And this opportunity index, as you look at it, you don't realize until you look at it in depth what it does.

In the City of Edinburg, the housing authority bought themselves a piece of land five years ago that's in the part of town, it's in the second quartile, it's got great schools around it, it has exemplary and recognized schools, it's sort of sparsely populated, there's a lot of agricultural, there's some nice houses, there's some older rundown houses, there's one of their own housing authority properties there. But the City of Edinburg has got probably some of the highest poverty rates in the United States. And so it's in the second quartile, it's in a great area of town, it has great schools, but it's got 35.08 percent poverty and would be excluded under the opportunity index.

And as we start looking at how the opportunity

index affects different regions, to be equitable in its effect, almost every region needs a different percentage rate. The Belton-College Station-Temple area needs a higher poverty rate, the Corpus region needs a higher poverty rate, the Lower Rio Grande Valley needs a higher poverty rate even than 35 percent if we're going to include at least half of the census tracts in the eligibility on the poverty side, and that's not even counting the quartiles.

The particular problem is the incidence of poverty in Edinburg, and I don't think the intent the opportunity index is to block out the whole town, it's just to block out areas of town. And that's because Edinburg has much higher poverty across the board, even in the better parts of town. It's because the poverty level is measured in the whole United States together, not just in the State of Texas.

The opportunity index -- and now I'm speaking for the Rural Rental Housing Association -- the way the quartiles affect, starting to look at my USDA properties and where they're located in little small towns, I started making a list, I had to go to the fourteenth town before I found one that would get inside the first or second quartiles. And it's my recommendation that for at-risk that the opportunity index be set aside. Those properties are already there, they're already USDA properties or they're already tax credit

properties, they need to be rehabbed, and I'd rather not be making -- I've got 15 properties that need to be rehabbed, I'd rather rehab the one that needs it the worst, but what am I doing? I'm looking down to see which one scores the most, unfortunately. So the opportunity index.

The commitment of funding by the unit of local government -- and again, I'm speaking for Rural Rental Housing here -- that's been tightened up quite a bit from years past, but still I found myself in the position of trying to figure out how am I going to get this loan from the city where it doesn't cost the city anything, and therefore, it skirts the intent of what's meant here. If this doesn't cost the city something, then it puts developers, everybody included, in the position of trying to figure out how am I going to construct this so I can get the points where it doesn't cost the city anything, and therefore, they'll agree with it. It needs to cost the city something.

MR. OXER: They need to have some skin in the game. That's what we were actually looking for because that constitutes a commitment, rather than coming up later and having the entire city say we didn't want this project. Well, if you've got something in there that says you funded it, there's a resolution. That was the intent, the best I recall.

MR. HOOVER: It's much better than it was.

MR. OXER: We're not there yet but we're inching closer, I hope. But go ahead. I'm sorry, Dennis.

MR. HOOVER: It needs to really cost the city something or else -- I mean, I was in a meeting yesterday trying to figure out how to --

MR. OXER: Game the system.

MR. HOOVER: -- how to game the system. Exactly.

MR. OXER: Unfortunately, we have to have winners and losers because, as we were talking earlier this morning, we've got plenty of projects, we're looking for money. Now we've got to peel the list down, so there's some that meet the criteria and some don't, and unfortunately, you don't get shaved half points in here. It's a hard problem to manage because every time you push something in here to sharpen up, it opens up something with unintended consequence on the other side.

We appreciate your comments and recognize that this is far from a perfect program. Part of what I had thought was there may be some other programs that had an opportunity to provide some relief to some of these areas of need that we haven't developed to a state of such competitiveness as the Tax Credit Program has. And I don't know how to do that, I'll admit that, but that's one of the things. The Tax Credit Program is essentially a tool to solve certain problems, it

can't solve every problem. In fact, if you try to use it to solve every problem, eventually you're going to run into the situation you're essentially using a hammer to solve an electrical problem, it's just not going to work. Okay?

MR. HOOVER: And that's the case with some of these smaller USDA programs. They get to the point where they're so small, the syndicators won't buy them, and therefore, what do you do? USDA has no money anymore and the HOME Program is about the only thing left.

MR. OXER: I'm sorry to interrupt. Did you have additional?

MR. HOOVER: A couple more comments. The cost per square foot, we had a lot of comment from our members back on that, and I think we just want to say we agree with the TAAHP recommendation of take it back to the 2011 with a $3,000 per unit boost on top of that.

The definition of rural needs to be clarified where it's one definition. I think there's a lot of confusion and some disagreement even amongst our members on that about which definition to use. So the small projects that are under 50 units gets an extra point. I happen to like that one, but most of our membership doesn't, so I'm just going to have to speak against it. And the quantifiable community participation, a neighborhood, one point extra for

neighborhood organization, I spoke against it last year. Most of our members say if it's a positive community neighborhood organization comment, it should count the same either way.

MR. OXER: Okay. Thanks.

MR. HOOVER: Thank you.

MR. OXER: Good morning.

Comment (21). Comments also located immediately following the end of this transcript.

MR. McGUIRE: Good morning. My name is Scott cGuire, and good morning, Mr. Oxer and Board members, Mr. rvine.

I'm here to comment on, first of all, I've been in the business for 25 years and I think I gave Dennis Hoover the first allocation when I was with the agency in 1986. In '86 we created the program and in '87 Dennis got the first allocation in that round. Everybody got an award.

MR. HOOVER: I think the application was five pages long.

DR. MUÑOZ: Let's say that again to get in the record.

(General talking and laughter.)

MR. McGUIRE: But I'm here to reiterate a couple of things, a couple of points that have already been made. One is sponsor characteristics. Again, I'd like to vent a question by a client of mine. I represent rural developers,

one of them which is an out-of-state developer, and with a permission, I'd like to read their letter into the record, if that's okay.

Comment (72)

"Prestwick Development is an Atlanta, Georgia based affordable housing development organization. It's principals collectively bring over 60 years of affordable housing development asset management experience, with over 14,000 developed to date throughout the south and southeast. All of our developments are in full compliance with the Housing Tax Credit rules of the respective states and Section 42 of the IRS Code. Prestwick successfully competed for and was awarded a 2012 Housing Tax Credit allocation for the development of the Manor at Hancock Park, a 58-unit elderly community located in Lampasas, Texas.

"As currently written under sponsor characteristics, developers with Texas experience are favored over experienced out-of-state developers. The language is putting forth an anti-competition, anti-free market agenda that is in direct contrast to the pro-business environment that Texas has long been known for. "As clearly stated in the Texas Government Code in Chapter 2306, one of the main purposes of TDHCA is to provide for the housing needs of individuals and families of moderate, low, very low and extremely low income, and to serve as a source of the

information to the public regarding all affordable housing resources. The Low Income Housing Tax Credit Program is a federal housing program of the U.S. Department of Treasury and it is administered for the benefit of Texans by TDHCA.

"While no one will argue that developer experience is one of the most important underwriting criteria, the location of that experience should be immaterial to the Qualified Allocation Plan. If an experienced out-of-state developer can provide for the affordable housing needs within Texas communities throughout the Tax Credit Program, he/she should be allowed to do so without impediment or handicapping in the application process. It is incumbent upon TDHCA to administer all federal affordable housing resources fairly, equitably, and without bias to where the developer is domiciled.

"We request the words 'in Texas' be removed from the sponsor characteristic section of the QAP and allow an even playing field for all experienced and compliant developers."

The second point that they're making is in the elderly, disparity in points between elderly and families in rural Texas. My comment there is in addition to supplement Prestwick's comment is I'd like to read from the Bowen National Research study that was conducted by TDHCA. Bowen was hired

by the agency to develop a report. And in that report I'd like to just read one section in their summary.

"Demographic trends and migration patterns indicate that younger people and families under the age of 25 appear to be leaving the rural areas, while senior, age 55-plus, population and households are growing rapidly in the rural areas. Rapid senior demographic growth trends will increase the need for senior-oriented housing. Without modifications to existing supply and/or development of new senior-oriented housing that will allow seniors to age in place, rural areas may experience migration of seniors from rural to more developed urban markets."

As I travel through rural Texas, I hear the same plea over and over again from mayors and city managers: Please help us keep our aging population in our community by creating affordable housing for our seniors who want to stay.

Thank you.

MR. OXER: Good. Thanks, Scott.

Cameron, are you up to speed on this? Do you need any time, or do you want to get the rest of them in?

MR. DORSEY: No. Let's keep going.

MR. OXER: Okay. Good morning.

Comment (3)

MR. JOHNSON: Mr. Chairman, members of the Board.

My name is Brett Johnson. I'm a partner with Overland Property Group out of Topeka, Kansas. And most of what I'd prepared to speak has already been covered today, so I'm going to do a little on-the-fly change here and give you a little bit of insight as to how an out-of-state developer views the Texas process.

We've developed over 27 communities throughout the Midwest, over 1,500 units in the past ten years. Without question, the TDHCA application process is the most fair, the most balanced and the most transparent scoring system out there. There are other states -- and I won't name names, but one of them just went to the SEC -- that doesn't even show the scoring, so we have no idea where we compare to other developers.

That being said, competition -- and I know this is strange coming from a developer -- competition is a good thing for you guys, it's not only a good thing for you guys, you have more options, more choices, more communities are going to be approached. A great example, this year we were fortunate enough to be awarded two deals, one in Burkburnett and one in Dumas. At one point there were four developers competing for land in Dumas, Texas. I think that's pretty unique, and if we throw up barriers and essential hamstring out-of-state or new developers by deducting three points,

that's a deal-killer for a lot of them which is not good for those communities. I think it's healthy to have 200-plus applications a year.

Some of the states we deal in are actively recruiting out-of-state developers because they don't have what you have down here which is competition. So I would like to stress that even though it's harder for developers like us to come in and get deals because we have to compete, it's better for the system in general. We had to sharpen our pencils considerably to get our deals approved, and if there were less developers competing against us, I don't know that that would necessarily be the case.

I don't know that it's also fair to penalize those who have less experience. It doesn't mean they're not capable of following rules. Just because Overland Property Group doesn't have three 8609s under our belt, that doesn't mean we aren't a good developer and can't follow along with what you guys want. And I know that compliance is driving this, but I would focus this more on penalizing the bad people than penalizing up front and assuming that somebody can't follow the rules.

So that being said, obviously I'm in opposition to this. I would encourage the staff to rethink that and look into the benefits of how the system is already working,

which is a free market system which is exactly what it was built on back in '86.

MR. OXER: Good. Thank you.

Any comments from anybody for Mr. Johnson?

(No response.)

MR. OXER: Whoever is next, come back and sign in, if you would, please.

Comment (29). Additional Letter provided behind #29.

MR. WATERHOUSE: Good morning. My name is Stan Waterhouse. I'm the chief operating officer for the Housing Authority of the City of El Paso.

For the last several months, in conjunction with the QAP, several of the large housing authorities here in Texas, San Antonio, Houston, Fort Worth, Dallas and El Paso, have had conversations about the QAP and how it affects our businesses and how we'd like to participate in it. The second part of that is we've had a lot of conversations with our local representatives at the city level to discuss their interest in how the QAP affects that joint interest.

Just as a way of background, really we want to talk about the fact that as housing authorities we accommodate approximately a million folks here in the State of Texas through the different programs. A large portion of that we also work with folks in the tax credit world. El Paso, as an example, I have 20 tax credit projects, I know San Antonio

has about 4,000 units in tax credit, so tax credit is a major piece of what we do and it's a nice complement to our total portfolios.

And the concern I have or want to express right now is the unit of local government funding issue. We're not, obviously, a unit of local government in a technical sense, we are in the sense that we get federal funds, we sort of live at the intersection, if you will, of the federal government and the city financing.

MR. OXER: Caught in the crossfire.

MR. WATERHOUSE: Absolutely. And it's an interesting place to be and it creates a lot of interesting opportunity.

But the QAP now, with the changes that have been reflected in it or placed in it, basically take us out of having a voice in that. Essentially, our monies become -- it changes the context of the funds that we put forward. As an example, we were fortunate enough to win a tax credit award this past round. We put, as the housing authority from the City of El Paso, approximately almost $6 million into a project, and essentially what the new QAP would say is that those funds have no value in the scoring process. And we've had conversations with the staff, I completely understand the perspectives that you guys have put forward as to the

involvement of the cities, but the city, in our instance, could never have contributed at that level to these projects and basically see us as an integral funding source for those type of projects.

We're clearly the only folks that can build PHAs, public housing units, and if you look at the way that public housing is being built currently, it's a multi-finance project where you have a combination of tax credits, you have a combination of affordables all the way to market rate and PHAs count as part of that mix. Without our funding, those kind of projects would not occur with a PHA as a component part. So we feel like our monies are governmental, they're clearly designed to feed a need, and they're clearly designed to work in conjunction with the city's needs.

MR. OXER: May I ask a question?

MR. WATERHOUSE: Sure.

MR. OXER: What is the housing authority's authority conditioned on what or founded on what? Is it a resolution? What created the housing authority?

MR. WATERHOUSE: Well, they're created via state but they're also basically chartered by the cities as well.

MR. OXER: Does that not constitute -- does that not qualify, Cameron?

MR. DORSEY: In the past it has but the way the

point item is currently written, a housing authority would only qualify for providing points under this item, and I'll get back to all the other places where that financing would get points. But under this item, if the board were at least 60 percent city council members or county commissioners, if that makes sense, basically it's substantially representative of the city's interests. The boards of housing authorities are oftentimes appointed by mayors.

MR. OXER: Not elected.

MR. DORSEY: That's right, not elected, and not necessarily substantially representative of the city's interests. And we do see where government instrumentalities veer directly in conflict with a city's will or desires in many cases. Again, this is under one specific point item and under what qualifies under this specific point item, it's not any kind of statement about government instrumentalities generally.

MR. OXER: Right. Go ahead, Tim.

MR. IRVINE: And just for clarification, the statutory provision is the level of development funding by local political subdivisions.

MR. WATERHOUSE: Well, and Chairman, in all honesty, in the past we've always been considered that, and so our funding has been considered from a point standpoint

to win those points.

MR. OXER: And I understand that, and I guess where we'll eventually wind up on this is that it's evident that the funding you provide is extraordinarily important, of course, and there may be other places where you have the opportunity to score points on that that others would not able to score on, it's just in this interpretation. We had to have some mechanism to sort this all out.

MR. WATERHOUSE: Absolutely.

MR. OXER: Your point is well made, we recognize the funding, we're trying to contribute some value to that in the scoring, perhaps someplace else, but your point is made.

MR. WATERHOUSE: Thank you.

And just in reaction to one of Cameron's points, all of our boards are appointed by the political beings within that community, whether it's the mayor or the council, so irrespective of whether there's a council person sitting on that board -- and he is correct, there are circumstances in any political environment where there's a disconnect between boards and maybe the folks that appoint them, but at the end of the day, at least for the large ones that I'm familiar with, we all work very, very closely with the political folks to make sure that the needs of the community are well taken

care of. And so I think when you start looking at the 60 percent crossover threshold that he's talking about, I'm not sure how realistic that is, certainly when it comes to larger communities such as ours.

MR. OXER: Understood. We appreciate your comments.

MR. WATERHOUSE: Not a problem.

Comment (30). Additional letter provided behind #30.

MS. McCORMICK: Good morning. My name is Kathy McCormick. I head up development for the San Antonio Housing Authority.

What I wanted to do is just spend a few minutes talking a little bit about what we do in San Antonio and then make some comments about some of the other aspects of the QAP that we're concerned about.

First of all, as Stan said, we have been talking with all the larger housing authorities. We are in agreement and do ask that you give consideration to how we're defined as an instrumentality. We are quasi-political subdivisions of the state and we think that provides us something. Also, most housing authorities can be taken over at any point in time by their elected officials if they're not happy with how the work is being done, so I would ask you to consider that as well.

But with SAHA, let me tell you a little bit about

what we do. We own and manage almost 12,000 housing units in San Antonio. Of those, close to 6,500 -- we have a few more than Stan mentioned -- are done in mixed income tax credit developments. But what's important to us about that is that those tax credit developments are all public-private partnerships. This isn't SAHA acting as a developer alone, but we've worked in partnership with NRP, Carlton Development Corporation, Franklin Development, Home Spring, and now more recently, we're also going to be working with McCormick Barry Salazar out of St. Louis.

What's important about these particular transactions for us, as Stan also said, is that we do a lot of deeply subsidized housing in these developments, so we do mixed income transactions. We develop them to a very high quality standard because as a housing authority we know that we're going to be owning these properties for 30 years. It's not just a matter of putting them up and then being able to walk away at the end of the tax credit compliance period or at the end of 15 years when you think you might come back in for more tax credits, we own and manage them for a really long time.

And because of the strategy that we take, we are distributing affordable housing throughout the communities in which we work which I think is an important public policy

and initiative that we all want to be aware of. It's not concentrating poverty, it's not concentrating a certain income level, it's getting them distributed throughout the community, which we think is also very important.

In San Antonio, in particular, though, we're probably one of the oldest housing authorities in the state. This week we're celebrating our 75th anniversary, we've been in business a pretty long time, and we have public housing that is 70 years old. And as we start looking at how we're going to begin redeveloping these products, because they are 70 years old, we have to do them in mixed income developments, we do rely on tax credits, and we also work very closely with our cities to set up what we call revitalization areas. So I just wanted to speak to that for a moment in the QAP.

We're going to be asking for consideration that you look at what multiple initiatives might be in a city as opposed to having an adopted revitalization plan the way it's defined here. So for example, in San Antonio we have neighborhood plans that have overlaid on them different tax increments and different kinds of development incentives like we have in the downtown plan where we might get waivers of fees, we might be able to get density bumps, those kinds of things. We're saying begin looking at all of these plans and where there's an intersection that clearly is an

incentive, have that count as though it was part of a revitalization strategy.

The other thing that we also ask consideration for is that -- this is on revitalization but also somewhat on the opportunity areas -- more and more we're looking at working and partnering with the federal government where we're developing some of our properties through the Choice Program which is a replacement of the old HOPE VI Program and we're a finalist, one of nine in the country, for the Choice implementation which would include the redevelopment of a public housing site but also the surrounding neighborhood. So it extends just past one site and looks at what's happening in the surrounding area. In this case it's an area that's been divested of, we have a lot of vacant lots, a lot of vacant properties where we'll be doing some in-fill rental housing.

So when we look at an opportunity area, it wouldn't really qualify, and yet the opportunity is that it's going to bring an additional $30 million into the community for revitalizing an entire area. So we think that needs to be considered both in the opportunity area definition, as well as the revitalization area.

And that is all I have for today. Thank you.

MR. OXER: Thanks.

Diana. I'm sorry, you're up next, you'll be up

next.

MS. McIVER: Good morning. Are you with a housing authority, though? Go ahead so you're a trio.

MR. OXER: That's right.

Comment (4).

MR. SIMONIANS: I'm Bobken Simonians, Houston Housing Authority. Good morning.

I don't want to reiterate whatever was said, just in support of what was said. I'd like to make two points, however. Number one is hard to develop areas, undesirable areas is creating a lot of problems for City of Houston, specifically, and I know in many other cities. We have 25 developments, about five of them are 1939-1940s, they need to be remodeled, they need to be reconstructed. They need to be excluded or exempted from the current rules because they are not admitting poverty, they are not creating new developments next to a railroad or whatever, they are there, there is nothing we can do with them, they are just improving the lives and improving neighborhoods. I think staff has possibly supported that idea to make it in the record as part of the exemption.

The other issue I have is what was said before with some variation. City of Houston is in a unique position, along with two or three other cities that receive federal disaster recovery funds, CDBG funds from the federal

government through GLO. Those monies, some of them directly go to the housing authority, some go to the City of Houston. With our very close cooperation with the City of Houston, the City of Houston has developed targeted areas, working with HUD, to use the money to improve those neighborhoods.

Now, in those neighborhoods, if we are using CDBG disaster recovery funds which are provided by the GLO and the city, we would like that to be considered as funding sanction, so to speak, and gets the 13 additional points for the city funding. Those are not funds that we have, we don't really have much funds, but this is sanctioned by the city, supported by the city, supported by the federal government, supported by GLO. Everybody in government is behind these developments and not giving them the 13 points would negatively impact the positive development plans we have.

I think I should stop there. We will submit written comments so that we won't take too much of your time, but it will be in the record.

MR. OXER: Good. Thanks very much. Diana, good morning.

MS. McIVER: Good morning, Chair, Board, staff. Diana McIver with DMA Development Company. And I would like to speak to the sponsor characteristics, primarily the use of HUBs as part of that category. To that, Dr. Muñoz isn't

here so I could redeem myself with him, for those of you who were at the last meeting, but if you'll vouch for me.

MR. OXER: If you want to wait.

MS. McIVER: Maybe I should wait. It's very positive. Do you want to go first?

MR. OXER: Trust me, you're going to be there. That's all right. Go ahead.

MR. SORAI: Good morning. My name is Kit Sorai, I'm with S2A Development Consulting.

I'd like to take this opportunity to read a letter into the record with regards to the proposed sponsor characteristics scoring item.

"Chairman Oxer and Members of the Board, I apologize for not being present today, but do appreciate your allowing me the opportunity of having our company's views read into the official record.

Comment (5). → "My name is Craig Whitner and I work with Pedcor which is a large developer, contractor and manager of affordable housing based in Indiana. I wanted to address the proposed sponsor characteristics scoring item and its potential impact on out-of-state developers such as myself.

"If the language is finalized in a way that penalizes out-of-state developers, we will no longer participate in the 9 percent program. While we have not been

successful in obtaining an award of 9 percent credits in the last two years, we have been very close and realize that with the perceived good old boy playing field for 2013, it makes sense to place our efforts somewhere else.

"Our company currently develops in eleven states, we self-manage our entire portfolio of 14,000 units, with 11,000 of those units being tax credit units. We are one of only a handful of companies in the United States that were given permission from HUD to go over the $250 million debt cap. Our company has a historical record of compliance that could be put up against anyone's in this country, but again, if the draft language is finalized, we would come out of the chute into the penalty box.

"Mr. Chairman, when reading the transcripts from an earlier board meeting, it seems clear that your desire is to have this scoring item look at the broader history of the applicant, not just in Texas but anywhere they have developed, which we agree with. I request that you instruct staff to investigate and present to the Board some of the various ways that other states have successfully approached this issue.

"Thank you for your time and consideration."

MR. OXER: Good. Any other questions from the Board?

We may have to give him some more slack here, Diana. We have a lost Board member.

MS. McIVER: Okay. Go ahead, Mark, bail me out.

(General laughter.)

MR. OXER: Let's do this, let's take a quick ten-minute break because we've been sitting here in our chairs for an hour and a half, and I, for one, need to stand up for a minute. So everybody be back in your chairs here at 20 of 12:00. And so that you know, we're going to break just a few minutes after 12:00 for lunch.

(Whereupon, at 11:30 a.m., a brief recess was taken.)

MR. OXER: Let's get started.

Diana, I think your revered guest is here so you can address your comments to him.

Comment (6). Additional letter provided immediately following the end of this transcript.

MS. McIVER: Yes. Thank you, Dr. Muñoz, for joining us, because this is very important, it's near and dear to my heart.

Again for the record, I'm Diana McIver, DMA Development Company, and I would like to speak on sponsor characteristics. The part of sponsor characteristics that I would like to speak to is some work that I did with staff following last meeting, and I think we came up with a very good way, in my mind, of treating the HUB participation in

tax credit developments.

When you go to the QAP and the draft that was printed, it's a little confusing because there's a section A, there's an option A and then there's an option B, and I would like to support option B. They look very similar except when you go to option B you'll see there's one point for participation in the development by a HUB, a Historically Underutilized Business, and how that is done is it is actually taking a concept that the HUB must have combined 100 percent benefits from a combination of ownership, developer fee and cash flow, and those can be in any percent as long as they add up to 100 percent.

Now, the reason I like that is, one, it makes the HUB not a substitute for inexperience but it makes the HUB a supplement to experience, so I think that's very positive. Another reason I like it is because you heard from the nonprofits that they were being penalized because they could not joint venture with a HUB and stay in the nonprofit set-aside. Under this concept, they can because they could give the HUB 20 or 30 percent of ownership and still, as the nonprofit, meet that test of materially participating.

The third reason I like it is because it's not unduly prescriptive, and everybody last time was saying you're telling us you want us to joint venture with a HUB but you're

telling us exactly what they must do, that they must have at least 51 percent ownership and that's not fair when we're going out and we're doing the personal guarantees and all of that. And so this allows the developer to decide how that HUB will participate in those three categories.

Now, the only thing I would suggest -- and this sort of gets to the fact that we don't want people gaming the system -- the only thing I would suggest is that maybe we tighten it up a little bit so that no one of those three categories can be less than either 5 percent or less than 10 percent, or something like that. And I say that because I would hate to go through all this and then see a situation where someone came in and got a HUB involved and that HUB was getting a half a percent of ownership and a half a percent of the developer fee and 99 percent cash flow on a deal that is not going to see cash flow for five, six, seven years. So I would say some rule of thumb like maybe 5 percent is fair, maybe it's 10 percent, but something in that range. And that was the only comment I'd have on tightening it up.

So I'm here saying we worked with staff on this and I think it's a very good substitute and I'm all in favor of the substitute.

I wasn't going to speak to the Texas experience thing, but I will tell you, from personal experience, eight

years ago I submitted in the State of Georgia, so I started laughing when the Georgia developer was speaking. I submitted in the State of Georgia and was dinged points because I did not have any Georgia experience, so other states do give points to their in-state developers and just want to throw that out. So those are my only comments on sponsor characteristics.

I have a very brief comment on the local government loans, and right now, as it's worded, the local government loans are tied to the applicable federal rate in order to qualify. They have to be five years in term and they have to be at or below the applicable federal rate. Well, we have used that terminology for a lot of years now, and when we first started using that terminology the applicable federal rate was about 4-1/2 percent. Today that midrange rate for five years, the applicable federal rate is .93. So I went into, or someone on my staff went into a community the other day where an economic development corporation was making loans that we thought would qualify for that contribution, and the loans are at 1-1/2 percent, so they would not qualify.

So I am saying, one, rates are hysterically --

(General laughter.)

MS. McIVER: -- historically and hysterically have gone down, and I think that since we're going to be asking

these communities for a five-year commitment, we need to have a little more latitude on that, and I would suggest one of two things. If we're going to use the applicable federal rate, that we do it with like plus 200 basis points or plus 250 basis points, something that is much more reasonable, or just do a flat fixed rate of 3-1/2 percent or whatever you all think is fair. Because it would be very, very difficult as we're going through -- and we hope rates stay low, but none of us can guarantee that, so as we're going through this period, I think there's going to be probably we need to come up with another test, either tied to the AFR or a specific rate, but definitely something above .93 percent.

And those are my only comments. Thank you.

MR. OXER: Good. Thank you. Any comments from the Board?

(No response.)

Comment (7)

MR. MAYFIELD: Thank you, Board members, Mr. Chairman. My name is Mark Mayfield, and I actually represent two housing authorities: I represent the Marble Falls Housing Authority in the City of Marble Falls just west of this community, and also a new housing authority called the Texas Housing Foundation which was only created, we had our first organizational meeting in January of '06.

The Marble Falls Housing Authority is a housing authority that was created in '65, it's a municipal housing authority, and it was created and works an annual contributions contract with the United States Department of Housing and Urban Development. The Texas Housing Foundation, however, is an independent housing authority. I believe it's the only housing authority of its kind in the country. It's fully independent and is not under any kind of contract with the federal government, and we created that basically as an offshoot of the Marble Falls Housing Authority development activity that we started with the housing authority a few years back and we were getting to where our portfolio of properties was more on the affordable side than it was from the public housing side, and we had to find a solution to that so we did create the new housing authority. It's a regional public housing authority created under Chapter 392 of the Local Government Code.

It's very intimidating talking behind Diana McIver. She's the encyclopedia of this business and a dear friend of mine, but I'll give it my best shot.

But I'm coming actually to speak in support of the sponsor characteristics. We basically focus all of our attention on rural communities in the state. We just recently closed a deal just last week in Canadian, Texas. We have

an application we're hoping might reach down to Monahans, Texas, and what we do is through public and private partnerships. And frankly, with that incentive not being there, the developers will not coming knocking on our door. There's no motivation really for that to happen because it does add layers, if you will, to the transaction, but if we want to see housing developed out in rural communities, there's got to be a motivation for it to be there because there's other factors that kind of hinder their willingness to come out to these communities.

Secondly, for a public housing authority, we're restricted by law of what we can do. We can't pledge assets, we cannot make guarantees on loans or anything like that, that are required in order to develop tax credit properties. As a rule, those are requirements that are within them, and that has to be with developer partners. So without the concept of the public-private partnerships, we just wouldn't see housing being developed. We've developed about 17 properties, I believe, since we started, and every one of our properties are with private partners, but they're owned by our newly created housing authority, and it's just a new way, I believe, that we've been able to meet some of these demands in the rural communities.

There are over 400 housing authorities in the State

of Texas, and you hear all the time of Dallas and San Antonio and Houston and El Paso but you don't hear about Bangs, Texas and Monahans, Texas and Marble Falls, Texas and the small communities, and I can tell you the pent-up need for housing because the funding from the federal government is just drying up. And how these rural communities are going to meet the housing needs within their communities, it's only going to be through creative ways and incentives for those that are able to put these properties on the ground and be able to come out to these rural communities and do it.

And so I stand in support of that sponsor characteristics, and appreciate the time and opportunity to speak with you guys. Thank you.

MR. OXER: Great. Any comment from the Board?

(No response.)

MR. OXER: Thank you, and make sure you sign in there.

Good morning.

Comment (35)

MS. STEVENS: Good morning. I'm Lisa Stevens. I'm with Sagebrook Development, and I represent several developers that have been working in Texas now for almost five years. 2013 would be our fourth allocation cycle.

We have 6,000 units that are in compliance, we've been in this business since 1987, we have no properties that

are in non-compliance within our entire portfolio. That being said, having been in Texas for four years, we just opened our first property. We opened it in August, and I'm proud to say it's 95 percent occupied and we are submitting for our 8609s. However, because we don't have three 8609s in the State of Texas, we will not be eligible for the sponsor characteristics, nor will most developers who want to partner with us because were they to partner with us, the cap would be 100 percent allocated to them, so as a competitor, I'm going to find it very difficult to find someone who is willing to partner with us.

We've been in this business in Texas, we've moved here, we have an office here, we've hired staff here, and we've been here for almost five years now. We can't qualify for three. That means that the only folks who can qualify for those three points under sponsor characteristics are folks who have been in this business for six or seven years. If they've been in this business for six or seven years, those are the same folks that you're having issues with -- not all of them, obviously, but Compliance is saying that they're having some issues. You have to have been here for six years plus to be one of those parties and yet those are the only parties eligible for two points or three points for sponsor characteristics.

Chairman Oxer, you mentioned at the last board meeting that your goal was to identify where you have problems and to try to put a stop to the problems. At that point, when you made that comment, the sponsor characteristics were with one point. Since then another revision has come out and now they're worth two points, and yet there still is not a prohibition for those who have caused problems, there is only a benefit for those who have been in the state developing and can show that they have three developments that are performing. You could have five that are not performing, but if you've got three that are performing, you're considered golden according to this application.

I know you've heard all of this before, I'm not going to reiterate what you've already heard. It was said that it almost feels like you're guilty until you can prove you're innocent, rather than you're innocent until you're proven guilty. I'd ask, given that the direction this has taken from the last draft to this draft, that you take another look at it and perhaps provide some direction as to what you're looking for in terms of a penalty rather than a point for in-state experience.

Thank you.

MR. OXER: Thanks, Lisa.

MS. SISAK: Good afternoon. My name is Janine

Comment (65). Additional letter provided behind #65.

Sisak. I'm speaking on behalf of JSA Development Company today.

My company is a HUB, it's a Texas Historically Underutilized Business, and while I've co-developed two deals and therefore meet the experience threshold under the current language of the QAP, I would not qualify if I did a deal on my own this year under the sponsor characteristics point category, I would get zero points. Still, I'm fine with the language that's proposed for a few reasons.

First of all, while I can put together an application and it can get award of tax credits, I'm very experienced in the application process, I don't have any deals in my portfolio or that are in operation, so I really do need to joint venture with an experienced developer in order to bring financial capacity to my deals and make them successful. That being said, I like the language because it gives me options to joint venture with both out-of-state and in-state developers but it really encourages me to joint venture with in-state developers which, quite frankly, would be my preference anyway.

Again, getting the application done and getting the credits is only half the battle. I've been in this business long enough to know that asset management, a local management company is extremely important, both in

maintaining the physical asset and keeping your compliance scores up. So I really like this language because it gives me opportunities to joint venture with the best developers with the largest portfolios, and in my opinion, it would give my deals the greatest chance of success.

I would like for the staff to speak a little bit there's been a lot of talk about the three point disadvantage for people that don't have experience. I don't think it's written that way. I think the way it's written in the part B, which I'm speaking on behalf of or in support of, says that if you have three 8609s you get two points, if you have two 8609s you get one point, and if you partner with a HUB you get one point. So we're really talking about a two point for a company with three deals versus a one point for an out-of-state that joint ventures with a HUB.

And I love the extra language in terms of true capacity-building, a HUB materially participating, a HUB that has real estate experience and has significant financial, a true financial participation in the property. And also, to reiterate what Diana said, it also gives HUBs the ability to joint venture with nonprofits without threatening their set-aside, their ability to find the set-aside.

So I think that's it. Thank you very much.

MR. OXER: Good. Any questions from the Board?

(No response.)

MR. OXER: Thanks, Janine.

Sarah, you're on deck. Good morning.

MR. HULL: Good morning. My name is Matt Hull. I'm the executive director with the Texas Association of Community Development Corporations, and we represent about 150 nonprofits around the state providing affordable housing and community facilities in low income areas.

Comment (8). Additional letter immediately following the end of this transcript.

And many of our members are tax credit developers, or have been in the past, and they're expressing a little bit of heartburn around some of the s sponsor characteristic points, as you've heard, mainly related to how they'll be able to compete as nonprofits, not only the nonprofit set-aside, but also as 100 percent general partners. Many of our nonprofit developers have a lot of experience but wouldn't meet the current threshold criteria for sponsor characteristics because they don't meet the bar that's been set.

And so their alternatives are they can partner with a developer, in which case, then, they wouldn't be a nonprofit or they wouldn't be able to qualify for things such as the supportive housing tax exemption because they wouldn't be a 100 percent nonprofit deal anymore. Or they could partner with a HUB, in which case, my understanding is, that

would still take them out of the nonprofit set-aside and you would have trouble meeting your nonprofit 10 percent set-aside like you did this past year.

I know several of our members have made comments to Cameron and have talked with others and we'll be following up on that. We would just ask that there be some consideration to allow them to be able to compete on a level playing field. If you're going to give a point for HUBs, perhaps you could also give a point if you're a 100 percent nonprofit deal.

On the experience side, some of our members have 2,600 multifamily units, others have 800 units and they still wouldn't meet the bar, so I would just appreciate the staff's consideration in trying to rectify that, how can a true nonprofit compete as a nonprofit as we move forward and meet the experience threshold requirements.

One of our members, or actually a couple of our members had some problems with using the initial inspection score as one of the criteria. As you know, that is when the property is about to go online, they go in. Things that are sometimes beyond their control can reduce the points that they get. Furniture moved up against a window will reduce points. They would suggest using the final construction inspection as a more relevant measure of their preparedness to move on and of their compliance.

So happy to take any questions.

MR. OXER: Any questions from the Board? I have a question.

MR. HULL: Yes, sir.

MR. OXER: And we are as proud as we can possibly be of having a chief of compliance who has got a nationwide reputation for enforcement compliance in this business, and as I recall, there's a black and white universe that she lives in and you're either in one side of the rule or you're not. And the problem is once a property is rented there are things that happen internal to that that the developer doesn't control, renters move the furniture, they leave a cord out, who knows. So your point is taken. How do you develop a rule that applies to that? And that's where we're going.

MR. HULL: Yes, and so the recommendation would be use the final construction inspection report which is based, I think the top you can get is one or zero, and so set some threshold around that because that is something that the developers can control.

MR. OXER: Okay, good. Thanks very much.

MR. HULL: Thank you.

MR. OXER: Good morning, Sarah.

Comment (20). Additional letter provided behind #20.

MS. ANDERSON: Good morning. My name is Sarah Anderson, and I'm here representing S2A Development

Consulting, Sarah number two when it comes to speaking to the Board. Sarah number one, unfortunately, has been detained. She was actually going to go ahead and cover the sponsor characteristic issues, as she did last time, but I think that you've heard plenty on that.

I think the only comment I would make, in addition to the fact that we don't like as it is right now, is that this would be my ninth or tenth cycle that I'm going into. We've been awarded upwards of 40 deals in the last eight or nine years, we've worked with 20-plus different developers, in-state, out-of-state, and at the end of the day, I would say that geography is not a good litmus test to quality. We have in-state people that are horrible, we have in-state people that are great; we have out-of-state people that are great, we have out-of-state people that we don't work with anymore. So I guess I would just ask, I'm still not sure what the purpose is of it because I don't see the purpose coming from the language as written.

The only other comment I have is a little bit more esoteric, it's about the local political subdivision scoring item. And as you know, I love the way that staff has done a stair step for the amount of funding that you bring in relative also to the population of an area, so that rather than everybody having to get top scoring points, $15,000 a

unit, you do a formula and it's based on the size of the city.

The top scoring item, the threshold seems to be at about 100,000 in population, so if you were a town of 100,000 or more, you have to bring in the full $15,000 per unit to get maximum points. I was talking with Cameron earlier, and I think that that population seems a little low. I think that the expectation that a city, a Longview or a Waco, can bring to the table the same amount of money that a Houston, Dallas or Austin can, doesn't seem quite correct. So I would ask that that top threshold for $15,000 be changed where maybe it's a population of 500,000 and above, a million and above, but just that that be looked at for fairness.

And also, right now the way the scoring is, it's a certain amount of points for $100 a unit, $500, I think it goes $5,000, $10,000 and $15,000, and there's only one point difference between each of those. So you could be bringing in 100 times more money per unit and only be getting four more points. I'm not sure if that's exactly correct. But I'd like to see maybe a dropping and a little bit more of a spreading out instead of five categories, maybe $500, $7,500, $15,000, and let there be more scoring differential. If I can bring in the equivalent of $15,000 a unit, I should get significantly more points.

And I think that's it.

MR. OXER: Good. Any comments from the Board?

(No response.)

MR. OXER: Walter, good morning -- or afternoon by now.

Comment (23). Additional letter provided behind #23.

MR. MOREAU: Walter Moreau, director of Foundation Communities.

I wanted to respond to your question about instead of a inspection score, instead use the final compliance score. And I can give you a good example. Our Southwest Trails Apartments, about ten years old, the only tax credits built west of MoPac in Austin, 100 percent full, great learning center. I think our last physical inspection was two years ago -- they only come out every three years. Inspector walked around the property, knocked off eight points for furniture placement, so we ended up with a score of 81. And there were a bunch of other little things. We fixed everything. You don't get a re-inspection, but if you fix everything right away and document it, then your final compliance score, the physical inspection doesn't count against you. So our final compliance score was a zero. You get zero to 30, 30 is material noncompliance.

I think the staff have looked for what they could grab in the compliance system to use as a threshold bar for good developers and grabbed this once every three years

physical inspector report. And we can't appeal it, we can't dispute it, all we can do is fix everything and then it's dropped from your final compliance score.

So my suggestion is instead of the physical inspection, you say maybe it's a final compliance score less than ten so at the upper end of your final compliance scores. You want to keep that inspection system as an incentive for developers to fix things. Now it's being used as a threshold. And that's my suggestion on that.

MR. OXER: Good. Thanks, Walter.

Okay, Sarah, I know that you had something that you wanted to say and you're running late, but you're the last one on the list, so jump in. Good morning.

MS. ANDRE: Good morning.

MR. OXER: You do have a penchant for timing. Or afternoon.

Comment (9).

MS. ANDRE: Good afternoon. I'm Sarah Andre. I'm a consultant in the Tax Credit Program and in affordable housing. I am here to speak about the point item for selection criteria on basically the experience of a developer.

Right now there's an additional point for a developer who has three Texas 8609s, so that's a developer who has developed three properties in Texas. And I was here last month and spoke about that, and I thought that my comments

that there was some level of agreement between Chairman Oxer and myself regarding providing an incentive to somebody that had been in Texas. And in fact, if you look at the transcript, there actually was some agreement. To quote Chairman Oxer, on page 123 of the transcript --

MR. OXER: That's not as rare as you might think. Okay?

(General laughter.)

MS. ANDRE: "My interest would be not to award somebody for being here but to penalize them for being here and screwing up, which is where I was headed with all that." Meaning looking at the developers experience.

MR. OXER: History.

MS. ANDRE: History, experience in affordable housing, and in tax credits, in particular, and in development.

My point is that I would still like to see the advantage for a local or Texas-based developer or someone with three Texas 8609s removed. I've commented to staff about this. They appear to need additional direction. Right now that point criteria remains.

That's it.

MR. OXER: Thanks, Sarah. I think Cameron got your point, it was right between the second and third rib

over there.

(General laughter.)

MR. OXER: And looking at the hour, I'm going to ask everybody to sit still here for a second because of some recording issues we've had with noise when everybody leaves. We're going to break for lunch here, but I'm going to ask everybody to sit still for 60 seconds because there's something I have to read into the record. We're going to table this, you're going to finish up your report after we get finished with this, that will give you some time to put it all together, Cameron

But for the purposes of the recorder, the Governing Board of the Texas Department of Housing and Community Affairs will go into closed session at this time, pursuant to Texas Open Meetings Act, to discuss pending litigation with its attorney under Section 551.071 of the Act, to receive legal advice from its attorney under Section 551.071 of the Act, to discuss certain personnel matters under Section 551.074 of the Act, to discuss certain real estate matters under Section 551.072 of the Act, and to discuss issues related to fraud, waste or abuse under Section 2306.039(c) of the Texas Government Code.

The closed session will be held in the small banquet room in the grill. The time now is 12:10. We'll

DMA DEVELOPMENT COMPANY, LLC

October 22, 2012

Comment (6)

Cameron Dorsey
Director of Multifamily Programs
Texas Department of Housing
& Community Affairs
P.O. Box 3941
Austin, Texas 78711-3941

Dear Cameron:

This letter is in response to the Draft 2013 Uniform Multifamily Rules that have been posted for public comment.

1. **Section 10.101(a)(2). Site and Development Requirements and Restrictions**

We support the radii for site characteristics contained in the current draft. Although we are aware that comments are being made in support of increasing the radius, it is our belief that to increase the distance will detract from the quality of the real estate.

2. **Section 10.205(5). Civil Engineering Feasibility Study.**

The topics and attachments required in the Civil Engineering Feasibility Study are too extensive. Instead of requiring applicants to provide a study in the form of a narrative and/or report, we recommend instead that the applicant be required to submit the following only:

a. Preliminary site plan identifying all structures, site amenities, parking and drive way, topography, drainage and detention, water and waste water utility distribution retaining walls, and other typical or required items, including off-site requirements. The site plan needs to adhere to all applicable zoning, site development, and building code ordinances (new language underlined);
b. A survey or current plat; and
c. A soil borings report.

3. **Section 11.7. Tie Breaker Factors.**

We support the first tie breaker contained in the current draft.

4. **Section 11.9(b)(2). Sponsor Characteristics.**

We support Subsection B as it gives maximum points to developers with significant Texas experience, and it provides for meaningful participation by Historically Underutilized Businesses. If the Board wishes to expand this experience to include out-

of-state experience, we would recommend that the "out-of-state" experience required be twice that of Texas experience to ensure that "out-of-state" experience ensures ability to adhere to TDHCA compliance rules, known to be some of the toughest in the country.

5. **Section 11.9(c)(6). Underserved Areas.**

We recommend that senior developments be given 2 points only if they are in a rural area census tract with no other tax credits of any kind. So if it is a senior deal, and there is a family deal in that same census tract, the senior deal would get 1 point. But if it is a senior deal in a rural area census tract in which has no other tax credit developments, the senior deal gets two points. This will allow for greater local choice and input.

6. **Section 11.9(d)(2) Community Input other than Quantifiable Community Participation.**

We recommend that developments for which a Neighborhood Organization submits a letter that does not meet the requirements of Section 11.9(d)(1) and receives 10 points under Section 11.9(d)(1)(C)(iv) be allowed to qualify for points under this section. This is consistent with the treatment under the 2011 QAP of developments for which ineligible QCP letters were submitted.

7. **Section 11.9(d)(3) Commitment of Development Funding by Unit of General Local Government.**

We recommend that the interest rate for loans under this section be required to be no higher than 3%. Additionally, we recommend that the Department define the data source that will be used to determine the population of a Place.

8. **Section 11.9(d)(6). Community Revitalization Plan.**

With regard to community revitalization plans described under Sections 11.9(d)(6)(A) and (B), many Texas cities have community revitalization plans that meet the spirit of the QAP, but do not follow a format that identifies specific financial projections as required under Section 11.9(d)(6)(A)(i)(VI). In order to allow these valid community revitalization plans to qualify under this section, we propose that in order to meet the requirement of Section 11.9(d)(6)(A)(i)(VI), Applicants be allowed to submit a letter from an authorized City official identifying the economic impact of the community revitalization plan.

With regard to Section 11.9(d)(6)(C) related to Developments located in a Rural Area, we recommend that the infrastructure work be approved prior to the Full Application Delivery Date, although the work still can be completed within 12 months.

We also recommend that water and wastewater service be split out into two separate categories, and that expansions of existing hospital's capacity be further defined. We suggest the following language:

(I) Paved roadways or expansion of paved roadways by at least one lane;

(II) Water ~~and/or wastewater~~ service;

(III) Wastewater service;

(~~II~~IV) Construction of a new police or fire station within one (1) mile of the Development Site that has a service area that includes the Development Site; and

(~~I~~V) Construction of a new hospital or expansion of an existing hospital's capacity by at least 25 percent within five (5) miles of the Development Site and ambulance service to and from the hospital is available at the Development Site. Capacity is defined as total number of beds, total number of rooms, or total square footage of the hospital.

9. Section 11.9(e)(2). Cost of Development per Square Foot.

Our concern about this scoring item is that it will discourage developers from innovative design that might cost even slightly more than "average." For instance, we are looking at a site in a high opportunity area where the best design would be a townhome product with an integrated carport. However, we are considering proposing a two story walk-up instead because it is safer in terms of achieving the maximum points under this category. We are working with another City that wants a mixed-use design in its downtown area, which is subject to a high level of design requirements, including the use of clay bricks on 100% of the exterior." We may decide to pass on this site in favor of one not in the downtown area because meeting these design requirements may take us too far over the mean. The current methodology may actually penalize those developers who are trying to achieve a higher level of design, and will likely promote more homogenous housing. Moreover, the current methodology might also discourage developers from implementing non-required amenities and construction features that add to the longevity and durability of the development. This will decrease the quality of housing funded by tax credits in the 2013 round.

Based on the foregoing, we recommend that this point category revert back to the methodology used in last year's QAP.

Should this methodology remain, we recommend that all structures parking costs be removed from this calculation, even those included in Eligible Basis.

Additionally, related to Section 11.9(e)(2)(A)(i), we suggest that any Qualified Elderly development, not just those that are elevator served be categorized within this section. As such we recommend the following language:

(i) Qualified Elderly Developments, ~~and~~ Elevator Served Development, more than 75 percent single family design, and Supportive Housing Developments; or

Our reasoning for this is that we have senior community designs which include both elevator served buildings and single-story cottages in order to provide maximum choices for our senior residents.

10. Section 11.9(e)(3)(I). Pre-application Participation.

Regarding the requirement that Community Revitalization Plans are submitted at the time of pre-application, the current language does not specify that this requirement is specific to community revitalization plans under Sections 11.9(d)(6)(A) and (B), and not to infrastructure improvements for Rural developments under Section 11.9(d)(6)(C). Therefore, we propose a revision to the draft language to clarify this requirement:

(I) The community revitalization plan the Applicant used for points under subsections (d)(6)(A) and (B) of this section was submitted at the time of pre-application.

11. Section 11.9(e)(4). Leveraging.

We recommend that the percentages be increased to 8, 9, and 10 for 3, 2 and 1 points respectively.

12. Section 11.9(e)(7). Development Size.

We recommend adding the following language to the end of the sentence to account for those rural sub regions with slightly more than $500,000 in credits available.

"or if in a rural sub-region, the amount of credits available in that subregion or $500,000, whichever is greater."

We appreciate your time and consideration of these comments. Please do not hesitate to contact me with any questions or concerns. I can be reached directly at 512-328-3232 ext. 165.

Sincerely,

DMA DEVELOPMENT COMPANY, LLC

Diana McIver
President

4101 PARKSTONE HEIGHTS DRIVE, SUITE 310 AUSTIN, TEXAS 78746
TEL: 512.328.3232 WWW.MCIVER.COM FAX: 512.328.4584

TACDC
ENHANCING COMMUNITIES THROUGHOUT TEXAS

Comment (8)

October 22, 2012

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
P.O. BOX 13941
Austin, TX 78711-3941

Mr. Irvine:

On behalf of the Texas Association of Community Development Corporations, please accept our comments on the draft 2013 QAP for the state low income housing tax credit program.

The Texas Association of Community Development Corporations is the state trade association for nonprofits working to build affordable housing in traditionally low income areas in Texas. To develop the following comments, TACDC held two conference calls with CDCs to gather their input on the draft QAP. A few common recommendations emerged from the discussions. Several of the CDCs participating in the calls may submit their own comments and we encourage you and your staff to consider these comments as well.

Recommendation #1 regarding Sponsor Characteristics:
TACDC members were pleased to see the board make a recommendation on eliminating scoring preferences for Texas-based developers with more than three 8609s issued and to move away from using the physical conditions inspection for other means of measuring compliance within the program.

However, many of our members have concerns around the preference points given to HUBs. While our members certainly understand the benefit of a for-profit developer partnering with a HUB, mission driven non-profits are unique in a few ways that should be taken into consideration:

1. To remain in the nonprofit set aside in the QAP, the nonprofit must maintain more than 51% of the ownership of the deal.
2. Mission based nonprofits cannot give up a part of the ownership of the general partner and maintain the property tax exemption under 11.1825 of the tax code, a vital source of funding for reducing rents and providing for social services.
3. Many mission based nonprofits would rather chose to defer the developer fee, or at least significant portions of it, in order to build a higher quality development than take the fee up front.
4. Most mission driven nonprofits use cash flow for increasing social services and livability at the complex.

Therefore, by requiring that nonprofits bring a HUB into a deal just to score points takes away from the social mission of the organization and **can reduce the**

number of applicants in the nonprofit set aside. Therefore TACDC suggests the following options to address the issue:

1) Allow either the HUB point OR equal point(s) for a nonprofit that has at least 100% of the GP/developer fee/cash flow. This also allows for-profits to partner with nonprofits on mission driven projects.
2) Allow a sole nonprofit project to get the same HUB point if the nonprofit works with construction and/or other professional services that are contracted with HUBs. This is a meaningful way to support HUBs**.**
3) Allow either the HUB point or a nonprofit point, but not both**,** so long as the nonprofit is 100% of the GP and cash flow is dedicated to support services and/or replacement reserve.

Recommendation #2 regarding Undesirable Area Features (10.101(a)(4)
TACDC is concerned that the language used to describe Undesirable Area Features is vague and that nonprofit developers will not know ahead of time if an area has an undesirable feature that will count against them in an application. Mission driven nonprofits often work in areas that have a history of crime and other undesirable features because their mission is to address those very issues. For many CDCs, providing affordable housing is one strategy in an overall revitalization plan to improve conditions in their neighborhoods by eliminating blight, reducing crime, and removing substandard housing in their neighborhoods.

TACDC encourages the staff and board to try to quantify this section so any developer can self-score their application, but also to think about what they want to accomplish with this section of the QAP. Does the board want to simply keep tax credit properties away from areas with known crime, even though that is not defined and is left up to interpretation and subjectivity, or does the board want to consider policies that make affordable housing part of a broader strategy to improve neglected areas of a city?

Recommendation #3 regarding Undesirable Site Features (10.101(a)(3)
TACDC recommends that an exception be made to the section on building within 300 feet of an active railroad track for those projects that mitigate the increased sound by using the official HUD sound attenuation standards.

Recommendation #4 regarding Cost of Development per Square Foot
As currently drafted in the QAP available through the Texas Register, the section on Cost of Development per Square Foot creates too much uncertainty for developers. At best, the uncertainty around gaining up to 10 points will provide incentive for developers to build the cheapest, most cookie cutter development they can and still be competitive in their sub region. Creativity in design and innovation in building with sustainable and durable materials and energy efficiency will be lost as everyone aims to maximize points.

While the rules in past QAPs around cost per square foot have not been perfect, developers could at least make informed decisions about whether to proceed with an application or to terminate an application based on scoring. Therefore, TACDC suggests returning to previous QAP language for this section and to take a longer,

TACDC
ENHANCING COMMUNITIES
THROUGHOUT TEXAS

more detailed look during the interim at how best to address this issue within the uniqueness of the Texas QAP.

Recommendation #5 regarding Mandatory Site Characteristics
TACDC recommends including access to public transportation in the list of mandatory site characteristics**.**

Thank you for considering our recommendations for the 2013 QAP and please let me know if you have any questions.

Sincerely,

Matt Hull

Comment (21)

Good morning Mr. Chairman, Board members and Mr. Irvine.

My name is Scott McGuire, I am a developer and consultant with McGuire Development. I have over twenty five years experience in the Tax Credit program.

I am currently working with Rural developers in Texas. I am here today to request two major scoring changes to the current draft of the QAP.

My first request is to ask that the point disparity between senior developments and those for the general population be equalized in Rural areas of Texas.

You have seen the results of TDHCA's own independent study that was conducted by Bowen National Research. I would like to read from the Summary of Key Findings in that report and I quote.

" Demographic trends and migration patterns indicate that younger people and families under the age of 25 appear to be leaving the rural areas while the senior (age 55+) population and households are growing rapidly in the rural areas. Rapid senior demographic growth trends will increase the need for senior-oriented housing. Without modifications to existing supply and/or development of new senior-oriented housing that will allow seniors to age in place, rural areas may experience migration of seniors from rural to more developed/urban markets."

As I travel throughout rural Texas, I hear the same plea over and over again from Mayors and City Managers. Please help us keep our aging population in our community by creating affordable housing for our seniors who want to stay.

As you can see from the Bowen research report the need is clearly evident for additional seniors' housing. I ask that you change two scoring sections of the QAP that currently have a negative impact on seniors' housing developments.

1. Underserved Area - Census tracts in Rural areas with no existing tax credit developments are identified as an underserved area. If the proposed development is serving the General population there are 2 points allowed while Qualified Elderly developments only receive 1 point.

2. Opportunity Index - Points for proposed developments for the general population earn 2 more points than for seniors' developments. I respectfully request that you equalize this point differential for Rural developments.

The second request I have for your consideration is set forth under Sponsor Characteristics where Texas developers are favored over experienced out of state developers. We have several very experienced out -of-state developers who have years of experience and numerous tax credit properties throughout other parts of the country. These quality projects are well managed and are in full compliance with the rules of their respective States and Section 42 of the IRS code. Please do not establish an isolationist rule that would effectively prevent these reputable developers from competing for the privilege of creating quality affordable housing in our State.

Comment (10)
Lynn Blakeley
Blakeley Commercial Real Estate

From: Cameron Dorsey
To: Teresa Morales;
Subject: FW: Proposed Changes to Current Restrictions in the Draft 2013 QAP
Date: Thursday, October 11, 2012 10:59:15 AM

From: Lynn Blakeley [mailto:lynn@blakeleyres.com]
Sent: Thursday, October 11, 2012 10:13 AM
To: Cameron.dorsey@tdhca.state.tx.us
Subject: Proposed Changes to Current Restrictions in the Draft 2013 QAP

Mr. Cameron Dorsey, Director
Multifamily Finance
Texas Department of Housing & Community Affairs
221 E. 11th Street
Austin, TX 78701

PROPOSED CHANGES TO CURRENT RESTRICTIONS IN THE DRAFT 2013 QAP
PUBLIC COMMENT

Dear Mr. Dorsey:

As an experienced commercial broker who is working with consultants and multifamily developers in the San Antonio market area who wish to make application to the Competitive Multifamily 9% Tax Credit Program for the 2013 funding cycle, I wish to make these recommendations during the Public Comment period:

1) As currently proposed, it is my understanding that Non-Participating Jurisdictions will be restricted from accessing the Department's HOME funds, which were allocated to the State for the purpose of furthering affordable housing opportunities, in Non-Participating Jurisdictions. This seems extremely prejudicial to these smaller, non-entitlement communities, as it represents a 13 point score and could mean the difference between a project's being approved for funding or not being competitive pursuant to the scoring criteria in the upcoming funding cycle. These smaller

communities are already burdened with the cost of extending their infrastructure and are frequently burdened with bond debt for a variety of programs, at a time when ad valorem property tax revenues are low and they are strapped for cash. I encourage you and the TDHCA Board of Directors to allow Non-Participating Jurisdictions to access HOME Funds with the support of the local jurisdiction, so that these communities can compete for affordable housing funding on a level playing field with the larger, entitlement cities.

2) Also, the current draft of the 2013 QAP proposes that the radius for services in proximity to a proposed development be set at 1 mile for an Urban project and 2 miles for a Rural project. This radius does not take into account that in many Urban settings, services may be concentrated in an area where multifamily land for an affordable development is either not available due to a community's build out, or the land is too expensive, due to proximity to mixed-use developments. This creates a serious restriction on a developer's ability to gain access to services, particularly when this is a mandatory requirement in the proposed 2013 QAP.

In Rural areas, services are frequently scattered along intersections where some services may be available, but may not allow for a concentration of the mandatory requirement of 6 services within the current radius which is set at 2 miles. Often, this limitation is a function of restrictions on water and sewer service in these rural areas and cannot be overcome by the local jurisdiction.

Since this is now a mandatory threshold requirement for the Competitive Multifamily 9% Tax Credit Program as well as for the Tax Exempt Multifamily Bond/4% Tax Credit Program, and is currently included in the Draft 2013 QAP, I would like to recommend that a more feasible radius for the provision of services is 2 miles for an Urban project and 3 miles for a

Rural project.

Thank you for your consideration.

Sincerely,

Lynn Blakeley, CPM
Blakeley Commercial Real Estate
7330 San Pedro, Suite 510
San Antonio, Texas 78216
210-724-5111
lynn@blakeleyres.com

Comment (11)
Clarie Palmer

Comments to 2013 Definitions and Rules

1. 8. Bedroom. Does the den have to have a door?

2. 10.Building Cost- I think the use of "vertical construction" limits the costs more than was intended.

3. 24. Control—The definition still says that control can be as little as 10% ownership. Last year this was in the definition but not allowed to be control for purposes of the QAP. Will 10% ownership now be considered as having control? How do you "indirectly" manage, etc?

4. 30. Developer—Shouldn't this also include the 20% consultant fee on non-profit deals?

5. 35. Development Team--- This is expanded and is important for eligibility. Is there a reason it was expanded? It is sufficient to be part of the Development Team to play "a role"? How much role? Does this mean that you need to check that all subcontractors or vendors are in TDHCA compliance?

6. 43. Existing Residential Development-- This question goes back to the issue with the Canton Street project. Does one unit in a building that is residential and the rest used for something else qualify? What if the rehab is for a building in a residential development that the building being rehabbed is not residential?

7. 46. General Contractor—Many Non-profits serve as the GC to get the tax exemption then subcontract the work to a contractor. Is that no longer allowed?

8. 49. Government Entity—Does the definition include quasi-governmental entities like Housing Authorities? If so, should that be specified?

9. 53. Guarantor—Doesn't include the construction guarantor. Was that intentional?

10. 69. Material Deficiency— This still seems very subjective.

11. 85. Principal- 10% ownership interest alone, without also being an officer, should not make you a principal.

12. 96. Reconstruction- If you demo one building out of many, how much do you have to rebuild?

13. 97. Rehabilitation— Are rehabilitation and Reconstruction now the same thing?

14. 101. Right of First Refusal—Is there a way to designate one entity that has the ROFR? That used to be done.

15. 120. Unit of Local Government—Same question about quasi-governmental, like housing authorities?

Staff Determination-- As I read this, if you file a pre-app you must raise your questions before pre-app. Many times the big questions come up while you are doing the application? Why this rule??

Site and Development Requirements and Restrictions

Undesirable Area Features—(B)Who decides what is significant blight?
(D) What is "frequent" police reports? In Dallas, this can be an issue because there may be an issue at one complex that results in a lot of reports even thought the rest of the area is great.

Rehabilitation Costs—Could this be tiered for all projects. If less than 20 years old, one amount and the $25,000 for others?

Unit Amenities-- By making most of these .5 points, you now have to do almost all. There is not much selection.

Application Submission Requirements

On page 4 of 8, under Applicants—(D)- Breach of Contract—should allow the application if the applicant is in the process of curing. (G) delinquent on loan—There may be a dispute about amount owed. That should not prohibit the application.

On page 9 of 18, Is this saying you must have financing in place at application? That is what it seems like (i) means. Is it (i) loan commitment **or** (ii) term sheet??

On page 11 of 18, Occupied Rehab now requires Relocation Plan with application? This could trigger some unintended consequences. You certainly don't want the clock ticking starting at application.

On page 16 of 18- Can you clarify for me about the civil engineering feasibility report. Last year that was appoints item. Is it now a requirement??

From: Jean Latsha
To: Teresa Morales;
Subject: FW: 2013 QAP
Date: Wednesday, October 17, 2012 9:33:07 AM

To be included in public comment:
Email thread below basically requests that rural applications can get CRP points by submitting a CRP plan, not just by proving up infrastructure improvements. Current language does not allow rural developments to get the points by submitting a community revitalization plan.
Thanks,
Jean

From: Claire Palmer [mailto:clairepalmer@sbcglobal.net]
Sent: Wednesday, October 17, 2012 9:18 AM
To: 'Jean Latsha'
Subject: RE: 2013 QAP

That would be great. By the way, I sent you and Cameron a bunch of questions on the definitions. Will that be part of the reasoned response too???

Claire Palmer
972.948.3166 (cell)
clairepalmer@sbcglobal.net

From: Jean Latsha [mailto:jean.latsha@tdhca.state.tx.us]
Sent: Wednesday, October 17, 2012 9:15 AM
To: Claire Palmer
Subject: RE: 2013 QAP

I hear you loud and clear, which is why we would be open to the idea. We crafted the rule in order to give these communities a chance to get the points, so I would not be surprised if it were revised in the final version. At the same time, we don't want to be in another situation where communities claim to have plans in place that are really non-existent.
If you would like I can just include this discussion in the public comment; that way it will be part of our reasoned response. Thanks,

Jean

From: Claire Palmer [mailto:clairepalmer@sbcglobal.net]
Sent: Tuesday, October 16, 2012 5:40 PM
To: Jean Latsha
Subject: Re: 2013 QAP

I tend to disagree. A lot of small communities are old and really need something to spark revitalization. Sometimes just getting this new housing can give that spark!!

Please excuse the typos
Sent from my IPhone

On Oct 16, 2012, at 5:05 PM, "Jean Latsha" <jean.latsha@tdhca.state.tx.us> wrote:

> We would be open to the idea of allowing rural developments to qualify for points by submitting a revitalization plan, but staff believes that the way the rule is currently written is more appropriate. It's the train of thought that stems from the idea that it's difficult to re-vitalize something that doesn't exist. Rural communities tend to need new economic development, not revitalization.
>
> **From:** Claire Palmer [mailto:clairepalmer@sbcglobal.net]
> **Sent:** Tuesday, October 16, 2012 3:19 PM
> **To:** Cameron Dorsey; Jean Latsha
> **Subject:** 2013 QAP
>
> Another question. Why can't a Rural Deal get points for a Revitalization Plan??
>
> Claire Palmer
> 972.948.3166 (cell)
> clairepalmer@sbcglobal.net

(A) An Application may receive (2 points) for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose of the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide some documentation of its tax exempt status and its existence and participation in the community in which the Development is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts), or taxing entities. Should an Applicant elect this option and the Application receives letters in opposition, then two (2) points will be subtracted from the score for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this subparagraph.

(B) An Application may receive (2) points for a letter of support, from a property owners association created for a master planned community whose boundaries include the Development Site that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (1) of this subsection.

(C) An Application may receive (2) points for a letter of support from a Special Management District, whose boundaries, as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site and for which there is not a Neighborhood Organization on record with the county or state.

(D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, standing alone, cause staff or the Department to terminate the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(3) Commitment of Development Funding by Unit of General Local Government. (§2306.6710(b)(1)(E)) An Application may receive up to thirteen (13) points for a commitment of Development funding from the city or county in which the Development is proposed to be located. Development funding from instrumentalities of a city or county will not qualify for points under this scoring item unless such instrumentalities are first awarding such funds to the city or county for their administration or at least 60 percent of the governing board of the instrumentality is city council members from the city in which the Development will be located (for Developments located in a city) or county commissioners from the county in which the Development will be located (for Developments not located in a city). A government instrumentality may not be a Related Party to the Applicant. Development funding must be provided in the form of a construction and/or permanent loan with an interest rate no higher than the Applicable Federal Rate (AFR) and term of at least 5 years, a grant, an in-kind contribution, a contribution which will support the Development, such as vouchers, or combination thereof. Funds cannot have been provided to the Unit of General Local Government by the Applicant or a Related Party. HOME Investment Partnership Program or Community Development Block Grant funds administered by the State of Texas cannot be utilized for points under this scoring item. The Applicant must provide evidence in the Application that an application or request for the development funds has been submitted in the form of an acknowledgement from the applicable city or county. The acknowledgement must also state that a decision with regard to the awards of such funding will occur no later than August 1. A firm commitment of funds is required by Commitment or the points will be lost (except for Applicants electing the point under subparagraph (B) of this paragraph).

(This would allow for inclusion of some EDC's and some PHA's)

or the city council, mayor and/or county commissioners appoint the governing board.

Comment (12)
Craig Taylor

Comments to the DRAFT 2013 QAP
Submitted by Communities for Veterans
10/17/12

11.9.(b) DEVELOPMENT OF HIGH QUALITY HOUSING

(2) Sponsor Characteristics

(A) 1 point for having 3 Texas deals, or for JVing with a Texas developer or being a HUB

(B) 3 points for having 3 Texas deals—basically says the same thing as the above—some confusion in the language here as far as I can tell

This is in violation of the Commerce Clause of the U. S. Constitution as it specifically limits interstate commerce, which has consistently been ruled unconstitutional.

The fact that Owners do not have to be based in Texas, but have Texas based projects does nothing to diminish this effect. Tax credits are a federal program and resource and administered under the same IRS regulations regardless of the state in which projects are located. Thus, this requirement is not a measure of successful experience with the tax credit program, but a de facto limitation of access by non-Texas developers to participate in the process.

Language should be changed to allow for a similar ownership of projects in other States:

Recommended change: A Person with at least 50 percent ownership interest in the General Partner also owns at least 50 percent interest in the General Partners of at least five (5) existing tax credit developments, none of which are in Material Noncompliance.

11.9.(c) SERVE AND SUPPORT TEXANS MOST IN NEED

(4) Opportunity Index This criterion references Texans most in need, but then focuses on the "general population." It is inherent in most cases that serving populations with the greatest need will necessarily focus on specific populations. Thus, the operant language should be "**regardless of population served**" allowing the developer to target specific populations with the greatest need as dictated by local development conditions.

As presently worded, these scoring criteria state the following:

(A) Development targets the general population; income in the census tract is in the top quartile of median household income for the county or MSA as applicable and the elementary school is exemplary or recognized (7 points)

(B) Development targets the general population; income in the census tract is in the top two quartiles of median household income for the county or MSA as applicable and the elementary school is exemplary or recognized (5 points)

(C) Any Development, regardless of population served is located in the census tract is in the top quartile of median household income for the county or MSA as applicable and the elementary school is exemplary or recognized (5 points)

(D) Any Development, regardless of population served is located in the census tract is in the top quartile of median household income for the county or MSA as applicable (3 points)

(E) Any Development, regardless of population served is located in the census tract is in the top two quartiles of median household income for the county or MSA as applicable (1 point)

Recommended change: Delete item (C) in this list altogether, and change the "general population" language to "regardless of population served" in items (A) and (B).

11.9.(d) COMMUNITY SUPPORT AND ENGAGEMENT

(1). Quantifiable Community Participation This criterion seems to have been written with a specific project(s) in mind. This is unfair to other developers and projects as it sets out a standard that cannot be met by the majority of projects. This is in effect a point "set-aside," creating a limited competitive advantage for a select few.

Recommended change: The 2 point provision for having a new support letter after previous year(s) non-support letters should be dropped.

(3) Commitment for Development Funding by Unit of General Local Government

Not all projects are under the aegis of a local government. Native American lands and potential developments on Federal or State lands, etc. do not really fit this category. Therefore, the funding requirement should be expanded to include the entity which exercises ultimate authority and control over the project.

Recommended Change: An Application may receive up to thirteen (13) points for a commitment of Development funding from the city or county in which the Development is proposed to be located, **unless the project is located on State or Federal property, in which case the project may receive points for a commitment of State or Federal funding, grants, contributions of land/ground leases or in-kind services to the project.**

(5) (C) Community Revitalization Plan

This criterion limits the provision of infrastructure or added services for Rural Developments to city, county or state governments. As noted above, the primary jurisdictional authority on some potential sites may be Federal; therefore, this entity of government should be added.

Recommended change: (C) For Developments located in a Rural Area (i) An Application may qualify for up to six (6) points if the city, county, state**, OR FEDERAL GOVERNMENT** has approved expansion of any of the basic infrastructure or projects to the Development Site described in subclauses (I) – (IV) of this clause, or improvements to areas within a quarter mile of the Development Site, unless a different distance is otherwise identified.

11.9.(e) EFFICIENT USE OF LIMITED RESOURCES AND APPLICANT ACCOUNTABILITY

(4) Leveraging of Private, State, and Federal Resources If resources are being leveraged, these should not be limited to such a small list, which clearly will benefit only select applications, therefore being an implicit set-aside via scoring for those applications. Leveraging should be broadly based.

Recommended change: "CDBG Disaster Recovery, HOPE VI, Choice Neighborhoods, **or other Private Foundation or Local, County, State, or Federal funding.**

(7) Development Size This criterion is limiting the credit ask to $500,000 to get the points. This scoring penalizes applications approaching or at 50 units, allowing smaller projects to garner more credits per unit. The standard should be credits per unit, not a maximum amount of credits. For example, an application for 30 units could score these points but utilize $16,667 in credits per unit, while a 50 unit project would only access $10,000 in credits per unit. This is not a sound basis for credit limitation or fairness.

Recommended change: Drop the language regarding maximum credits per project and add the following: "**a Funding Request of Housing Tax Credits, as identified in the original Application submission, of $15,000 in tax credits per unit or less."**

Comment (13)
Cynthia Bast
Locke Lord

Locke Lord LLP
Attorneys & Counselors

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cbast@lockelord.com

MEMORANDUM

TO: Texas Department of Housing and Community Affairs

FROM: Cynthia Bast

DATE: October 18, 2012

RE: COMMENTS ON QUALIFIED ALLOCATION PLAN

Our firm represents G.G. MacDonald Companies, which is a developer of rural properties using low-income housing tax credits. On behalf of our client, we submit the following comment to the draft 2013 Qualified Allocation Plan.

Section 11.9(c)(4) Opportunity Index

Issue: When a rural community is in an MSA, it is inappropriate to compare that community's household income to the household income of the MSA. Rather, the household income for any rural community should be compared to the household income for the county.

Reasoning: Chapter 10, Subchapter A defines a "Rural Area" to include communities in an MSA with a population of less than 25,000. Typically, rural communities have lower incomes than communities in MSAs, and comparing a rural community to a city in an MSA is like comparing an apple to an orange. If rural communities in an MSA are required to use the MSA income for comparison, then fewer of such communities will fit within the top quartile. By contrast, the county's household income would provide a better comparison, because it is more inclusive of a variety of income levels, both rural and urban. Using this comparison would also ensure that all communities in a Rural Area use the same method of comparison.

Proposed Change: "Developments located in Rural Areas are exempt from meeting the elementary school and poverty rate factors under each of subparagraphs (A) – (E) of this paragraph, and will utilize the county's household income for comparison purposes, but the elementary schools in which tenants may attend can have a rating below acceptable in order to qualify for points."

I am happy to respond to any questions about these comments. Thank you for your time.

Locke Lord LLP
Attorneys & Counselors

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Cynthia L. Bast
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cbast@lockelord.com

MEMORANDUM

TO: Texas Department of Housing and Community Affairs

FROM: Cynthia Bast

DATE: November 6, 2012

RE: PUBLIC COMMENTS ON RULES – **CHAPTER 10, SUBCHAPTER A – GENERAL INFORMATION AND DEFINITIONS**

On behalf of Locke Lord LLP, please find comments to draft Chapter 10, Texas Administrative Code, Subchapter A.

Section 10.3(a)(2) Administrative Deficiencies

Issue: Should the definition also include a reference to omissions? Should it be clear that the Administrative Deficiency process is not utilized for underwriting, since the formality of the Administrative Deficiency process traditionally has not been used in that realm?

Reasoning: Clarification of actual TDHCA practice.

Proposed Change:

(2) Administrative Deficiencies--Information requested by the Department staff that is required to clarify or correct one or more inconsistencies or omissions in an Application that in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application. Administrative Deficiencies may be issued at any time while the Application or Contract is under consideration by the Department, including at any time while reviewing performance under a Contract, processing documentation for a Commitment of Funds, closing of a loan, processing of a disbursement request, close-out of a Contract, or resolution of any issues related to compliance, but excluding real estate analysis and underwriting.

Section 10.3(a)(4) Affordability Period

Issue: Reference to termination of LURA upon foreclosure should also include deed in lieu of foreclosure.

Reasoning: Consistency with federal law and the actual language of the LURA.

Proposed Change: "The term of the Affordability Period shall be imposed by the LURA or other deed restriction and may be terminated upon foreclosure or deed in lieu of foreclosure.

Section 10.3(a)(22) Compliance Period

Issue: Throughout these rules, it is not always clear which requirements apply to which programs.

Reasoning: Clarity for users.

Proposed Change: "With respect to a building financed by Housing Tax Credits, the period of fifteen (15) taxable yeas, beginning with the first taxable year of the credit period pursuant to §42(i)(1) of the Code."

Section 10.3(a)(23) Continuously Occupied

Issue: The reference to the "same household" is unclear as to how life events like births and deaths affect whether a household fits within the definition.

Section 10.3(a)(33) Development Consultant

Issue: I have previously expressed a concern that the duties of a Development Consultant are described to include activities that are not includable in eligible basis (such as work on the tax credit application), yet other portions of the rules and the Application forms themselves show the Development Consultant receiving a portion of the Development Fee. Any Development Fee paid for a non-eligible activity is not includable in basis. To the extent Development Consultants are performing non-eligible activities, they should be paid a fee separate and above the Development Fee. While the amount could be measured based upon a percentage of the Development Fee, it should not actually be paid out of the Development Fee.

Section 10.3(a)(46) General Contractor

Issue: Various parts of this Definition are unclear as to when a Person fits within the definition of a prime subcontractor and, therefore, is equivalent to the General Contractor. It would be helpful to have additional information about what TDHCA is attempting to accomplish by significantly rewriting this definition. In particular, item (C) seems to be randomly inserted

Reasoning: Logical reasoning should be provided for the significant change to this rule, and clarity should be provided for users.

Proposed Change:

(46) General Contractor (including "Contractor")--One who contracts for the construction or rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. A ~~P~~prime subcontractor~~s~~ will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, ~~if any of the criteria~~ in the scenarios described in subparagraphs (A) and (B) of this paragraph ~~are true (in which case, such subcontractor fees will be treated as fees to the General Contractor)~~:

(A) any subcontractor, material supplier, or equipment lessor receiving more than 50 percent of the contract sum in the construction contract is ~~subcontracted to one subcontractor, material supplier, or equipment lessor ("prime subcontractors")~~will be deemed a prime subcontractor; or

(B) if more than 75 percent of the contract sum in the construction contract is subcontracted to three or ~~less~~ fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed ~~("~~prime subcontractors~~"); or~~

~~(C) the General Contractor has less than seven (7) subcontractors~~.

Section 10.3(a)(56) Historically Underutilized Business

Issue: This definition should include limited liability companies, which are common forms of ownership for a HUB.

Reasoning: Consistency with actual practice.

Section 10.3(a)(58) Housing Credit Allocation

Issue: The last phrase of this definition is confusing. It refers to "this chapter" and then to "Chapter 10." This definition is in Chapter 10, so the wording seems incorrect. Perhaps it should be "this subchapter"?

Reasoning: Clarity for users.

Section 10.3(a)(59) Housing Credit Allocation Amount

Proposed Change: "With respect to a Development or a building with a Development, the amount of Housing Tax Credits the Department determines . . . . "

Section 10.3(a)(64) Low-Income Unit

Issue: This definition refers to an income eligible household "as defined by the Department." It does not tell the reader where or how the Department defines income eligible households and is not as clear or useful as it could be.

Reasoning: Clarity for users.

Section 10.3(a)(68) Market Rent

Issue: This definition is unclear. It refers to rents "determined after adjustments are made." What kind of adjustments? Who makes these adjustments? Please revise this definition.

Reasoning: Clarity for users.

Section 10.3(a)(93) and (94) Qualified Nonprofit Organization and Qualified Nonprofit Development

Issue: The word "qualified nonprofit organization" is used throughout the rules, both capitalized and non-capitalized. It is important to note that what constitutes a qualified nonprofit organization under Section 42 of the Code and what constitutes a qualified nonprofit organization for the purposes of the non-profit set-aside under Chapter 2306 of the Texas Government Code are different. Right now, TDHCA is using the term "qualified nonprofit organization" interchangeably, and that could have a detrimental affect on certain nonprofit organizations. For instance, it needs to be clear that a nonprofit organization need not meet the criteria of Chapter 2306 of the Texas Government Code in order to participate in the right of first refusal process. TDHCA needs to perform a "search" function through the entire set of rules and look very carefully at each instance in which the term "qualified nonprofit organization" issued, ensuring that each usage incorporates only those restrictions that are applicable in that particular instance.

Reasoning: Ensure that the unintentional use of a more restrictive definition does not disqualify certain nonprofit organizations from participating in certain activities.

Section 10.3(a)(99)(B) Relevant Supply

Issue: Further clarification is needed for the phrase "that may not have been presented to the Board for decision." What does it mean to be "presented to the Board for decision"?

Reasoning: Clarity for users.

Section 10.3(a)(101) Right of First Refusal

Issue: Definition needs to reflect that a right of first refusal can also be provided to a governmental agency. Both the Tax Code and the Government Code have some provisions for governmental agencies (which may be TDHCA) to participate in the right of first refusal process.

Reasoning: Consistency with law.

Section 10.3(a)(114) Third Party

Issue: This definition requires modification for it to be most effective. First, it defines the General Contractor as someone who is not a Third Party. While a General Contractor is sometimes related to the Applicant, that is not always the case. A General Contractor absolutely can be an unaffiliated Third Party. The term "Third Party" is used throughout the rules to refer to reports, certifications, and opinions that come from Persons unrelated to the Applicant or Development Owner. It is conceivable that a General Contractor could be a Third Party and could be needed to provide one of those reports. This should be permitted, and it would not be permitted, if the definition were retained as presented.

Issue: The use of the word "Related Party" should be removed. This term is defined in Government Code Chapter 2306 and used in only one context in the Government Code. Because the definition is so complex and can be difficult to understand, TDHCA should refrain from using it except in the context actually required by Chapter 2306. Otherwise, defined terms such as "Affiliate" are adequate for TDHCA's purposes.

Reasoning: Providing a more effective definition and clarity for users.

Section 10.3(a)(122) Unstabilized Development

Issue: The last sentence of this definition does not make sense and may be missing text. Should it say "The Market Analyst may not consider <u>such</u> a development stabilized in the Market Study."?

Reasoning: Clarity for users.

Section 10.4(7) Market Analysis and Civil Engineer Feasibility Study Delivery Date

Issue: The heading refers to the civil engineer feasibility study, but the text refers only to the market analysis. This makes it unclear as to whether the civil engineer feasibility study has the same delivery requirements as the market analysis.

General Comment: Throughout the Definitions, multiple terms are used for the same definition. See, for exampled Section 10.3(a)(18):

(18) Commitment (also referred to as Contract)

The Definitions section does not have a cross-reference definition for the word "Contract." Therefore, if a Person is reading the rules in a later subchapter, happens upon the word "Contract," and tries to seek the definition, it will be difficult for the reader to find. I recommend TDHCA either (1) use the "search and replace" function to establish one working definition for each term throughout the rules or (2) for those terms that use multiple defined words, establish a cross-referencing system in the Definitions. In this second scenario, both "Commitment" and "Contract" would have it own definition, but the definition of "Contract" would simply refer back to the definition of "Commitment."

I am happy to respond to any questions about these comments. Thank you for your time.

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MEMORANDUM

TO: Texas Department of Housing and Community Affairs

FROM: Cynthia Bast

DATE: November 6, 2012

RE: PUBLIC COMMENTS ON RULES – **CHAPTER 10, SUBCHAPTER B – SITE AND DEVELOPMENT REQUIREMENTS AND RESTRICTIONS**

On behalf of Locke Lord LLP, please find comments to draft 10 Texas Administrative Code, Chapter 10, Subchapter B.

Section 10.101(a)(5)

Issue: This section says that if TDHCA makes a determination that a site is unacceptable, "the Applicant will be allowed an opportunity to address any identified concerns." That does this mean outside the context of either the Administrative Deficiency process or the appeals process? If a site is determined unacceptable, the Application should be terminated and the Applicant should have the opportunity to appeal in the normal course. References to any other sort of "opportunity to address . . . concerns" implies a mechanism for resolution that is not part of TDHCA's system.

Proposed Change: "If the Department makes such a determination, the Application will be terminated and subject to appeal, as provided herein."

Section 10.101(b)(3) Rehabilitation Costs

Issue: The rule says that the rehabilitation costs per unit must be "maintained through the issuance of IRS Forms 8609." What does this mean? What if the rehabilitation uses a funding program that does not involve the issuance of Forms 8609? Is it more appropriate to say that the rehabilitation costs per unit must be "supported in the Applicant's cost certification"? Further, what happens if the Applicant does not support the requisite level of rehabilitation costs

per unit at the time of cost certification? Is the funding lost entirely? The text of this section leaves this question open for implication.

Section 10.101(b)(5)(C)(xxx)(i)(-a-)

Issue: The presence of required amenities is observed at the final construction inspection and the periodic compliance inspections. How does TDHCA monitor whether 20% of the property's irrigation needs are coming from a collection system? Is TDHCA actually seeking evidence of this? What happens in times of drought?

Section 10.101(b)(6)(B) Unit Amenities

Issue: In the first sentence, should it be clarified that the amenities must be maintained <u>for the compliance period</u>?

Section 10.101(b)(7)(G)

Issue: In the world of today's technology, should the reference to a "CD-Rom" course be changed to an "online" course?

Section 10.101(b)(7)(I) and (J)

Issue: It seems illogical that quarterly health and nutritional courses would have assigned the same point value as organized youth and sports programs. Quarterly programs are fairly easy to set up and not particularly time intensive. Organized youth programs can be much more time-intensive and can require additional expenditure for equipment or supplies.

Recommendation: Increase the points available for organized youth and sports program, commensurate with the effort and resources that are invested for this activity.

I am happy to respond to any questions about these comments. Thank you for your time

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cbast@lockelord.com

MEMORANDUM

TO: Texas Department of Housing and Community Affairs

FROM: Cynthia Bast

DATE: November 6, 2012

RE: PUBLIC COMMENTS ON RULES – **CHAPTER 10, SUBCHAPTER C – APPLICATION SUBMISSION REQUIREMENTS, INELIGIBILITY CRITERIA, BOARD DECISIONS AND WAIVER OF RULES**

On behalf of Locke Lord LLP, please find comments to draft 10 Texas Administrative Code, Chapter 10, Subchapter C.

Section 10.201 Procedural Requirements for Application Submission

Issue: There is a reference to "fees for withdrawn Applications." I don't see such a fee established in Section 10.901.

Section 10.201(1)(B) Procedural Requirements for Application Submission

Recommendation: Insert the phrase "or extended" after the phrase "cannot be waived" in the second sentence.

Section 10.201(2)(B) Procedural Requirements for Application Submission

Recommendation: Change "receive advance notice" to "receiving advance notice" in the first sentence.

Section 10.201(5) Procedural Requirements for Application Submission

Issue: Is the cross reference to Section 1.5 correct? I do not see such a section in the current published version of the Texas Administrative Code.

Section 10.201(7) Procedural Requirements for Application Submission

Recommendation: Insert the phrase "or omissions" after "resolve inconsistencies" in the first sentence. This is consistent with my recommendation in prior comments regarding the definition of Administrative Deficiencies.

Section 10.201(7)(A) Procedural Requirements for Application Submission

Issue: The following sentence is not entirely true:

"An Applicant may not change or supplement any part of an Application in any manner after the filing deadline or while the Application is under consideration for an award, an may not add any set-asides, increase the requested credit amount, revise the Units mix (both income levels and Bedroom mixes), or adjust their self-score except in response to a direct request from the Department to do so as a result of an Administrative Deficiency."

The highlighted language creates a restriction. There are several contexts in which an Application can be changed outside of a request in the Administrative Deficiency process. First, the rules specifically state that an Application may be modified after submission as a result of the limited review opportunity process. Secondly, changes can be made during the Real Estate Analysis underwriting review. If the Real Estate Analysis division is not going to use the Administrative Deficiency process (it traditionally has not), then this is another exception to the rule.

Section 10.202(1)(L) Ineligible Applicants and Applications

Issue: This section requires disclosure in the Application. Should it also refer to the Pre-Application, as it is preferable for TDHCA to handle this disclosure as soon as possible in the process? If a denial is brought to the Board for hearing, what is the consequence if the Board determines certain individuals may not be involved with the Application? Is the Application terminated, or can the Applicant change out those individuals? The consequences of the decision are not explicitly stated.

Section 10.202(1)(M) Ineligible Applicants and Applications

Issue: It should be clear that filing a permitted challenge does not constitute "creating opposition to any Application."

Section 10.202(2)(A) Ineligible Applicants and Applications

Recommendation: In the third sentence, insert the phrase "so long as the Application remains eligible for funding" after the phrase "remains in effect."

Section 10.204(5)(A) Required Documentation for Application Submission

Issue: This section refers to 150 units but does not describe what kind of units can qualify.

Issue: This section refers to the development of 150 units but does not necessarily require the completion of 150 units. For instance, a party that has developed but not completed 150 units could provide a Construction Contract or a Development Agreement.

Recommendation: I think the language in this section could be tightened and clarified to provide users better direction as to what is required for an experience certificate.

Recommendation: In Section 10.204(5)(A)(i), at the end of the phrase, insert "prior to the first date of the Application Acceptance Period."

Section 10.204(6)(A)(i)(II) Required Documentation for Application Submission

Recommendation: For clarity, insert an "or" after the semi-colon in this subsection.

Section 10.204(6)(A)(ii)(III) Required Documentation for Application Submission

Issue: This subsection asks for term sheets for interim and permanent loans. To indicate that the term sheet must include a minimum loan term of 15 years in inconsistent with the concept of an interim loan.

Recommendation: Insert the phrase "for the permanent loan," at the beginning of subsection (III).

Section 10.204(6)(A)(ii)(VI) Required Documentation for Application Submission

Recommendation: Insert the phrase "if applicable" after the phrase "tax credits" to accommodate multifamily funding that does not include tax credits.

Section 10.204(6)(B) Required Documentation for Application Submission

Recommendation: Insert the phrase "or private" after the phrase "federal, state or local."

Section 10.204(13) Required Documentation for Application Submission

Recommendation: In the opening paragraph, refer to a nonprofit General Partner or Owner.

Reasoning: In HOME-only transactions, a limited partnership structure likely will not be utilized.

Section 10.204(13)(B) Required Documentation for Application Submission

Recommendation: In the first sentence, refer to a nonprofit General Partner or Owner.

Reasoning: In HOME-only transactions, a limited partnership structure likely will not be utilized.

Section 10.204(13)(B) Required Documentation for Application Submission

Issue: In addition to receiving the determination letter from the IRS, it may be helpful for TDHCA to have a copy of the nonprofit organization's Certificate of Formation filed with the Secretary of State, in order to cross-check the organization's exempt purpose and ensure it includes housing activities.

Section 10.205 Required Third Party Reports

Issue: In the opening paragraph, the rule states:

"The Department may request additional information from the report provider or revisions to the report as needed."

Does this happen through the Administrative Deficiency process?

Section 10.205(3) Required Third Party Reports

Issue: The definition of Rehabilitation includes Reconstruction. Does it make sense for a Reconstruction development to obtain a property condition assessment?

Section 10.205(5) Required Third Party Reports

Issue: Should a civil engineer feasibility study be required for Reconstruction in any context?

Recommendation: It is not clear what the subsections are intended to do, as there is no appropriate leading sentence for the list. It could be restructured to say something like the following:

"The report shall include an Executive Summary and shall evidence the engineer's review and conclusions regarding the following:"

From there, items (B) through (O) could be listed.

Section 10.206 Board Decisions

Issue: This paragraph opens with a broad statement about the "Board's decisions." What decisions? Decisions for awards, ineligibility, appeals? This paragraph needs to be tightened up, lest it be interpreted to apply to contexts unintended.

Section 10.207(a) Waiver of Rules for Applications

Issue: Is a pre-clearance determination referring to the same process described in Section 10.3(b)?

Section 10.207(c) Waiver of Rules for Applications

Issue: Subsection (a) says the waiver provisions apply to Subchapter B and C. Subsection (c) refers to waiver of the rules in Subchapters A through C, E, and G. Why is there a discrepancy?

Section 10.208 Forms and Templates

Issue: I am strongly opposed to including any Application forms in the rules. These Application forms, as published, present numerous concerns. They utilize terms and definitions inconsistently, they have duplicative provisions, and they just generally need to be cleaned up. TDHCA should not lock itself in to a set of forms at this juncture, when the full Application form has not been established. Additionally, from time to time, an Applicant needs to be able to make some changes to the form to accommodate unique circumstances. In the past, we have been able to do this with the cooperation of TDHCA staff. If the forms are promulgated by rule, the ability to make changes is lessened and could be problematic for Applicants. If TDHCA wants the Board and the public to be acquainted with the various forms, there are other ways to promote this, such as including them as a Report Item on a Board agenda.

I am happy to respond to any questions about these comments. Thank you for your time

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MEMORANDUM

TO: Texas Department of Housing and Community Affairs

FROM: Cynthia Bast

DATE: November 6, 2012

RE: PUBLIC COMMENTS ON RULES – **CHAPTER 10, SUBCHAPTER G – FEE SCHEDULE, APPEALS AND OTHER PROVISIONS**

On behalf of Locke Lord LLP, please find comments to draft 10 Texas Administrative Code, Chapter 10, Subchapter G.

Section 10.901(12) Extension Fees

Issue: As drafted and literally read, this section provides for an owner to be exempt from paying a fee if it applies 30 days advance of the deadline and to pay a fee if it applies after the deadline, but it does not address the period consisting of the 30 days before the deadline.

Proposed Change:

All extension requests for deadlines relating to the Carryover, 10 Percent Test (submission and expenditure), or Cost Certification requirements ~~that are submitted after the applicable deadline must be accompanied by an extension fee of $2,500. Extension requests~~ submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee. Any extension request submitted fewer than thirty (30) days in advance or after the applicable deadline must be accompanied by an extension fee of $2,500.

Section 10.901(14) Right of First Refusal

Issue: As we have seen in recent practice, it may be necessary or appropriate for an owner to go through a second right of first refusal process. Will it be possible to obtain a fee waiver for a second right of first refusal request in unusual circumstances?

Section 10.901(18) Unused Credit or Penalty Fee

Issue: Is it appropriate to have a point penalty for the Tax Credit program in this section, or should it appear in the QAP? Perhaps it should appear in this section and be cross-referenced in the QAP?

Section 10.901(19) Compliance Monitoring Fee

Issue: In the header, TDHCA distinguishes that this fee applies to [HTC Developments Only.] This is a very helpful reference, and it would be ideal for TDHCA to use this system throughout to distinguish rules that are unique to the Tax Credit program. This would be most helpful to users who are not using Tax Credit funding.

Section 10.902(a) Appeals

Issue: Section 10.407(f) allows an appeal on right of first refusal matters, but that is not reflected in Section 10.902(a).

Proposed Change:

Insert a new subsection (9) that reads “any other matter for which an appeal is permitted under this chapter”.

Section 10.902(b) Appeals

Issue: There appears to be a grammatical problem in this sentence.

Proposed Change:

“An Applicant or Development Owner may not appeal a decision made regarding an Application ~~or~~ filed by or an issue related to another Applicant or Development Owner”

Section 10.901(d) Appeals

Issue: Thee appears to be a grammatical problem in the fourth sentence.

Proposed Change:

"Full disclosure allows the Executive Director to make a fully informed decision based on a complete analysis of the circumstances and verification of any information that may warrant a granting of the appeal in the Applicant's or Development Owner's favor"

Section 10.901(f) Appeals

Issue: This section states that the Board "may not review any information not contained in or filed with the original Application." This seems inconsistent with subsection (d), immediately above, which states ". . . additional information can be provided in accordance with any rules related to public comment before the Board."

Recommendation: Reconcile these provisions to make clear the kind of information that can be included in an appeal.

Section 10.903(2) Adherence to Obligations

Issue: There are multiple problems with subsection (2). First, this Adherence to Obligations policy should apply to all of the funding programs administered by TDHCA. Yet, subsections (A) and (B) refer to prohibiting an owner from applying in the Tax Credit program. It seems this should more broadly refer to all funding programs. Additionally, the last phrase of subsections (A) and (B) does not make sense and needs to be clarified. See the highlighted language.

> ". . . the date that the non-conforming aspect, or lack of financing, was recognized by the Department of the need for the amendment; the placed in service date; or the date the amendment is accepted by the Board"

Recommendation: Revise this provision so that it adequately accommodates all of the Department's funding programs and is consistent with other provisions of the rules relating to similar consequences, including the provisions for administrative penalties and the compliance rules.

Section 10.904 Alternative Dispute Resolution Policy

Issue: Should it be clarified whether a party must exhaust administrative appeals before pursuing ADR?

Issue: Is the "informal conference with staff" permitted in this section considered an ADR proceeding?

I am happy to respond to any questions about these comments. Thank you for your time

Comment (14)
Dennis Hoover, Hamilton Valley Management

From: Dennis Hoover
To: cameron.dorsey@tdhca.state.tx.us; Jean Latsha; Teresa Morales (teresa.morales@tdhca.state.tx.us);
cc: Gilberto De Los Santos; Benjamin Farmer; Claire Palmer; Ginger McGuire; jbrown@taahp.org;
Subject: RE: support for Public comment
Date: Monday, October 01, 2012 1:22:05 PM
Attachments: OpportunityIndex comparison.xls

Sorry, I forgot the attachment.

From: Dennis Hoover
Sent: Friday, September 28, 2012 4:50 PM
To: cameron.dorsey@tdhca.state.tx.us; 'Jean Latsha'; Teresa Morales (teresa.morales@tdhca.state.tx.us)
Cc: Gilberto De Los Santos; Benjamin Farmer; 'Claire Palmer'; Ginger McGuire; jbrown@taahp.org
Subject: support for Public comment

Cameron, Teresa and Jean,
The first sheet is the summary sheet. This shows what % of Urban Tracts by Region are over the qualifying Poverty level (15% or 35%) for Opportunity Index. It also shows at the bottom the same for the Rural for the whole state with Regions 11 & 13 broken out.

It also shows what percentage of 1st and 2nd quartiles would not qualify because of the Poverty level of the tract.

To correct the inequity between the Regions I recommend either:
The Poverty Index be deleted for Rural and all Regions have 50% or more of its tract over the Poverty level, or
The Poverty levels in Regions 2, 8, 10 and 11 be increased to the following level: (so that at least 50% of the Tracts in each Region would qualify)

Region	Metro Areas	Current Poverty Level	% of Census Tracts that qualify Under Current Policy	Proposed Poverty Level	% of Census Tracts that would qualify Under Proposed Policy
13	El Paso	35%	71%	35%	71%
11	McAllen-Brownsville-Laredo	35%	47%	37%	52%
		Discrepancy	**24%**		**19%**
1	Amarillo	15%	50%	15%	50%
2	Abilene-Wichita Falls	15%	44%	18%	52%
3	Dallas--Fort Worth	15%	62%	15%	62%
4	Longview-Tyler-Texarkana	15%	51%	15%	51%
5	Beaumont	15%	52%	15%	52%
6	Houston	15%	55%	15%	55%
7	Austin	15%	64%	15%	64%
8	Bryan-Temple-Waco	15%	36%	20%	51%
9	San Antonio	15%	51%	15%	51%
10	Corpus Christi-Victoria	15%	42%	17%	52%
12	Midland-Odessa-San Angelo	15%	51%	15%	51%
		Discrepancy	**28%**		**13%**

Dennis Hoover
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From: Dennis Hoover
To: Cameron Dorsey; Jean Latsha;
cc: Gilberto De Los Santos; Kim Youngquist; Ginger McGuire; Claire Palmer; Teresa Morales;
Subject: How to make Public comment
Date: Wednesday, September 26, 2012 1:39:47 PM

Cameron or Teresa,
Do I need to boil this down, make it shorter or whatever for Public Comment?
Also, on the Poverty Rate % on the Opportunity Index: How does the rounding work? In other words if a census tract is 35.08% in Region 11, how is it judged?
Thanks,

Dennis Hoover
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From: Dennis Hoover
Sent: Tuesday, September 25, 2012 5:24 PM
To: 'Cameron Dorsey'; Jean Latsha
Cc: Gilberto De Los Santos; Kim Youngquist; Ginger McGuire; Claire Palmer; Benjamin Farmer; Teresa Morales
Subject: RE: Summary of Poverty Rate for Regions Metro Areas (2).xlsx

Cameron, Isn't the Poverty level determined for the entire US as a whole? If it is (and I think it is) then the upper quartile census tracts in high poverty Regions are being discriminated against because of the inclusion of the Poverty level. It seems like the Poverty level should be tossed out because it in too many cases excludes desirable areas that would be in the top two quartiles. Doesn't the quartile determination and Educational Excellence, by themselves, accomplish the purpose of the Opportunity Index?

Region 11 has a very high Poverty rate as compared to rest of the US as a whole. We're making this point because our census tract in particular is 35.1% poverty, but it's in the 2nd quartile of Edinburg, and there are census tracts in Region 11 as well as other Regions which are in the 1ST and 2nd Quartiles—but do not qualify under the poverty rate. It's a good area of town where the Housing Authority has chosen to buy land (already bought it) and build, it has Exemplary and Recognized

schools. If I understand the purpose of the Opportunity Index then this is where it is directing us to build.

For example, if every census tract in town had above 35% poverty then you could build nowhere in the whole city, even in the very best part of town. Isn't this the same point being made for dropping the Poverty level from the Rural areas, and the reason for increasing the poverty level from 15% to 35% in Regions 11 and 13? Go to the attached file called "Opportunity Index Region II combined" and go down to 35% poverty line. You will see there how many census tracts are in the 1st or 2nd quartile but above the 35% Poverty level.

Look in the sheet called "Copy of Other Regions Opportunity Index" and look at the census tract below the qualifying poverty levels. You can see how many tracts in the top two quartiles are being excluded because of the Poverty Level. What is true for Region II is also true for Region 8, somewhat for Region 9 and 10, and of course less true for the higher income areas. This discriminates against the census tracts in the lower income Regions, even though Region 11 is at 35%.

From: Cameron Dorsey [mailto:cameron.dorsey@tdhca.state.tx.us]
Sent: Tuesday, September 25, 2012 10:22 AM
To: Dennis Hoover; cameron.dorsey@tdhca.state.tx.us; Jean Latsha
Cc: Gilberto De Los Santos; Kim Youngquist; Ginger McGuire; Claire Palmer; Benjamin Farmer; Teresa Morales
Subject: RE: Summary of Poverty Rate for Regions Metro Areas (2).xlsx

Dennis,

This makes a case but it is unlikely to be one that will change staff's recommendation. Changing the poverty rate in this way all but renders that particular factor insignificant because the median income factor alone limits the number of tracts to 50% without the poverty rate used at all. That is the explicit purpose of the median income factor. The idea that we should change the poverty rate factor to allow 50% of the tracts to qualify would not be all that different from removing the poverty rate as a factor altogether. Also, I don't think it's accurate to say that this puts the sub-regions on a level playing field since it only accounts for two of the three factors. There is no way of knowing how these figures would be augmented by the school rating factor. Aside from this, I don't believe that there is an effort from staff's perspective to craft scoring criteria that result in the same

number sites qualifying for points under each of the scoring criteria within each of the sub-regions. If this were a rationale for modifying this factor then it seems the same argument could be made for a majority of the other scoring criteria. For example, we could apply a similar logic based on rent limit differences between sub-regions. The purpose of the RAF is to address these kinds of issues and differences.

We'll make sure we discuss it more internally but these are my initial thoughts in response to your question regarding whether this research makes the case.

Let me know if you have any other thoughts.

Thanks,
Cameron

.....
Cameron F. Dorsey
Director, Multifamily Finance
Texas Department of Housing and Community Affairs
Ph. 512.475.2213

From: Dennis Hoover [mailto:DennisHoover@hamiltonvalley.com]
Sent: Tuesday, September 25, 2012 9:06 AM
To: cameron.dorsey@tdhca.state.tx.us; Jean Latsha
Cc: Gilberto De Los Santos; Kim Youngquist; Ginger McGuire; Claire Palmer; Benjamin Farmer
Subject: Summary of Poverty Rate for Regions Metro Areas (2).xlsx

Cameron and Jean,
Mr. De los Santos and I are preparing a public comment on the Poverty rate. The attached chart he has prepared shows the % of census tracts that currently qualify for the Opportunity Index, in the particular regions, but only using the Urban tracts. The point being that if we want to level the playing field so that 50% of the tracts in all areas would be eligible then:
Region 2 would need their poverty level raised to 18%,
Region 8 would need their poverty level raised to 20%,
Region 10 would need their poverty level raised to 17%,
Region 11 would need their poverty level raised to 37%,

The question is, do we need to research the poverty levels in the Rural tracts also, or does this research make the case by itself?
Thanks,

Dennis Hoover
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Comment (15)
Ken Smith
Revitalize South Dallas Coalition

October 2, 2012

Mr. Jesus Azanza
TAAHP
221 E. 9th Street, Ste 409
Austin, TX 78701

RE: ***RSDC's*** Public Comment to Proposed 2013 TDHCA QAP

Dear Mr. Azanza:

I am President of ***Revitalize South Dallas Coalition,*** a non-profit that champions economic development, revitalization and job creation in South Dallas, a low-income QCT. Our address is P.O. Box 153247, Dallas, Texas 75315. Our website is www.rsdc.us.

We disagree with judge Sidney Fitzwater's ruling that favors awarding tax credits to organizations and/or developers in "HOAs" (high opportunity areas) because it negates Congress's original intent. Section 42 of the Internal Revenue Code shows a clear congressional preference for assisting those with the lowest incomes; placing LIHTC projects in Qualified Census Tracts; and serving low-income tenants over extended periods of time to ensure success.

Therefore, we support TDHCA's *Motion to Alter or Amend the Judgment or Have a New Trial* that argues that the judge's opinion related to Section 42 of the IRC is misinterpreted and therefore wrong. The judge's order, in essence, rules that the only way low-income people can succeed is to move to more affluent areas – dislodging them from family and friends; diluting their voting strength; diminishing their political clout; and abandoning the institutions they have built. It advances the notion that, somehow, the majority's "ice" is "colder". And, it overlooks the fact that in many cases, these same people **built** the communities they live in; only to see them decline after an earlier period of "flight".

TDHCA is "between a rock and a hard place." It is trying to abide by the Judge's Remedial Plan, while upholding the spirit of the founding legislation. But, the two don't mix! Although we support TDHCA's *Motion to Appeal*, we do not support its 2013 QAP process that awards more "points" to projects in high income areas and in areas with exemplary schools. The unintended result is having one set of rules for North Texas and another for the rest of the state. And, the ruling hastens the abandonment of QCTs by promoting "flight" outward. This diminishes population; forces school's to close due to low enrollment; and leaves QCTs increasingly to the less desirable elements. Abandonment accelerates financial red-lining, which had already contributed to neglect, and the vicious cycle continues. These are the conditions LIHTCs were created to fight!

We urge the following:

1. If the Judge denies TDHCA's Motion to Alter the Judgment, or to have a new trial**,** TDHCA should appeal the decision and order,
2. TDHCA should file a motion requesting a stay of the Judge's order until a court of final resort determines the case,
3. TDHCA should have only 1 QAP for all of Texas, and
4. TDHCA should revise sections of its Proposed 2013 QAP, so that projects in QCTs (low-income neighborhoods) that are part of a comprehensive revitalization supported by the City have a competitive opportunity to receive an award.

Other options to improve the chances that revitalization developments will be competitive in the tax credit process include amending the 2013 QAP to include the following points:

- Federal law mandates that at least 10% of the tax credit awards each year go to non-profit sponsors. A non-profit set-aside is administered in the QAP. Since non-profits are at the heart of community revitalization, giving a preference for revitalization developments for those applications competing in the non-profit set aside might ensure that revitalization efforts by non-profits can succeed without significantly impacting the other 90% of the tax credit awards in the state.
- State law requires that TDHCA award a very substantial number of points in the competitive process for developments supported by financing from the city, county or equivalent. This scoring item could be revised so that the threshold for receiving points is at a level where the development would receive these points only if there was a major financing infusion from the local government. That way, revitalization developments that are receiving large amounts of local funding would be preferred, and those developments that are not receiving similar levels of support would not.

Thank you for considering our comments.

Sincerely,

Ken Smith, President
Revitalize South Dallas Coalition
214-770-3068 c; 214-428-4966 h
info@rsdc.us

Comment (16)
Linda Brown, Casa Linda Development Corporation

Casa Linda Development Corporation

VIA EMAIL

October 16, 2012

Ms. Jean Latsha
Manager, 9% Housing Tax Credit Program
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701-2410

RE: Recommended Language Changes to the Proposed 2013 Qualified Allocation Plan (QAP)

Dear Jean:

In response to the department's request for public comment to the proposed 2013 Qualified Allocation Plan, we offer the attached recommended changes. Thank you for the opportunity to comment and offer our thoughts to improving the QAP for next year. Should you wish to discuss or have any questions, please do not hesitate to contact either Sara Reidy at 214-941-0089 or myself.

We appreciate the staff's hard work in preparing a document for review and look forward to another successful round.

Sincerely,

Linda S. Brown
President/Partner

C: Cameron Dorsey, TDHCA Director of Multifamily Finance
Sara Reidy, Casa Linda Development Corp., EVP/Partner

2010 Kessler Parkway, Dallas, TX 75208
Phone: 214-941-0089; Fax: 1-888-811-2360

Casa Linda Development Corporation

2013 Recommended QAP Changes

11.9(2) Sponsor Characteristics. §42(m)(1)(C)(iv) (2). An application may qualify to receive points under subparagraph (A) or (B) of this paragraph. Page 11 and 12 of the Draft QAP

Why Do We Need The Change? The Draft QAP Language as written does not adequately incentivise inexperienced HUB's and HUB's but not more than 2 deals through 8609's to effectively compete. We propose the following recommended language that reflects the Board's direction to provide HUB's an opportunity to 1) enter the program and 2) further encourage HUB owned projects by incentivizing a HUB to continue to build on previous limited experience. A HUB with 3 deals completed through 8609's is considered to have gained the experience necessary to effectively compete.

Recommended Language:
(2) Sponsor Characteristics. §42(m)(1)(C) (iv) (2). An application may qualify to receive points under subparagraph (A) or (B) of this paragraph.

(A) An Application may qualify to receive up to one (1) point provided the ownership structure meets the requirement described in clause (i) **or** two (2) points provided the ownership structure meets the ownership structure in clause (ii).

i. A HUB as certified by the Texas Comptroller of Public Accounts that is unable to qualify for a TDHCA Experience Certificate and has an ownership interest and receives no less than ten percent (10%) of the developer fee and twenty percent (20%) of the cash flow.

ii. A HUB as certified by the Texas Comptroller of Public Accounts and owns 100% of the General Partnership interest and has received 8609's on one (1) but not more than two (2) housing tax credit projects through 8609's.

(6)(C)(i) Community Revitalization Plan for Developments located in a Rural Area.

Why Do We Need The Change? In rural communities, capital projects are less frequent and more likely to be further away from the development site. Therefore, we recommend the following adjustments to the language to position community development/revitalization efforts in rural areas on balance to the larger urban communities in Texas.

Recommended changes to Current Draft of QAP are highlighted in red. Page 19 in the Draft QAP.

(i) An Application may qualify for up to six (6) points if the city, county, or state has approved expansion of any of the basic infrastructure or projects to the Development Site described in subclauses (I) – (IV) of this clause, or improvements to areas within a one mile of the Development Site, unless a different distance is otherwise identified. The Applicant or Related Party cannot contribute funds for or finance the project or infrastructure. The project or infrastructure must have been completed no more than thirty-six (36) months prior to the beginning of the Application Acceptance Period or be approved and projected to be completed within twenty-four (24) months from the beginning of the Application Acceptance Period.

2010 Kessler Parkway, Dallas, TX 75208
Phone: 214-941-0089; Fax: 1-888-811-2360

Comment (17)
Bernadette Nutall, Dallas ISD

Mike Miles
Superintendent of Schools

Dallas Independent School District
Educating All Students For Success

October 31, 2012

Tim Irvine
Teresa Morales
TDHCA
P.O. Box 13941
Austin, TX 78711-3941

Dear Mr. Irvine and Ms. Morales,

My name is Bernadette Nutall, and I serve as a trustee of Dallas ISD. I represent the Fair Park/South Dallas community.

Due to blighted conditions and poor public policy decisions over the past 40 years, we have endured declining population and quality housing stock, excessive joblessness and other conditions that are symptomatic of stubborn poverty. However, throughout all this, I and the residents of the area have remained committed and worked steadfastly for a healthy, mixed-income and diverse community.

As you know, the Frazier area is part of a revitalization effort that has been in progress for quite some time, and with no conventional financing available, the Low Income Housing Tax Credits (LIHTC) are key for the revitalization to continue.

I understand the LIHTC were originally designed for areas of revitalization, in fact, according to your own Motion filed in the ICP v. TDHCA lawsuit, "Section 42 shows a clear congressional preference for assisting those with the lowest incomes, serving low-income tenants for long periods of time, and placing projects in QCTs ...Congress clearly intended that LIHTC should be used to help low-income tenants for long periods of time and to revitalize low income areas."

Therefore, I urge you to do the following:

- If the Judge denies the Motion, TDHCA should appeal the decision and Order
- File a motion requesting a stay of the judge's Order until a court of final resort determines the case
- Revise sections of the Proposed 2013 QAP, so that projects in QCTs (low-income neighborhoods) that are part of a comprehensive revitalization supported by the city have a competitive opportunity to receive an award

Respectfully,

Bernadette Nutall

Bernadette Nutall

Cc: TDHCA Board Members

3700 Ross Ave.
Dallas, TX 75204
(972) 925-3700
www.dallasisd.org

(17)

9/18 - Cameron

SCANNED

CC: TKI, JL, BD, JM

Mike Miles
Superintendent of Schools

Dallas Independent School District
Educating All Students For Success

September 10, 2012

Mr. Tim Irvine
Executive Director
TDHCA
PO Box 13941
Austin, TX 78711-3941

Dear Mr. Irvine:

My name is Bernadette Nutall, and I serve as a trustee of Dallas ISD. I represent the Fair Park/South Dallas community. I previously worked for DISD at D. C. James Elementary (now the Irma Rangel Girls Academy) at Fair Park in the Frazier neighborhood. I left DISD to found and lead Circle of Support Inc., a non-profit which for the past 10 years has supported young girls in the neighborhood both during the school year and with summer programs. We have found we must help young people both during the school year and summers to give them the best chance for success in school and in life.

In these capacities, I have a firsthand knowledge of the people, schools and other conditions in the Frazier neighborhood. I have written support letters for Frazier's Hatcher Square project and deeply believe in the process and hope for comprehensive revitalization of our neighborhood. We've made extraordinary progress, against all odds.

Due to blighted conditions and poor public policy decisions over the past 40 years, we have endured declining population and quality housing stock, excessive joblessness and other conditions that are symptomatic of stubborn poverty. However, throughout all this, I and the residents of the area have remained committed and worked steadfastly for a healthy, mixed-Income and diverse community.

We have experienced considerable success. For instance, over 100 new homes have been built in the community. There has also been the construction of a new Baylor Healthcare facility. The community is experiencing reduced crime and perhaps most importantly, improved schools. It's been a struggle and much is still needed, but we're on the right path.

We need your help to keep this going. With de-population, we need more housing – for people of all ages, ethnicities and incomes. To get the middle-class demographic to move back into the community, we must have good schools – and I am totally committed to that end – that's why I ran for and twice have been elected to the School Board.

I am familiar with FRI's work, including getting more affordable housing for our community and support for our neighborhood schools and jobs. In its proposed 2013 QAP for housing tax credit grants, I understand TDHCA has included a scoring item for

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"Education Excellence," where a project may score 3 additional points if the schools in the area are "Recognized" or "Exemplary." I share this aspiration in the longer term, and am pushing hard for this exact outcome in all of our schools. However, we're not there yet. While several of our schools currently meet this requirement, having this as part of the selection criteria would only result in denying crucial, affordable housing to our community. This compounds a growing economic development problem which is contradictory to the spirit and intent of the tax credit program. Additionally, offering these 3 extra points, which no doubt the projects in High Opportunity Areas (HOAs) will score, would basically favor projects in those HOAs.

It would be cruel and disingenuous to say we prefer good projects in low-income neighborhoods but then set unachievable hurdles that block revitalization, and instead, send the housing grants to affluent suburbs.

We've made great progress with our schools, but national data (and here as well) reveal that schools in middle and upper class communities, mainly white neighborhoods, are much more likely to be Exemplary and Recognized at this time.

It's not impossible for schools in low-income, ethnic minority neighborhoods to consistently reach this level, but it will take more time and resources. For example, Frazier Elementary earned an Exemplary rating in 2009, but was closed this year due to declining population. H. S. Thompson Elementary was rated either Recognized or Exemplary from 2007 through 2010under Principal Kamalia Cotton. The school even won a National Blue Ribbon award in 2010. The school was again rated Exemplary in 2011. However, when the Turner Courts housing project was demolished, the school was closed this year due to inadequate student population. Hopefully when Buckeye Trails is completed the school can reopen. The neighborhood high school, Madison, was poorly performing until Marion Willard was named principal 5 years ago, and she has turned the school's performance around. It has barely missed the "Recognized" category for several years running, and the graduation rate has increased steadily ever since.

Unfortunately, this issue is not just limited to the Frazier neighborhood. In other low-income neighborhoods in the Southern Sector, including those undergoing revitalization, the challenges to remaining open, while also meeting rating thresholds are significant. However, our record for continuous improvement is the key – i.e., as a result of Dallas Achieves and Dallas Commit (both multi-million dollar and multi-year commitments form DISD in partnership with parents and the business and philanthropic community) and the effort of excellent school principals and other reforms, we are making significant gains including steadily increasing academic scores and graduation rates.

You see, despite our struggle – in the Frazier neighborhood, we have demonstrated that poor children can learn. (TI has been exceptionally helpful for over 15 years in sponsoring the Margaret Cone Head Start program at Frazier so that low-income children arrive at 1st grade already reading or ready to read and learn.) Yet without affordable housing, we lose population and must close or consolidate schools. This is a vicious cycle.

I recommend the elimination of scoring related to educational excellence altogether; otherwise, I need your help at TDHCA in defining the education standards for your QAP in ways that take into consideration the realities noted above. Standards something like the following that may be certified by the school district superintendent, as I recognize these standards may be difficult to evaluate:

I would suggest that TDHCA look at the trends of a school district versus the static figure of a previous academic rating. For instance, is the performance of the schools in the affected area trending upward over a 3 to 5 year period? Is the performance of the school district improving over a similar time frame? It is also of utmost importance to look at the economic and societal issues that often affect the performance of a school. When families struggle with such daily tasks as receiving adequate health care and even basic nutrition, academics and school performance can, and often do, suffer. However, are these same challenges even present in more affluent suburban school districts?

Noting the improvement of a school and district is a better gauge of future potential and results that can be expected. As I have pointed out, DISD had schools meet exemplary status, yet still were forced to close due to non-academic related issues. These same issues cannot be addressed without the support of TDHCA's tax credit program. After all, the goal of the tax credit program is to improve the quality of a community. No better area would be better served than the Fair Park/South Dallas community.

We are the proverbial 'boots- on- the ground' or front line troops in an ever challenging battle. Academic theories that apply to affluent neighborhoods are not necessarily applicable here. This is not an excuse, but rather a practical view of the real and significant challenges we face in preparing our children for school, a life of good citizenship and productivity beyond.

I would be pleased to come to Austin and speak with you, your staff or board if that is helpful. I would also like to extend an invitation to you and your staff to come to Dallas to see first-hand what we are accomplishing and facing.

We appreciate all you are doing. It is extraordinarily important to our community.

Sincerely yours,

Bernadette Nutall

Bernadette Nutall

cc: TDHCA Board Members
Mayor Mike Rawlings
Senator Royce West
Representative Rafael Anchia
Representative Daniel Branch
Representative Eric Johnson

Comment (18)
Rafael Anchia
State Representative District 103

STATE OF TEXAS
HOUSE OF REPRESENTATIVES
DISTRICT 103

RAFAEL ANCHIA
MEMBER

October 4, 2012

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941

Dear Mr. Irvine:

I seek your support on a crucial and urgent matter relating to needed affordable housing in our urban, low-income neighborhoods in Texas. As you know, in the Inclusive Communities Project case TDHCA has filed a motion to alter or amend the judgment or have a new trial, arguing that the Judge's ruling is in error. According to your supporting brief: "Section 42 (of IRC) shows a clear congressional preference for assisting those with the lowest incomes, serving low-income tenants for long periods of time, and placing projects in Qualified Census Tracts (QCTs). . . Congress clearly intended that low income housing tax credits(LIHTCs) should be used to help low-income tenants for long periods of time and to revitalize low-income areas." For TDHCA to now give preference to projects in affluent suburbs, as required by the proposed 2013 Qualified Action Plan (QAP), would not only conflict with that argument, but also would thwart our cities' revitalization efforts, and be unfair to the residents who want to continue to reside in their communities. Of course, in principle, affordable housing should be available everywhere; but, for large cities, the crucial problem is one of scarcity of tax credits in relation to overwhelming demand, and lack of conventional financing for affordable housing in low-income neighborhoods. So, the issue is one of priorities.

As I understand it, the new Qualified Action Plan (QAP) for 2013 will be used for the scoring of the highly competitive 9% LIHTCs process throughout the state. The effect of the Remedial Plan and the Proposed 2013 QAP (as was the case with the 2012 QAP) will be to virtually curtail awards of LIHTCs to low- income areas that we, in our major Texas cities, are seeking to revitalize. Although addressing only North Texas, the Court ruling, and TDHCA's arguments against it, will have state-wide and national implications.

I respectfully urge the following:

1. If the Judge denies TDHCA's Motion to Alter the Judgment, or to have a new trial, TDHCA should appeal the decision and order;
2. TDHCA should file a motion requesting a stay of the Judge's order until a court of final resort determines the case;
3. TDHCA should have only one QAP for all of Texas, and
4. TDHCA should revise sections of its Proposed 2013 QAP, so that projects in QCTs (low-income neighborhoods) that are part of a comprehensive revitalization supported by the City have a competitive opportunity to receive an award.

CAPITOL OFFICE: POST OFFICE BOX 2910 AUSTIN, TEXAS 78768-2910 • (512)463-0746 • FAX: (512) 463-5896
DISTRICT OFFICE: 1111 W. MOCKINGBIRD LANE • SUITE 1330 • DALLAS, TEXAS 75247 • (214) 943-6081 • FAX: (214) 920-9996
RAFAEL.ANCHIA@HOUSE.STATE.TX.US

I ask that TDHCA comply with the four requests made in this letter. Citizens in low-income communities deserve the opportunity to have their neighborhoods revitalized and thriving, and since there is no conventional financing available, LIHTCs are the only hope to provide new affordable housing.

I am available to answer any questions you may have with regard to this issue. Please feel free to contact me at 214-943-6081.

Sincerely,

Rafael Anchia

Cc: J. Paul Oxer, Chair, TDHCA Board
Tom H. Gann - Vice Chair, TDHCA Board
Leslie Bingham Escareño, TDHCA Board Member
Lowell A. Keig, TDHCA Board Member
Dr. Juan Sanchez Muñoz, TDHCA Board Member
J. Mark McWatters, TDHCA Board Member

Comment (19)
Benjamin Farmer
Rural Rental Housing Association

RRHA OF TEXAS
RURAL RENTAL HOUSING ASSOCIATION OF TEXAS, INC.

October 16, 2012

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Dear Mr. Irvine:

Thank you for the opportunity to present the views of the Members of the Rural Rental Housing Association of Texas on changes to the 2013 Qualified Allocation Plan. On behalf of our more than 100 Associate Members and approximately 700+ TxRD-USDA financed Project Members who control almost 26,000 apartment units in Texas, our comments reflect our experience, as well as, our challenges building, owning, managing and rehabbing. The comments below represent the consensus of our Membership.

The Low Income Housing Tax Credits (LIHTC) program is the most successful rental housing program in decades. In 2010, half of all multifamily starts were financed by the Housing Credit according to NAHB. In rural communities, apartments with tax credits are often the only new rental housing that has been built in 20 or more years. It is often the only available source of funding for preservation, transfer and rehab of aging properties because of the underwriting challenges and the population targets of the units.

More responsibility is going to LIHTC to solve the nation's rental housing shortages and in this economic and political environment no new affordable housing programs are being created leaving the rural communities with difficult choices when they want to improve or expand their home towns.

1. Elderly. The Texas Rural Statewide market analysis identifies senior's as the stable and growing population for rural Texas, and a need for new and rehabilitated projects to offer living options for seniors that do not want to move from their rural community in later years. While younger families are moving to larger cities, the elderly population is growing in rural Texas. Elderly projects in rural areas should receive parity in scoring points with family developments because of the demand for restricted elderly in these areas.

2. 11.4 (b) and (c)(2)(A). Tax Credit Request and Award Limits. Regarding the maximum request limit, we support the draft language allowing an application request amount of 150% of the credit amount available in the sub-region. We recommend the language regarding the 30% boost in Eligible Basis read; (A) the Development is located in a Rural Area, **or the development retains existing USDA funding**. This is an important addition to catch 514 and 515 properties that may now be located in exurban areas as a result of geographical growth of the nearby large city.

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E-Mail: office@rrhatx.com

3. 11.9 (B)(2) Competitive HTC Selection Criteria/Sponsor Characteristics. For either 1 or 2 points, this requires either 3 projects with 8609's and 85% compliance score or HUB owning 51% and receiving 20% of cash flow and 10% of the developer fee. This provision freezes the applicant pool at near current participant levels, and it doesn't provide a way for potential applicants to work out of the freeze. By making it very difficult for out of state developers to score competitively, this provision also eliminates some very responsible Texas owners of 514 and 515 properties, as well as experienced and responsible out of state owners, with very few alternative funding outlets available for new construction in rural areas or for rehab of the aging rural rural portfolio. The RRHA opposes this provision in its entirety. If TDHCA wants to target and shut out "bad boys" then this provision doesn't do it.

11.9 (b)(iii) The HUB is a threshold requirement in the QAP already, and to incentivize them further is not necessary. We support the HUB inclusion for 1 point; however, we recommend the 100% aggregate calculation for an additional point be eliminated.

4. 11.9 (c)(2)(A) and (B) Rent Restrictions. Elderly, the largest growing population in rural Texas, should also receive 11 points or 8 or 9 points respectively, along with supportive housing in rural areas.

5. 11.9 (c)(4)(A-E) Opportunity Index. The Draft QAP states that rural is exempt from the poverty level requirement and only has to have acceptable elementary schools, but does not state how the application receives points, if any. Are points received and how, please clarify. In reference to the Poverty Index, in order to remove inequities in the percentage of qualifying census tracts among the regions and to assure that each region has at least 50% of the census tracts in the qualifying Poverty percentage: Raise the Poverty level as follows: Region 2 to 18%; Region 8 to 20%; Region 10 to 17%; Region 11 to 37%.

6. Opportunity Index, set-asides. RRHA further strongly recommends that the At Risk set-aside be excluded from the Opportunity Index scoring criteria. The very intent of the Opportunity Index is to create affordable housing in high opportunity areas with more jobs, better schools, etc. The intent of the At Risk set-aside is to upgrade existing affordable housing stock and assure that it remains affordable. There is no opportunity to relocate an existing property and scoring priorities will lead to decisions being made to rehab based on eligible QAP score rather than a decision based on need and deterioration of the existing property. The Bowen Study commissioned by TDHCA emphasized that, particularly in rural Texas, upgrading the existing affordable housing stock is critically important. The location of these projects is already determined and cannot be relocated simply to score competitively. A quick survey of four RRHA members' properties in current need of rehabilitation showed that out of 53 properties only 10 were in a 1st or 2nd quartile census tract.

7. 11.9 (3) Commitment of Development Funding by Unit of General Local Government. It is unclear if the term of 5 years for a construction can be paid off earlier, and we request a clarification from staff. Construction loans, if you can get one from a local government in a rural area, will be shorter than 5 years, and will likely be higher than the current AFT (.93%). We would like to see specified the ability to prepay anytime before the 5 year term.

8. 11.9 (3)(A) Please provide a calculation example of how (i-v) works in determining the population with a multiplier.

RRHA would also like to see an addition to the local funding entities in rural areas to include any entity under the authority of the city or the county. This would give rural communities the ability to seek funds from local regional organizations that actually may have money to lend, and to fulfill the intent of the provision to have a local financial stake in the project. Most rural cities will not have excess funding to lend outside of these entities.

9. 11.9 (e)(2)(B) Cost of Development per square foot. Comparing construction costs to any number at the time of application is a completely academic exercise, but asking applicants to invest in a very expensive HTC application without even a number for comparison is unfair. If this comparison must remain as a selection point criteria then **we support the TAAHP recommendation t**hat the 2011 QAP language with a cost boost of at least $3000 a unit be reinstated because it best honors the legislative intent and the language of the statutory requirement. It recognizes that we do create different types of housing in different communities that cannot be "averaged," and it does not create a 10 point "unknown" as we make decisions about what developments to pursue.

10. The definition of rural needs to be clarified and one definition needs to be selected to apply to all rural applications in the QAP. ANY 515 should be considered rural and receive the 130% boost, even if the location has become within urban or exurban areas as a result of growth. This addresses the current interpretation of the 2306.003 which staff interprets as a property in an area that is less than 50,000 population, AND is eligible for USDA funding. There are USDA financed aging projects that have become located in exurban areas as a result of geographic and population growth, still serving their intended purpose such as farmworker housing, and they are available for USDA financing. The problem is that USDA relies heavily on LIHTC to solve their transfer/rehab problems with very little preservation financing available nationally. So long as the project retains USDA financing, it should be considered rural for at-risk tax credit purposes as it is for USDA and GNMA purposes. RRHA recommends that the area needs to be less than 50,000 population and/or eligible for USDA funding, specifically the retention of a 514 or a 515 loan. The 538 program is relatively new and is generally limited to areas of 20,000 population or less (some sparsely populated counties are exceptions for the major small city) and should not present an unintended conflict of opportunity.

11. Persons with Special Needs -- the definition of Persons with Special Needs should be expanded. For example, Wounded Warriors as defined by the Wounded Warriors Act of 2008 should be added. Applicants should have the opportunity to obtain Agency approval of other categories of special needs not specifically listed at the time of Cost Certification.

12. Quantifiable Community Participation - The extra point received by an application from a Quantified Neighborhood Organization that has previously opposed a Housing Tax Credit application should be removed. There are "Super Neighborhood associations" whose boundaries cover large portions of some municipalities and who both support and oppose multiple applications. These groups or any neighborhood association's opposition of a project in

a prior year has nothing to do with their perceptions of the merits of an application in 2013 and should not have positive or negative effect on an application in 2013. This point does nothing to further the legislative intent of Quantifiable Community Participation nor reflects the merits of a particular application and should be removed.

13. 11.9(3) UGLG -- RRHA supports the ARCIT comment and believes the graduated scale of funding based on population is a good change and will resolve some of the inequities between urban and rural. However, the language is confusing and we request there be an example in the QAP showing a calculation of the amount. In addition, we request the Department expand the entities allowed to provide funding. These should include "any" entity created and still under the authority of the city or county. (this could include HFCs, EDCs, etc.)

14. 11.9(6) Community Revitalization Plan -- RRHA supports the ARCIT comment and believes that Rural communities that have created redevelopment plans should be able to use those plans in the same way as urban communities do revitalization. Both serve the needs of community in revitalization.

We request that the Department expand the criteria so that rural areas may receive the full points for having either a redevelopment or revitalization plan. We request the Department expand the definition of infrastructure to include other community-wide amenities that would improve the quality of life for residents (i.e. parks).

Thank you for the opportunity to provide the Associations' views on the draft 2013 QAP.

Sincerely,

Benjamin Farmer
President, RRHA

cc: Mr. J. Paul Oxer, Chair, TDHCA Board
Mr. Tom H. Gann, Vice Chair, TDHCA Board
Ms. Leslie Bingham Escareno, TDHCA Board Member
Dr. Juan Sanchez Munoz, TDHCA Board Member
Mr. Lowell A. Keig, TDHCA Board Member
Mr. J. Mark McWatters, TDHCA Board Member
Mr. Cameron Dorsey, Director for Multifamily Housing Programs, TDHCA
Mr. Tom Gouris, Deputy Executive Director for Housing Programs, TDHCA
Ms. Jean Latsha, Competitive Tax Credit Program Manager, TDHCA
Mr. Michael Lyttle, Director of Policy and Public Affairs, TDHCA
Ms. Teresa Morales, Multifamily Division Manager, TDHCA
Mr. Brent Stewart, Director of Real Estate Analysis, TDHCA

Comment (20)
Sarah Anderson, S. Anderson Consulting

From: Cameron Dorsey
To: Teresa Morales;
Subject: FW: QAP Sponsor Characteristics.
Date: Wednesday, September 26, 2012 4:43:05 PM

Sarah would like this to be public comment.

From: Sarah Anderson [mailto:sarah@sarahandersonconsulting.com]
Sent: Wednesday, September 26, 2012 4:08 PM
To: 'Cameron Dorsey'; 'Sarah Andre'
Cc: 'Jean Latsha'; 'Stacy Kaplowitz'; 'Alyssa Carpenter'
Subject: RE: QAP Sponsor Characteristics.

Yes, please. Thanks!

Regards,

Sarah Anderson
S. Anderson Consulting

1305 E. 6th St., #12
Austin, TX 78702
512-554-4721
fax: 512-233-2269

From: Cameron Dorsey [mailto:cameron.dorsey@tdhca.state.tx.us]
Sent: Wednesday, September 26, 2012 4:03 PM
To: Sarah Anderson; Sarah Andre
Cc: Jean Latsha; Stacy Kaplowitz; Alyssa Carpenter
Subject: RE: QAP Sponsor Characteristics.

Thanks Sarah. I suspect that if the Board wants to go in a different direction they will most certainly make a motion to that effect; although I'm not sure at this point what staff will recommend. Would you like us to include this in the official public comment?

-Cameron

From: Sarah Anderson [mailto:sarah@sarahandersonconsulting.com]
Sent: Wednesday, September 26, 2012 3:37 PM
To: 'Cameron Dorsey'; 'Sarah Andre'
Cc: 'Jean Latsha'; 'Stacy Kaplowitz'; 'Alyssa Carpenter'
Subject: RE: QAP Sponsor Characteristics.

I think we just want to be on record restating our opposition to having a scoring item that favors developers who have been in Texas for 5 to 7 years already, and to point out that the scoring item itself and the proposed changes in the Board Approved Draft are not only not reflective of the statements/direction outlined by the Board Chair, but in fact are the complete opposite of his statement's. He had envisioned a scoring item that penalized bad behavior, but was not a barrier to entry to new players with experience.

It seems that this could be a negative scoring item, much like site characteristics were. If you are good or new you are not impacted, but if you are a bad player, then you get dinged. It seems like this would also address Patricia's issues with repeat bad players. There just doesn't seem to be any reason for the Department to be putting up barriers to entry to the program if a sponsor has the experience to participate. We can understand why other Developers may want this scoring item to remain as it is, but simply can't understand why the Department would want to.

Regards,

Sarah Anderson
S. Anderson Consulting

1305 E. 6th St., #12
Austin, TX 78702
512-554-4721
fax: 512-233-2269

From: Cameron Dorsey [mailto:cameron.dorsey@tdhca.state.tx.us]
Sent: Tuesday, September 25, 2012 3:37 PM
To: Sarah Andre
Cc: Jean Latsha; Sarah Anderson; Stacy Kaplowitz; Alyssa Carpenter

Subject: RE: QAP Sponsor Characteristics.

I recall what Mr. Oxer said but this was not part of the motion. The Draft rules published in the register allow staff or the Board modify this item in the final version based on your comments if that's ultimately what staff decides to recommend or the Board decides to approve.

Are you suggesting that we have to recommend something different than what was published in the register? I'm just trying to figure out if you are expecting something specific from me, staff, or the Board or if you just wanted to make sure we were aware of what Mr. Oxer said.

-Cameron

From: Sarah Andre [mailto:sarah@s2adevelopment.com]
Sent: Tuesday, September 25, 2012 3:20 PM
To: Cameron Dorsey
Cc: Jean Latsha; Sarah Anderson; Stacy Kaplowitz; Alyssa Carpenter
Subject: Re: QAP Sponsor Characteristics.

Per my comments at the board meeting, we don't believe there should be a scoring bias for developers who have done deals in Texas. As you can see from the attached transcript, Chairman Oxer very much agreed with that. I spoke to Jean about it last week or maybe the week prior, when the transcript was not out. She was not certain that the board had provided direction, but I felt that they did, that is why I sent her the transcript in my email.

She was also open to suggestions of how to guaranty experience - some of the suggestions I made in my testimony still hold up - look at the number of years in business, the number of units developed, past compliance scores, bankruptcies, law suits etc. Oxer stated in his response to my testimony that he wanted to ding people for poor performance, not reward people for being in Texas.

Sarah Andre
S2A Development Consulting, LLC
1305 East 6th, Suite 12
Austin, Texas 78702
512/698-3369 mobile
512/233-2269 facsimile

On Sep 25, 2012, at 2:52 PM, Cameron Dorsey wrote:

Can I understand what exactly you're asking us to do?

From: Sarah Andre [mailto:sarah@s2adevelopment.com]
Sent: Tuesday, September 25, 2012 12:17 PM
To: Jean Latsha
Cc: Cameron Dorsey; Sarah Anderson; Stacy Kaplowitz; Alyssa Carpenter
Subject: QAP Sponsor Characteristics.

Hi Jean,

Thanks for your time on the phone the other day with regard to the latest draft of the QAP. Per our conversation, I have pulled out the section of the Board meeting transcript that covers comments by me and Stacy Kaplowitz of Herman and Kittle with regard to the Sponsor Characteristics.

I highlighted the start of the comments and the response by Chairman Oxer. It is very clear to me that he did not intend to have the QAP limit people without Texas 8609s from competing on a level playing field. He clearly states that he wants developers who have been problematic in Texas to be penalized - point deductions for bad behavior instead of incentives for being here. I hope you will review the attachment and agree.

Sincerely,

Sarah Andre
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Austin, Texas 78702
512/698-3369 mobile
512/233-2269 facsimile

Comment (22)
Sean Brady, Rea Ventures Group, LLC

October 19, 2012

Texas Department of Housing and Community Affairs
Attention: Cameron Dorsey
P O Box 13941
Austin, Texas 78711-3941

RE: Comments on Draft 2013 Qualified Allocation Plan

Dear Mr. Dorsey:

Thank you for this opportunity to submit our comments on the draft 2013 Texas Qualified Allocation Plan (QAP) to the Texas Department of Housing and Community Affairs (TDHCA). Rea Ventures Group and its managing principal, Bill Rea, has developed over 3,560 units of multi-family affordable housing, 130 units of single-family affordable housing, and 6,460 beds of student housing across the country including several affordable developments in Texas.

Zoning. Currently, the QAP requires an applicant to submit proof that a site is appropriately zoned for its intended use at the time of credit allocation. We respectfully suggest that the QAP be revised to require an applicant to submit proof of zoning completion at the time of full application so as to avoid allocating tax credits to projects that cannot be built due to denied rezoning requests. Most states require an applicant to submit proof of zoning completion at the time of pre-application or full application in order to avoid this situation.

In the 2012 round, we were faced with this exact situation whereby a higher scoring project had in fact been denied its rezoning request by the community. Our project was next in line for funding and was appropriately zoned. Had credits been allocated to this other project whose zoning had been denied and which was requesting less credits than our own project, the remaining credits in our region would have fallen into the collapse and not left sufficient credits in our region to fund our project once that project was unable to provide proof of zoning. This situation was averted by both of our projects being passed over to fund a lower scoring non-profit set aside project. However, we bring this situation to your attention in the hope that it may be prevented in the future.

Sponsor Characteristics. While the QAP currently provides additional points for the 50 percent participation of experienced Texas developers and Texas historically underutilized businesses (HUBs), we request that TDHCA remove these competition-limiting barriers. The current Draft requires a sufficient level of experience under threshold requirements. Additionally, applicants are now required under threshold to use HUBs in the development. This point item is an incentive for the use of something that is already a threshold requirement. In its place, points could be assigned based on levels of development experience (regardless of state), or participation of non-profit developers could be encouraged through the use of points to help ensure the 10 percent non-profit requirement is achieved.

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Phone: (800) 605-7608 ▪ Fax: (404) 745-0530

We recognize that TDHCA is attempting to encourage proven Texas developers but submit that the infusion of new ideas from out of state developers is healthy to providing the highest quality housing at the lowest possible cost to limited state resources. We also understand that TDHCA seeks to support new and disadvantaged developers through awarding points to HUB participation. However, their inexperience frequently proves a burden on general partnerships and introduces unnecessary risk and cost to the viability of affordable housing projects. Mission-driven housing non profits would alternatively bring more capable members to the team while still encouraging disadvantaged developers that cannot accrue assets as a not for profit entity.

Commitment of Development Funding by Unit of General Local Government. We recognize TDHCA's intent to reward those communities most supportive of affordable housing by their willingness to put "skin in the game." However, restricting this funding solely to the municipality or county will drive affordable housing to those urban communities where sufficient resources exist to make loans or grants to support affordable housing. Economic development funds in rural areas are largely concentrated in economic development corporations that operate throughout the county. We respectfully request that TDHCA broaden the definition of allowable funding sources to include any quasi-governmental entity operating under the authorization of the city or county in which a project is located so as to realistically encourage more rural communities to partner in the development of affordable housing in their community.

Community Revitalization Plan. This scoring criteria varies widely between urban and rural areas in a way that favors urban development locations. Those rural communities that have created a redevelopment plan should be rewarded in the same way as urban communities for having the foresight to establish a development plan for future growth. Likewise, those urban communities that make investments in support of an affordable development should also be rewarded in this section. Both serve the needs of community revitalization in urban and rural areas alike. However, in rural areas additional infrastructure such as parks or streetscapes that would be of benefit to residents are not awarded points.

Rural communities should not be discouraged from adopting a redevelopment plan and urban communities should not be discouraged for investing in project-related infrastructure. We therefore respectfully request that TDHCA expand the criteria of this section so that either urban or rural areas can receive full points for having either a redevelopment plan or the extension of utilities. We also encourage TDHCA to expand the definition of infrastructure to include parks, streetscapes, and other community-wide amenities that would improve the quality of life for residents.

Cost of Development Per Square Foot. While we appreciate TDHCA's effort to stretch its resources by grading projects on a bell curve of development cost, this new category will encourage a "lowballing" effect among competitive developers that may leave funded projects with insufficient resources to build and fund reserves. Further, TDHCA already addresses this concern by the establishment of cost caps and used that metric in last year's QAP to assign points. Historical cost data may prove inaccurate this year as developers lower their costs to outcompete rivals for the decisive 10 points assigned to this category.

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We suggest that TDHCA remove the bell curve scoring for construction costs and return to the "not to exceed" cost caps used in last year's QAP. This metric allowed developers to have some confidence in determining whether or not they could afford to build a project. However, if TDHCA chooses to retain the bell curve cost scoring it should include these scores in the pre-application score and publish the median costs in the pre-application log to alert developers to their status as a low-scoring outlier before those developers expend the considerable funds necessary to prepare and submit a full application.

Thank you again for this opportunity to submit comments on the draft 2013 QAP. We appreciate all the hard work of TDHCA in developing quality affordable housing in Texas and are proud to be a part of the team.

Sincerely,

Sean M. Brady, LEED AP
Vice President of Development

2964 Peachtree Road NW, Suite 640 ▪ Atlanta, Georgia 30305
Phone: (800) 605-7608 ▪ Fax: (404) 745-0530

Comment (23)
Walter Moreau, Foundation Communities

From: Cameron Dorsey
To: Teresa Morales;
Subject: FW: comments on draft 2013 QAP
Date: Monday, October 01, 2012 3:44:50 PM
Attachments: image002.png

From: Walter Moreau [mailto:Walter.Moreau@foundcom.org]
Sent: Monday, October 01, 2012 3:38 PM
To: Cameron Dorsey; Jean Latsha
Cc: Tim Irvine; Tom Gouris; Brent Stewart; Jennifer Hicks
Subject: comments on draft 2013 QAP

Thank you for the open, thoughtful and wise process you have followed to develop a successful 2013 QAP. We would like to offer the following comments:

1) 'Sponsor Characteristics' needs to be reworked. Two issues: 1) If you want to give points to good, experienced developers, then the draft criteria does not measure this experience fairly, and 2) sole nonprofit projects (100% nonprofit projects that cannot by definition be a HUB and may qualify for a 50% property tax exemption) should be able to compete on a level playing field and score equivalent points as a HUB. A 100% nonprofit project should be able to get the full 'sponsor characteristic' points to avoid having too few 'nonprofit setaside' projects as necessitated by Section 42.

We recommend that 'good experience' be defined as at least two developments that have received a final clearance letter for the TDHCA final construction inspection and if they have a final compliance score that it be below a 10. The final compliance score looks at a developers total compliance experience.
Please do not utilize the initial physical inspection score (UPCS). This score system penalizes a developer for various items that are beyond their full control. The system does not allow for appeal or amendment of an initial score. The system only allows for repair work to be done, and then rather than a new inspection score, the repairs are factored into the final compliance score.
You do not have a scoring or grading system that can be used to adequately distinguish the best, experienced developers. Reliance on a single measure like the UPCS score is inadequate and inconsistent. The compliance system is primarily designed to determine material noncompliance, but the final score may be the best measure available.
We recommend that if a nonprofit organization is at least 51% (or 100%) of

the general partnership and serves 100% as the developer, then grant one point (by definition this type of sponsor cannot also get the HUB point).

2) Green building practices should be a meaningful threshold item. "Affordable" housing by definition includes affordable utility bills. Water conservation is particularly important across Texas.

We recommend adding the following language in the threshold definitions: (5) Common Amenities (A) "At least two (2) points must come from clause (xxx) for developments greater than 17 units."

3) Do not change the Supportive Housing definition and open up a 'loophole'. We respect the interest in creating a 'service enriched' housing definition, however the definition for the QAP must be carefully constructed as a more functional description of the project to prevent a regular development from claiming the scoring and underwriting distinctions of supportive housing.

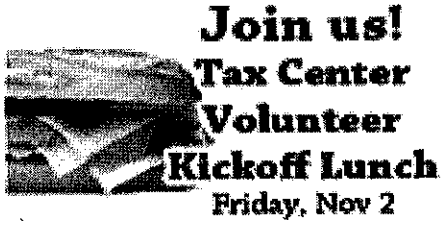
Can you clarify if supportive housing projects are considered to serve the 'general population' in the context of the Opportunity Index? Supportive housing is not specifically designed for the elderly, therefore it should be considered 'general population.' Given the policy goal to help develop more supportive housing, and the effort required to build community support for supportive housing, we believe that the scoring should be equivalent to a general population project in the opportunity index.

4) We support capping the per project limit at $1.5million given the reasonable prices paid for credits in the current market. Please do not increase the cap per project beyond 150% of the regional amount. Allowing projects in a Rural region to apply for 150% of their setaside unfairly takes funds away from Urban regions. Statute already 'over' allocates rural regions by providing for a minimum of $500,000 in credits per region. We also support the requirement of a purchase contract at the time of pre-application.

Thank you for your consideration of these comments.

We are also reviewing the nonprofit 'right of first refusal' rules and will provide comments.

Walter Moreau
Executive Director,
Foundation Communities
512-610-4016



From: Cameron Dorsey
To: Walter Moreau; Jean Latsha; Teresa Morales;
cc: Tom Gouris; Tim Irvine; Brent Stewart; Jennifer Hicks;
Subject: RE: HUB point and nonprofits
Date: Monday, October 15, 2012 10:56:09 AM
Attachments: image001.png

Hi Walter,

I knew you all would have some concerns. We really appreciate your feedback and thoughtful explanations. We are considering how this point item could impact the various types of transactions and owners, including mission driven nonprofit organizations. Our goal, as always, is to be deliberate in our actions and proposals. The discussion that was had at the Board meeting provided some general, very thoughtful guidance for staff and the development community in the drafting of any changes that may be proposed in the final version. However, there are myriad issues to consider and the Board did not intend that their thoughts limit public comment or the great ideas that might result from additional public comment. I want you all to have some comfort that staff will fully vet these ideas.

Thanks,
Cameron

.....
Cameron F. Dorsey
Director, Multifamily Finance
Texas Department of Housing and Community Affairs
Ph. 512.475.2213

From: Walter Moreau [mailto:Walter.Moreau@foundcom.org]
Sent: Monday, October 15, 2012 10:23 AM
To: Cameron Dorsey; Jean Latsha
Cc: Tom Gouris; Tim Irvine; Brent Stewart; Jennifer Hicks
Subject: HUB point and nonprofits

Cameron and Jean

We are grateful for the final outcome of the board discussion about sponsor experience. Challenging to work thru – so thank you.

The HUB point is still a real problem for us as a nonprofit. This will impact FC, New Hope, Avenue CDC, Covenant, Brownsville CDC, and any other mission driven nonprofits. It really impacts supportive housing.

We assume we have to get this point to be competitive, but it ends up costing our mission. Adding a for-profit HUB to the ownership, developer fee or cash flow, simply means we have to charge higher rents and have less funds for social services. The implications of a nonprofit developer hiring a HUB are not the same as a for profit developer. Most of the for-profit developers are able to 'partner' with a for-profit HUB without any issues (they are already a HUB, or work with their spouse).

Nonprofits have some unique issues:

a) To stay in the nonprofit setaside the HUB must be less than 50%. But worse....having the HUB own even 1% of the GP knocks out any property tax exemption. We want to remain 100% nonprofit GP so that we might be eligible for 50% property tax break. Without the tax break, we can't deep income target as much – which is what happened on Capital Studios (we had to limit the number of units for chronic homeless and 30% units so we could afford 100% taxes).

b) Typically we do LOTS of fundraising for our projects and defer developer fee as needed. We would rather invest in quality construction and green building, than maximize our developer fee. The fee is paid out of cash flow, and if necessary in year 15 we cover the fee (pay it to the partnership....and then they pay it back to us...and we are a nonprofit so it is not taxable income). If we have to pay a developer fee to a for-profit HUB, then this is real cash flowing out of the deal for something we don't need (we've been the sole developer of all of our 17 communities.) I can't really fundraise in order to pay a developer fee to a for profit HUB that we don't really need.

c) We typically dedicate cash flow to resident services! We don't want to send cash flow to a for-profit HUB. On M Station and Sierra Vista we fundraised to keep our final mortgage small so that we would have some cash flow to help offset the cost of the learning centers.

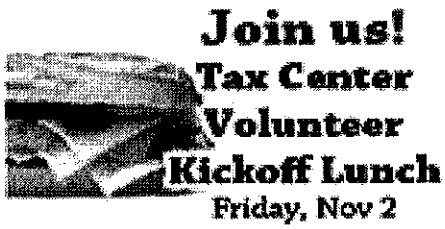
In summary, we cannot put a HUB into the transaction at 100% without taking money directly from our mission. This is not right. We support meaningful HUB involvement, but don't want it to come at the expense of lower rents and services.

Here are some ideas:

1) Allow either the HUB point OR a nonprofit that has at least 100% of the GP/developer fee/cash flow. This also allows for-profits to partner with nonprofits on mission driven projects.
2) Allow a sole nonprofit project to get the same HUB point if x% of the construction and professional services are contracted with HUBs. We contract with HUBs all the time for architecture, engineering and construction. This is a meaningful way to support HUBs
3) Allow either the HUB point or a nonprofit point, so long as the nonprofit is 100% of the GP and cash flow is dedicated to support services.

Thanks

Walter Moreau
Executive Director,
Foundation Communities
512-610-4016



Comment (24)
R.L. Bobby Bowling IV, G. Granger MacDonald, T. Justin MacDonald, Mike Sugrue, Diana McIver, Dennis Hoover

R. L. "Bobby" Bowling
President
Tropicana Building Corp.
4665 Cohen
El Paso, TX 79924

G. Granger MacDonald
President
G. G. MacDonald Inc.
2951 Fall Creek Rd.
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T. Justin MacDonald
President
MacDonald Housing Development, LLC
2951 Fall Creek Rd.
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Mike Sugrue
President
StoneLeaf Companies
1302 S 3rd St., Suite 103
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Diana McIver
President
DMA Companies
4101 Parkstone Heights Dr., Ste. 310
Austin, TX 78746

Dennis Hoover
President
Hamilton Valley Management
P.O. Box 190
Burnett, TX 78611

Cameron Dorsey
Tax Credit Director, TDHCA
Sent VIA E-MAIL

September 18, 2012

RE: TAX CREDIT DEVELOPMENT CAP REQUIREMENT FOR 2013 QAP

Dear Cameron,

The undersigned, as experienced Texas developers in the LIHTC program for over 12 years, wish to see the Texas QAP return to a "per deal" tax credit cap of $1.2 million.

The $1.2 million served Texas well to bring equity throughout the 26 Texas sub-regions for over a decade until the tax credit market (and actually, all financial markets) in the United States crashed in late 2008-2009. The result of the financial crash of 2008 led to tax credit pricing dropping from average highs of 99 cents per credit dollar of equity invested in Texas deals in 2007, to a staggering low of 64 cents per dollar of equity invested in Texas deals in 2009—if the deals were done at all in that time period.

The crisis led every tax credit agency in the country to award additional credits to individual deals in order to try and salvage awarded deals and make them attractive to investors. In Texas, TDHCA took formal action to release the $1.2 million capped amount of credits that a development could be issued, and raised the cap first to $1.4 million, then to $1.6 million and then, ultimately, to the $2 million limit that currently exists. As you well remember, the crisis was so bad, that the limited pool of investment dollars passed on investing in deals around the country at any price, leading Congress to enact emergency legislation creating the short-lived "Tax Credit Exchange Program (TCEP)" and the "Tax Credit Assistance Program (TCAP)."

Today, the emergency crisis in the financial sector has now passed; both the TCEP and TCAP programs have expired, and equity investment in tax credit deals around the country are again at historical averages—in the range of 85-90 cents per tax credit dollar. As a result of this "return to normalcy", we are advocating for a reversion back to the $1.2 million per deal tax credit cap. By returning to this cap,

TDHCA can ensure that the nightmare of the 2012 allocation round—where some sub-regions did not have enough money to issue credits to a single application submitted in 2012—does not occur again. Further, the $1.2 million per deal cap will lead to better geographic dispersion of tax credit developments, and will ensure that more developments around the state are awarded.

Thank you for your consideration of this request, and please re-institute the $1.2 million per-deal cap on tax credit applications for 2013.

Sincerely,

R. L. "Bobby" Bowling IV

G. Granger MacDonald

T. Justin MacDonald

Mike Sugrue

Diana McIver

Dennis Hoover

Comment (25)
Michael Daniel
Daniel & Beshara, P.C.

Daniel & Beshara, P.C.
3301 Elm Street
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October 19, 2012
email delivery

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Beth Klusmann
Assistant Solicitor General
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OFFICE OF THE ATTORNEY GENERAL
P. O. Box 12548 (MC 059)
Austin, Texas 78711-2548

Re: *ICP v. TDHCA*, 3:08-CV-0546-D,
TDHCA proposed 2013 Qualified Allocation Plan

The proposed 2013 TDHCA QAP would violate the Judgment in *ICP v. TDHCA*, Document 194, 3:08-CV-0546-D by omitting the undesirable site features required on page 3 of the judgment and by omitting the challenge process required on page 3 of the Judgment.

Undesirable site features violation.

The Judgment states on page 3 that TDHCA must:

> D. continue to include in the QAP criteria for disqualifying proposed development sites that have undesirable features, as set forth in the Plan at 11-13, and incorporate the more robust process for identifying and addressing other potentially undesirable site features, as set forth in the Plan at 13-14; . . .

The Plan, at pages 13 - 14, lists eight negative site features that require notification and preclearance:

> a. A history of significant or recurring flooding;
> b. A hazardous waste site or a source of localized hazardous emissions, whether remediated or not;
> c. Heavy industrial use;

d. Active railways (other than commuter trains);
e. Landing strips or heliports;
f. Significant presence of blighted structures;
g. Fire hazards which will increase the fire insurance premiums for the proposed site.
h. Locally known presence of gang activity, prostitution, drug trafficking, or other significant criminal activity that rises to the level of frequent police reports.

The proposed QAP lists only the flooding, blighted structures, fire hazards and criminal activity factors. The proposed QAP omits the hazardous waste and emission factor, the heavy industrial use factor, the active railways factor and the landing strips or heliports factor. If the adopted QAP omits these factors, TDHCA will violate the Judgment.

Non-compliance with an element applicable to the 4% tax credit program

The Judgment states on page 3 that TDHCA must:

> G. provide a mechanism to challenge public comments that cause proposed developments to receive negative points, as set forth in the Plan at 19,

TDHCA's proposed Remedial Plan states on page 19 that:

> **9. Review of challenged public input.**
> Any public comment that will be considered for negative scoring of applications, or as opposition to 4% non-competitive allocations, may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local governmental entity. If any such comment is challenged, the party that made the challenge will have to declare the basis for the challenge. The party that made the comment will be given seven (7) days to provide any support for the accuracy of its assertions. All such materials and the analysis of the Department's staff will be provided to a fact finder for a review and determination. The Department's determination will be final.

Contrary to the Judgment and the TDHCA proposed Remedial Plan, the proposed QAP element on this subject is set out only for the Qualified Citizen Participation input process for the 9% program. Proposed Rule § 11.9(d)(1)(D), 37 Tex. Reg. 7419, September 21, 2012. The award of 4% tax credits in conjunction with the private activity bonds is also subject to opposition and negative scoring as set out in the Proposed Rule § 12.6(9). 37 Tex. Reg. 7427, September 21, 2012. There is no challenge process associated with public opposition to a 4% program application in the proposed QAP. If the adopted QAP omits the applicability of the challenge mechanism to the 4% tax credit applications, TDHCA will violate the Judgment.

Sincerely,
s/Michael M. Daniel

cc: Elizabeth K. Julian
Laura B. Beshara
G. Tomas Rhodus

Comment (26)
MaryAnn Russ, Dallas Housing Authority

Dallas Housing Authority
3939 N. Hampton Rd., Dallas, TX 75212 |Phone: 214.951.8300|Fax: 214.951.8800| www.dhadal.com

October 18, 2012

via Facsimile

Ms. Teresa Morales
Rule Comments
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

RE: Comments to the Draft 2013 Qualified Allocation Plan and Draft Uniform Multifamily Rules

Dear Ms. Morales:

We appreciate the opportunity to provide comments on the Draft 2013 Qualified Allocation Plan ("QAP") and the Draft Uniform Multifamily Rules ("Rules"). We understand and appreciate the considerable effort the TDHCA staff have undertaken to separate the Rules from the QAP and provide a uniform set of rules for many of TDHCA's programs. We anticipate this will benefit both TDHCA and applicants.

With the recent Court ruling in the *ICP v. TDHCA* lawsuit, we commend the Agency in its efforts to comply with the Court ruling while providing a program to benefit most Texans. The new requirements for award of an allocation of 9% tax credits will help to disperse affordable housing throughout metropolitan areas, although they will limit the program's use as a tool to revitalize inner-city neighborhoods. We are also supportive of the Agency's efforts to maintain one QAP for the entire State rather than providing a separate document specifically for Region 3.

Below are our comments regarding the Draft 2013 QAP and the Draft Rules.

§11.9(d)(3) Commitment of Development Funding by Unit of General Local Government

The Draft QAP language provides for the award of points in 9% applications for the commitment of development funding by a unit of general local government. Unlike in previous years, the language limits the entities providing local support to only city or county governments. Commitments of funding from other government instrumentalities within the jurisdiction, such as public housing authorities (PHAs) are excluded from this scoring criteria.

A PHA is a unit of local government as described in the Texas Government Code §392.006 and can provide a significant source of funding for the development of affordable housing for low-income families. This funding not only includes cash, but also project-based vouchers which can

make the housing affordable to extremely low-income families. For this reason, we encourage the TDHCA to revise this section of the draft 2013 QAP to include all units of general local government and governmental instrumentalities within the jurisdiction (particularly PHAs) in this scoring criteria as it has in past years.

Thank you for consideration of our comments. We look forward to continuing to work with you and your staff to provide quality affordable housing to low-income families.

Sincerely,

Mary Ann Russ
President and CEO

Comment (27)
Richard Knight, Frazier Revitalization, Inc.

From:	Don Williams
To:	Tim Irvine (tim.irvine@tdhca.state.tx.us);
cc:	Teresa Morales (Teresa.morales@tdhca.state.tx.us); Richard Knight (rknight@pegasustexas.com); Dorothy Hopkins;
Subject:	Public Comment to Proposed 2013 QAP
Date:	Friday, October 19, 2012 2:31:45 PM
Attachments:	image002.png image003.png image004.png

FRI

FRAZIER REVITALIZATION INC

A proud neighborhood, building its future.

October 19, 2012

Mr. Tim Irvine

Executive Director

Texas Department of Housing and Community Affairs

PO Box 13941

Austin, TX 78711-3941

RE: Public Comment to Proposed 2013 QAP

Dear Tim:

In an ideal world, there would be sufficient LIHTC to provide affordable housing in both high opportunity areas and in qualified census tracts. As we know, however, that is not the case. With the scarcity of supply and the overwhelming demand (in the North Texas Urban Region 3, for 2012 there were over $103 million in pre-applications and only $7.6 million LIHTC available) TDHCA board has to decide on priorities.

In TDHCA's Motion to Alter or Amend the Judgment or for a New Trial that was filed in the ICP Case, the Department argues that the judge's opinion of Section 42 of the IRC is wrong. The brief states: "Section 42 (of IRC) shows a clear congressional preference for assisting those with the lowest incomes, serving low-income tenants for long periods of time, and placing projects in QCTs. . . Congress clearly intended that LIHTCs should be used to help low-income tenants for long periods of time and to revitalize low-income areas." This observation makes good sense but with the judge's Order in place, you have a difficult choice either: 1) follow the judge's Order, even though you (and we) believe it is in error and your 2013 Proposed QAP reflects that approach, continuing to erroneously prefer projects in affluent suburbs, or 2) do the right thing by seeking a stay order and appealing the decisions, (as we intend to do) as well as revising the 2013 QAP. The latter course would allow TDHCA to change its Proposed 2013 QAP in ways that would bring it back in line with the intent of the enabling legislation of the Internal Revenue Code.

Therefore, we urge the following:

1. If the Judge denies TDHCA's Motion to Alter the Judgment,

or to have a new trial, TDHCA should appeal the decision and order,

2. TDHCA should file a motion requesting a stay of the Judge's order until a court of final resort determines the case,

3. TDHCA should have only 1 QAP for all of Texas, and

4. **TDHCA should revise sections of its Proposed 2013 QAP, so that projects in QCTs (low-income neighborhoods) that are part of a comprehensive revitalization supported by the City have a competitive opportunity to receive an award.**

If you proceed with the Proposed 2013 QAP, given the restrictions imposed by the Texas rule making process, we make the following recommendations, while they do not go far enough, they more comport with section 42 of the Internal Revenue Code, to help those involved in community revitalization:

The Proposed 2013 QAP introduces 3 new scoring items: Educational Excellence, Opportunity Index, and Community Revitalization Plan.

· "Educational Excellence," allows projects to receive up to three points if located within the attendance zone of a public school with an academic rating of Recognized or Exemplary by the Texas Education Agency. This appears to give an incentive to developments to be sited where low-income residents may move to take advantage of high quality schools – i.e., affluent suburbs. However, simply placing low-income families in predominately white and high-income areas does not necessarily translate into greater opportunity nor is leaving their home neighborhoods, friends, schools, churches, stores, etc. appealing to many of our low-income residents. Those who wanted to leave have already done so. A more successful strategy (and one not only permitted but

mandated by the LIHTC enabling legislation in the Internal Revenue Code) would be to encourage the development of quality affordable housing in historically neglected, but now recovering low-income neighborhoods. This is what we are trying to do in Dallas. Hence, ***this Educational Excellence scoring item should be deleted altogether or amended to reflect year over year school progress for comparable socio-economic neighborhoods to be certified by the school superintendent.*** This approach is supported by Superintendent of DISD, Mike Miles, and educational leaders ranging from Mike Moses to Linus Wright to Tom Luce and many others across Texas, who have submitted letters to TDHCA.

· "Opportunity Index," allows a project located within a census tract that has a poverty rate below 15% (i.e., affluent) to qualify to receive up to 7 points if the schools are Recognized or Exemplary.

But compared to:

· "Community Revitalization Plan," allows projects to qualify to receive up to only 6 points if located in an area covered by a community revitalization plan that meets numerous and sometimes quite challenging criteria. ***The Remedial Plan mandated by***

the Court allows 7 points. Moreover, since QCT revitalization is at the heart and soul of the enabling legislation, the Community Revitalization Plan scoring item is inadequate, and we propose that the project may qualify to receive up to 10 points.

Other options to improve the chances that revitalization developments will be competitive in the tax credit process include amending the 2013 QAP to include the following points:

· Federal law mandates that at least 10% of the tax credit awards each year go to non-profit sponsors. A non-profit set-aside is administered in the QAP. Since non-profits are at the heart of community revitalization, giving a preference for revitalization developments for those applications competing in the non-profit set aside might ensure that revitalization efforts by non-profits can succeed without significantly impacting the other 90% of the tax credit awards in the state.

· In the Sponsor Characteristics scoring section, delete the points for the Developer owner, but add additional points for applicants that are substantially owned by a non-profit.

· State law requires that TDHCA award a very substantial number of points in the competitive process for developments supported by financing

from the city, county or equivalent. This scoring item could be revised so that the threshold for receiving points is at a level where the development would receive these points only if there was a major financing infusion from the local government. That way, revitalization developments that are receiving large amounts of local funding would be preferred, and those developments that are not receiving similar levels of support would not.

In the Commitment of Development Funding scoring section, widen the range of points for the level of commitment and increase the level, i.e. $20,000 per unit could receive 15 points, $15,000 could receive 12 points, $10,000 could receive 10 points, $5,000 could receive 8 points.

Successful inner-city revitalizations across America have always begun with such federal subsidies until conventional financing and other market forces are available. The clear intent of the Reagan-era bi-partisan law is to encourage the use of LIHTCs to rebuild distressed communities. It was not the intent of Congress, nor is it sound public policy, to deny new, fit and affordable housing as part of comprehensive revitalization and renewal initiatives in our cities' blighted inner city neighborhoods, nor to force inner-city residents to move from their neighborhoods, families, friends, churches and jobs to affluent suburbs.

Citizens in our blighted inner cities deserve the opportunity to have their neighborhoods revitalized and thriving, and since there is no conventional financing available, LIHTCs are the only hope to provide new affordable housing. The LIHTC process has been allowed to be manipulated by for profit developers; they are driving the system rather than the legislation that was put in place to offer assistance to revitalization efforts.

Thank you, and feel free to call me to discuss this further.

Sincerely yours,

Richard Knight
Chairman of the Board
Frazier Revitalization, Inc.

J. McDonald Williams
Founder and Board Member
Frazier Revitalization, Inc.

Dorothy Hopkins
President and CEO
Frazier Revitalization, Inc.

Comment (28)
Rodolfo “Rudy” Ramirez, Edinburg Housing Authority

EHA

EDINBURG HOUSING AUTHORITY
P.O. Box 295 / 910 S. Sugar Rd. Edinburg, Texas 78540
Phone: (956) 383-3839 Fax: (956) 380-6308
www.edinburgha.org

October 4, 2012

Cameron Dorsey

Texas Department of Housing and Community Affairs

221 E. 11th Street

Austin, Texas 78711

Mr. Dorsey, please consider this request for TDHCA to increase the poverty level criteria for High Opportunity Areas (HOA's) from 35% to 37% for Region 11 in order to reduce the 24% inequality between Region 11 and Region 13. By proposing the poverty level for Regions 11 and 13 at 35% as is drafted in the current QAP draft, TDHCA recognizes that these two regions are significantly different in poverty levels from the other Texas Regions, where the threshold remains at 15%. The facts show that Region 11, having Metro Areas with the highest poverty rate in the United States, has a much higher incidence of poverty than Region 13. While Region 13 has 72% of its census tracts under 35% poverty rate, Region 11 has only 48% of the census tracts that qualify under the 35% poverty level criteria—a statistically significant difference of 24%. The current QAP proposed criteria would allow even fewer than 48% of the census tracts in Region 11 to qualify under the HOA criteria due to the other two limiting factors namely, median income and recognized elementary schools. The 35% criteria would restrict the number of census tracts in Region 11 eligible under the Poverty Criteria, and some of these census tracts, while having a higher incidence of poverty, according to United States national standards, are desirable for HOA's within Region 11—and would not take anything away from other Regions in Texas.

Setting the poverty level at 37% for Region 11 would reduce the difference between Regions 11 and 13, and would clearly improve the implementation of the TDHCA Policy to encourage affordable housing in the most desirable locations in each region. The attached Excel Spread Sheets show the calculations for the changes mentioned above. By making this small, but significant change for Region 11, the eligible number of census tracts qualifying under the poverty rate criteria would increase to 53% in Region 11, roughly 18 census tracts.

An example of how this disparity is effecting a specific development is as follows. The Housing Authority of Edinburg has already bought s land in order to build tax credit apartments. This land is in a desirable area of town, in the 2nd quartile of local median income. There are Exemplary and Recognized schools that serve the site. The city is supporting the VET project financially and is helping develop this area of the city. This is the part of town where the Housing Authority wants to build and it's also where the Opportunity Index wants housing to be focused. But the fact that Edinburg has some of the highest poverty rates in the nation prevents this development from receiving the Opportunity Index points to develop this land actually in the 2nd quartile.

In laboring thru this analysis, I noticed that Regions 2, 8, and 10 are also significantly different from the other 7 Regions with regards to Poverty Rates. In fairness to all regions, I would suggest similar adjustments to the required poverty levels in these Regions.

Thank You,

Rodolfo "Rudy" Ramirez

Executive Director

Edinburg Housing Authority

(956) 383-3839

rudy@edinburgha.org

From: Rudy Ramirez
To: teresa.morales@tdhca.state.tx.us;
cc: rchristian@edinburgha.org; erodriguez@edinburgha.org;
Subject: Rule Comments on TDHCA Housing Tax Credit Program Qualified Allocation Plan
Date: Monday, October 22, 2012 1:15:15 PM

October 22, 2012

ATTN: Ms. Teresa Morales

Texas Department of Housing and Community Affairs

VIA Fax No. 512-475-0764

Re: Rule Comments on TDHCA Housing Tax Credit Program Qualified Allocation Plan

Dear Ms. Morales:

The following are my comments for consideration by TDHCA to the Housing Tax Credit Program QAP published in the September 21, 2012, Texas Register:

Section 11.4(b) Maximum Request Limit (Competitive HTC Only): TDHCA should not allow an applicant to request more than the credit amount available in a sub-region. This QAP provision to allow an applicant to request up to 150% of the credit amount available in a sub-region is not consistent with the provisions of Texas Government Code Chapter 2306 which requires TDHCA to use a formula to make regional allocations and has no provisions that allow TDHCA to allow an applicant to request more than the credit amount available in a sub-region. Additionally, the QAP prohibits awards to an applicant if there are not sufficient funds within the sub-region to fully award the application that then places the application in the rural or statewide collapse.

Section 11.5(3)(D) At-Risk Set-Aside: There are at-risk developments that have existing rental assistance with rents lower than the tax credits rents and may not be financially feasible unless they are allowed to eliminate a portion of that benefit. For example, the existing rental assistance may be within the tax credits rents for units at 30% AMGI and the development should be required to retain the rental assistance for those units but be allowed to eliminate the existing rental assistance on the other units who will retain their affordability within the HTC income and rent restrictions. This provisions should provide " . . . unless regulatory or financial barriers necessitate elimination of a portion of that benefit for the Development."

Section 11.9(b)(2) Sponsor Characteristics: Housing Authorities have extensive experience in providing affordable housing as developers, owners, and managers of Public Housing and Contract Administrators of HUD rental assistance contracts under Section 8 of the National Housing Act (Voucher Program). Many Texas Housing Authorities have as much as 75 years administering the Public Housing Program and 45 years administering the Section 8 Program. TDHCA needs to recognize this experience by awarding participation by Housing Authorities the maximum points under Sponsor Characteristics.

Section 11.9(b)(2)(A) Sponsor Characteristics: Should include provisions awarding 1

point for a Housing Authority that has at least 51 percent ownership interest in the General

Partner, materially participates in the Development and operation of the Development

throughout the compliance period, and will receive at least 80 percent of the cash flow from

operations and at least 25 percent of the developer fee.

Section 11.9(b)(2)(B) Sponsor Characteristics: Should include provisions awarding 3

points for a Housing Authority that that is rated by HUD as a High Performer or 2 points if

rated by HUD as a Standard Performer and has at least 51 percent ownership interest in the

General Partner, materially participates in the Development and operation of the

Development throughout the compliance period, and will receive at least 80 percent of the

cash flow from operations and at least 25 percent of the developer fee.

Section 11.9(d)(3) Commitment of Development Funding by Unit Of General Local Government: TDHCA proposes to restrict the awards points for funding from only a City or County. In prior years these points were allowed for funding by a "Unit of General Local Government" such as a Housing Authority. There is no basis for TDHCA to now exclude consideration for funding by any Unit of Local Government limit the award of points to only funding by a City or County.

Additionally, TDHCA proposes to penalize participation by a government instrumentality such as a Public Facility Corporation PFC) created under Chapter 303 of the Texas Local Government Code that was adopted by the Texas Legislature so that local governments such a City, County, Housing Authority or other Units of Local Government can carry out activities with their instrumentalities such as a PFC. There are many HTC developments in Texas sponsored by Units of Local Government using their instrumentality PFCs/ TDHCA needs to remove from the QAP all proposed restrictions on instrumentalities.

Section 11.9(e)(4)(A)(i) Leveraging of Private, State, and Federal Resources: Needs to include leveraging of funding from the Public Housing Program Capital Fund, Project Based Vouchers, and Section 8 Vouchers to assist families with their relocation.

Rodolfo "Rudy" Ramirez, Executive Director

Edinburg Housing Authority

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Edinburg, TX 78539

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rudy@edinburgha.org

www.edinburgha.org

Never look down on anybody unless you're helping them up.

~ The Reverend Jesse Jackson

Comment (29)
Stan Waterhouse, Housing Authority of the City of El Paso

Housing Authority of the City of El Paso

October 12, 2012

Mr. J. Paul Oxer, Chairman
Mr. Tim Irvine, Executive Director
Texas Department of Housing and Community Affairs (TDHCA)
P.O. Box 13941
Austin, TX 78711-3941

Re: Texas Housing Authorities

Dear Gentlemen,

At the October 9, 2012, TDHCA Board meeting Chairman Oxer inquired as to the legal basis for Housing Authorities. This letter explains the status of Texas housing authorities as governmental entities and the relationship between a housing authority and the city or county that authorized it.

1. The nature of a housing authority. A housing authority is a *"public body corporate and politic"*[1] A housing authority is also a *"unit of local government and the functions of a housing authority are essential governmental functions and not propriety functions"*.[2]

Texas law establishes a municipal housing authority in each municipality and a county housing authority in each county[3]. However, a housing authority may not transact business until either the governing body of the municipality or the county commissioners' court declares by resolution that there is a need for an authority.[4] Once a housing authority is created, it operates independently.[5] For example, housing authorities have the power of eminent domain[6] and may issue bonds.[7]

2. The relationship of a housing authority to a city or county. The commissioners of a municipal housing authority are appointed by the presiding officer of the governing body of the municipality[8], who is usually the mayor of the city. A housing authority commissioner may not, however, be an officer or employee of the municipality.[9] Similar

[1] Texas Local Gov't Code §392.011(b) & §392.012(b)
[2] Texas Local Gov't Code §392.006
[3] Texas Local Gov't Code §392.012
[4] Texas Local Gov't Code §392.011(c) & §392.012(c)
[5] See e.g. Texas Local Gov't Code, Subchapter D. Powers and Duties of a Housing Authority, §392.0051-392.067
[6] Texas Local Gov't Code §392.061
[7] Texas Local Gov't Code §392.081
[8] Texas Local Gov't Code § 392.031
[9] Texas Local Gov't Code §392.031(b)

provisions provide for the appointment of commissioners of a county housing authority by the county commissioners court.[10]

The facts are as follows:

- PHA's are units of local government,
- Municipal housing authorities are created by cities,
- Municipal housing authority commissioners are appointed by the mayor,
- Statute prohibits municipal officers from serving as PHA commissioners.

These facts create a continuing and strong connection between the city and a municipal housing authority. Additionally, the Texas Attorney General has written that *"Texas case law and opinions of this office have concluded that a municipal housing authority is a division of the city that created it. Similarly, this office has concluded that a county housing authority is a division of the creating county."*[11]

For these reasons, §11.9(d)(3) of the Draft 2013 Qualified Allocation Plan (QAP) should recognize that a financial contribution by a PHA to a Housing Tax Credit project is equivalent to a contribution by a city or a county.

Sincerely,

Stan Waterhouse
Chief Operating Office

[10] Texas Local Gov't Code §392.032
[11] Texas Attorney General Opinion DM-426 (November 25, 1996), *citations omitted*

Austin Public Hearing

Comment (30)
San Antonio Housing Authority, El Paso Housing Authority, Fort Worth Housing Authority, Houston Housing Authority

Comment (31)
Ryan Hettig, Hettig/Kahn Holding, Inc.

Comment (32)
Michael Hartman, Tejas Housing Group

Comment (33)
Tim Lang, Tejas Housing Group

Comment (34)
Deborah Sherrill & Gary Allsup
Corpus Christi Housing Authority

Comment (35)
Lisa Stephens, Sagebrook Development

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

2012 STATE OF TEXAS CONSOLIDATED

PUBLIC HEARING

10:20 a.m.
Wednesday,
October 10, 2012

Room 172
Stephen F. Austin Bldg
1700 N. Congress
Austin, Texas

BEFORE:

ELIZABETH YEVICH, Director
Housing Resource Center

ON THE RECORD REPORTING
(512) 450-0342

I N D E X

P R O C E E D I N G S

MS. YEVICH: Good morning, and welcome to the 2012 State of Texas Consolidated Public Hearing here in Austin on Wednesday, October 10.

These hearings are an opportunity to comment on a portion of the Texas Department of Housing and Community Affairs, the Texas Department of Agriculture, and the Texas Department of State Health Services annual policy, rule, and planning documents as well as other documents at TDHCA, Texas Department of Housing and Community Affairs.

All the documents are available on TDHCA's website.

If you have not already done so, please fill out a sign-in sheet, and if you plan to speak, we ask that you fill out a witness affirmation form and, also, if you plan to speak, I would ask that you sit at one of these tables here because the microphones are located there for the court reporter.

And, also, as reminder, this is a hearing. We are here to accept public comment but we will not be able to respond to questions about the rules or documents at this time.

So the comment period for the 2013 State of Texas Consolidated One-Year Action Plan, and all the other documents here today, is September 21 to October 22. Any comment received at this public hearing will be considered official public comment for these documents here today.

So the first thing up is the One-Year Action Plan Draft and TDHCA coordinates this with the Texas Department of Agriculture and the

Department of State Health Services. It covers four different program areas, which are Housing Opportunities for Persons with AIDS, known as HOPWA, coordinated by the Department of State Health Services; the Community Development Block Grant, known as CDBG, coordinated by TDA, Department of Agriculture; and here in TDHCA we have the Emergency Solutions Grant program -- that was formerly known as Emergency Shelters Grant program; and we also have the Home Investment Partnership, known as HOME.

The plan includes a one-year action plan and additional information on meeting underserved needs, fostering and maintaining affordable housing, lead-based paint hazard mitigation, reducing poverty-level households, developing institutional structure, and coordination of housing and services.

The Community Development Block Grant program. The primary objective of CDBG is to develop viable communities providing decent housing, suitable living environments, and expanding economic opportunities, principally for persons of low to moderate income.

Under the Texas CDBG program, assistance is available to nonentitlement general-purpose units of local government, including cities and counties that are not participating, or designated as eligible to participate, in the entitlement portion of this federal program.

Is there anyone here to comment on this CDBG program?

(No response.)

MS. YEVICH: Hearing none, we will move over to the HOME program. The Home Investments Partnerships program, referred to as

HOME, awards funding to various entities for the purpose of providing safe, decent affordable housing across the state of Texas.

To provide this kind of support to communities, HUD awards an annual allocation of approximately $24 million to TDHCA. Under the HOME program, TDHCA awards funds to applicants for the administration of the following activities: the Home Ownership Assistance Program, which provides down-payment and closing-cost assistance for eligible households; the Home Owner Rehabilitation Program which provides funds to eligible homeowners for rehabilitation or reconstruction of single-family homes; Tenant-Based Rental Assistance, TBRA, which provides rental subsidies which may include security deposits to eligible tenants for a period of up to 24 months; and the Rental Housing Development Programs which provides funds to build, acquire, and/or rehabilitate affordable multifamily housing.

Is there anyone here to comment on the HOME action program?

(No response.)

MS. YEVICH: Hearing none, we will move to the Emergency Solutions Grant, as I mentioned, formerly known as the Emergency Shelter Grants Program. It's a competitive grant fund that awards funds to private nonprofit organization, cities and counties in the state of Texas to provide the services necessary to help persons that are at risk of homelessness or homeless quickly regain stability in permanent housing.

Is there anyone here to comment on the ESG one-year action plan?

(No response.)

MS. YEVICH: Hearing none, we will move over to the Housing Opportunities for Persons with AIDS Program, known as HOPWA. The Texas Department of State Health Services, DSHS, addresses the housing needs of people with HIV and AIDS through the HOPWA program, which provides the following: emergency housing assistance in the form of short-term rent, mortgage, and utility payments; tenant-based rental assistance, which enables low-income individuals to pay rent and utilities until there is no longer a need; supportive services, which provides case management, basic telephone assistance, and smoke detectors; and permanent housing placement, which allows assistance for reasonable security deposits, related application fees, and credit checks.

If you have questions regarding HOPWA, DSHS can be reached at area code 512-533-3000.

Is there anyone here to comment on the HOPWA action plan?

(No response.)

MS. YEVICH: Hearing none, we will move over to the Housing Tax Credit Qualified Allocation Plan. This document establishes the 2013 Rules for the Housing Tax Credit Program. The Housing Tax Credit Program uses federal tax credits to finance the development of high-quality rental housing for income-eligible households and is available statewide.

The draft QAP includes policy recommendations and administrative changes to improve the Housing Tax Credit Program and maintains compliance with all statutory and code requirements.

And I believe we have several speakers lined up for the QAP. I believe Mr. Ryan Hettig is first.

Comment (31)

MR. HETTIG: Hello, I'm Ryan Hettig with Hettig/Kahn Holding, Inc. I wanted to speak regarding the 2012-2013 Qualified Allocation Plan, specifically Section 11.4(c)(1) and (2) regarding the 30 percent boost. We would request that the language revert back to what it was last year, allowing for developments that receive local jurisdictional funds, CDBG funds or HOME funds, up to at least $2000 per unit to receive the boost. Otherwise, you could have developments in revitalization areas that are not in QCTs that would we need that boost that would not be able to get it.

MS. YEVICH: Thank you.

Next, I believe we have Nancy Shepard. Are you here to comment on the QAP?

MS. SHEPARD: Yes.

MS. YEVICH: Okay.

MS. SHEPARD: Actually I have something to read in the record.

MS. YEVICH: Certainly.

MS. SHEPARD: I'll try to summarize and then I'll just give it to her if that's okay.

MS. YEVICH: That's perfect.

Comment (30). Additional letter located immediately following the end of this transcript.

MS. SHEPARD: And then I can email.

But my name's Nancy Shepard. I'm with the San Antonio Housing Authority and, basically, ourselves, along with El Paso, Houston and

Fort Worth have all been having calls so this is on behalf -- read into the record on all those housing authorities.

The few comments they wanted was, first, on the preapplication requirement regarding notification of recipients in ETJs, it is their recommendation that this should not be added as a requirement. Basically, ETJs have no jurisdiction over the proposed developments in the areas and there are wide variances among how ETJs are managed across the state. So we feel tax credit development should only be required to fulfill the requirements in the respective ETJs if they apply.

The second is competitive housing tax credit criteria regarding development funding by unit of general local governments that would exclude housing authority allocations. An application can receive up to 13 points for a commitment of development funding from a city or county in which the development is proposed to be located. Housing authorities are established by resolution of the elected officials in their communities.

While the boards are appointed by the mayor, they also serve at the pleasure of the mayor and are, in fact, instrumentalities with quasi-governmental roles. So because of that, replacement housing factor funds, public housing operating subsidy, and sectioning vouchers should qualify as potential sources of funding.

Next point -- on the community revitalization plan, applications would qualify for six points if development site is located in an area covered by a community revitalization plan that meets certain criteria, including the plan being adopted by municipality or county in which it is proposed.

We would recommend, in lieu of that language, that you look at using multiple overlapping planning efforts that are already in cities. For example, in San Antonio we have a transit orient development plan, an Eastside revitalization plan, a San Antonio 2020 that's the mayor's initiative.

The list goes on, but basically, we're asking that you look at that that already exists in cities to be recognized as a community revitalization effort -- projects that are within a broader federal program initiative, such as Choice Neighborhoods, Hope VI, or sustainable community efforts; also removing points earned for size of a budget, small initiatives can transform areas if they're planned carefully and also leveraged.

And also we would suggest that you replace your points earned for scope of the plan, and we listed some that could be an impact instead of just budget, maybe using environmental remediation, transportation, education, safety, workforce, development, housing, and health. And then we gave points to -- if you had a certain amount of those elements you'd get three points; some you'd get two points.

So that's what we would suggest be replaced as opposed to the just budget. We are preparing proposed language which we'll submit at a later date.

The next issue is on the cost of development per square foot. Currently, it says you would qualify up to ten points for this item based on building cost per square footage relative to the mean cost per square foot for a similar development size.

Our recommendation is that cost should be reflective of local

conditions, and while the previous average cost per square foot was disconcerting to staff in underwriting, it is the only way for several factors to be taken into consideration for applications, and we recommend that it remain as it was previously.

Next is on the undesirable sight features. Developments within a proximity to certain undesirable features are considered uneligible -- the feature, such as the junkyards and railroads. We would recommend that the railroad feature be eliminated from this list of ineligible activities, that it should not be considered a negative.

As in previous developments there are many ways in which to attenuate noise levels. Undesirable sight features that have been mitigated through US Department of Housing and Urban Development, HUD, should be exempt.

On the undesirable features, 300 feet to a thousand feet as required to disclose in preapplication, the issue here is the section is vague. We have concern that it will increase challenges for development in those areas that can result in an improvement in a community. We recommend you initiate a waiver process and once Board approves, it should not be challengeable.

On tie breakers, this factors in -- right now where the factors would define that applications ranking higher in the opportunity index number would be first and those located the greatest distance from the nearest housing would be second.

What we would recommend in its place is the ranking based on

the higher opportunity index number should be removed. If it's not removed, then we would recommend that you apply that only to Region 3 and use the distance from the nearest housing tax credit assistant development for all others.

And we'd also like them to look at the potential of tax credits that are undertaking in phases and maybe look at tie breakers that should apply to the completion of a development phase.

And, lastly, on the Dallas lawsuit, the issue here is to boost initiatives for affordable housing development located in areas with good schools and low poverty rates. This reform will allow TDHCA to challenge opposition at lost cost housing from neighborhood groups.

We recommend ruling and reform should only be applied to the Dallas area and region and not be implemented statewide and that you could use previously approved 2011-2012 QAP for all remaining regions throughout the state.

Thank you.

MS. YEVICH: Thank you, Ms. Shepard.

The next person who's signed up to speak is Walter Moreau. Is Walter ready?

Comment (23). Additional letter located behind #23.

MR. MOREAU: I'm Walter Moreau, the director of Foundation Communities. I have a wide-ranging number of comments. The supportive housing definition, we're in favor of not changing that. I know there is interest from some folks to do a special-needs housing, or a service-enriched housing definition.

We want to make sure that the definition doesn't functionally change and therefore create a loophole for regular projects that somehow could claim the benefits of the supportive housing definition.

On the community revitalization plan, I guess we disagree with the PHA. We think that if you're going to give six points to that plan, that needs to be a really substantive plan. The minute you start to weaken that, it becomes something that everybody's going to try to go for, try to work their city council to pass a plan to get -- it could become essential that you have to play that game and create a plan for your area to get your project funded.

One idea that comes to mind for the public housing authorities, but I don't know if this works statutorily, is can they compete in the at-risk set-aside if they're revitalizing an older property that really is a risk. I just don't know definitionally if that is something you can do because of statutory definition of at risk.

We're very grateful for the outcome yesterday and recommendation from staff and board to just not have the experience be a part of sponsor characteristics for points this year, given the problems with that; however, we're really still challenged by the HUB point.

We're a nonprofit charity. Essentially what I have to do is pay a HUB to partner with us with goes against all the fund-raising that we do. So we want to stay 100 percent of the general partner so that we can be property tax exempt, or 50 percent exempt, which is really important for supportive housing. So I can't let the HUB be part of the general partner.

We've developed 17 properties. We've never partnered; we've

always been our sole developer. So giving a HUB 10, or 40, or 80, or 100 percent of the developer fee doesn't make sense. We often have to defer a lot of our fee to be paid out over time, or even at the end of 15 years we pay it to ourselves, but if there's a HUB that's a for-profit, then there's a tax hit. It's very complicated.

And then, finally, on the cash flow, we don't typically have a lot of cash flow and any cash flow we've got, if we keep our debt low, we funnel right back into learning centers, case management, substance abuse counseling programs; but now to get the HUB point, I've got to divert cash flow to pay a for profit. So you're making us as a nonprofit charity pay a for-profit HUB.

Our recommendation would be that under sponsor characteristics you get a point if you're a partner with a HUB and it adds up to 100 percent, or a nonprofit that adds up to 100 percent, or you're 100 percent nonprofit. New Hope Housing, Covenant Communities, Brownsville CDC, Third Ward, Avenue CDC. We are true nonprofit charitable organizations.

We don't want to be forced into the box where we've got to give up developer fees, cash flow, or even ownership of the deal just to be able to compete and have a HUB. We do contract with HUBs substantially and maybe that's another alternative to gain that same point, that if the Board's goal is to create incentives to work with HUBs, we can do that, and we do do that in meaningful ways.

I think the final comment -- and it may be not a QAP comment; it may be in the threshold rules where for points in the QAP for amenities. We

really believe in green building; we think that's an essential part of the affordable housing definition. Water conservation's extremely important across the state.

Our recommendation is that at least two of the threshold points come from the menu of green items that's already there.

That's it.

MS. YEVICH: Thank you, Mr. Moreau.

The next I have is Michelle Hartman.

MR. HARTMAN: Michael Hartman.

MS. YEVICH: I'm so sorry.

Michael Hartman, are you here to speak on the QAP?

MR. HARTMAN: Yes.

MS. YEVICH: Okay.

Comment (32)

MR. HARTMAN: Michael Hartman, Tejas Housing Group. My first comment probably is no longer applicable after yesterday but just in case that the Board and staff does not decide to take out the two points for the Texas experience, there is a conflict between that and the nonprofit set-aside in the fact that to qualify for the nonprofit set-aside, the nonprofit has to have greater than 50 percent in the GP, and to get the two points for sponsor characteristics, the qualifying general partner has to have at least 50 percent, which means that somebody who's competing in the nonprofit set-aside would not be able to get those two points.

I don't believe that was the intent when the rule was written, and hopefully after yesterday that's no longer applicable. But in case it still is,

I think that's something that needs to be rectified so that the nonprofits can compete effectively.

The second thing that I was asking about was part of the preapplication threshold criteria is that we have to put in an community revitalization plan that we anticipating using for points -- the way it is written for points under community revitalization for rural, you don't really have a plan so if there could just be some clarification.

Are you asking us to put in all the documents that would be used to qualify for the points at preapp, or are we putting them in at application and it's only the plan that you want to see because in rural you're not going to have a plan per se when you submit for the points under community revitalization.

The next thing that I wanted to comment about is I do understand under point reductions under item number 1 that we have excluded certain items from the -- there is a thing that says that if you ask for points and you don't get them that not only do you lose the points but you get penalized a point.

And because we've changed the scoring criteria so much, instead of just limiting certain items to be excluded from that, I think we should remove the whole thing and see how this works the first year, because it is a very substantive change from what was done in prior years, and see how it ends up in the end.

My final comment is not really on the QAP. It's more on the threshold and it echoes what somebody said before. Under undesirable area

features, we talk about undesirable features. I think we need some better clarification on them because -- for instance, a history of significant or recurring flooding. Okay. What's significant; what is recurring? I mean, that's open to a lot of subjectivity.

Fire hazards that could impact the fire insurance premiums for the proposed development. I don't know. I don't know what fire hazards exactly we mean there.

And then under (d), locally known presence of gang activity, prostitution, or other significant criminal activity that rises to the level of frequent police reports. I mean, in some cities, frequent police reports might be if you have one a month. In other cities, it might be less than one an hour might be considered frequent.

Again, it's very subjective. I think it's going to lead to a lot of challenges. And I don't know if we can tighten it up or do we not have this in there because it's so subjective, so I'll leave that for another day.

Thank you.

MS. YEVICH: Thank you, Mr. Hartman.

The next speaker I have is Tim Lang.

Comment (33) →

MR. LANG: Good morning. My name is Tim Lang. I'm with the Tejas Housing Group and I want to speak on the economically distressed areas portion of the QAP.

I think that some clarification is going to be necessary. Looking at the Texas Water Development Board's web site and their economically distressed areas program, I found two distinct and different definitions for what

an economically distressed area is.

One was based on the median income for an area; another one had to do with the availability and the financial ability for an area to provide water and sewer service. So I think that some clarification -- if both of those definitions will be acceptable or if one or the other. There should be some additional clarification there.

Also, there were two different areas regarding qualification outside of the definition and there are some areas that are available to receive assistance through this program and then there are areas that have actually received assistance through this program. And, again, I think that we need to determine if it's going to be one, the other, or both that will be acceptable.

And finally, we should also, I think, implement the time period, how far back we're going to go to accept. Is it within five years, two years, one year, current -- whatever time frame the Department decides. I think that we need a little bit of guidance as far as the time frame that's going to be acceptable to qualify for those points.

That's all I have. Thank you.

MS. YEVICH: Thank you, Mr. Lang.

I have no more witness affirmation forms but I know that there's other people that want to speak.

If you could identify yourself and who you're with. Thank you.

Comment (34). Additional letter located immediately following the end of this transcript.

MS. SHERRILL: Good morning. My name is Deborah Sherrill. I am with the Corpus Christi Housing Authority. I actually have a few comments so bear with me.

The most important comment -- or actually, there's two of them that I think are pretty important. The Commitment of Development Funding by Unit of General Local Government -- that whole section, I believe, is unfair to housing authorities, and the reason why I state this is because in order for a housing authority to self-develop, they have to create their own entity. They have to create their partnership or their general partner; therefore, they become a related party.

So how can a housing authority self-develop if the related part is not accepted? So that's my first comment. That same section also states that the funding source also can be a combination of things, and one of the items is vouchers. Well, the vouchers come from the local housing authority but yet they can't be the related party to the applicant. Okay?

Second comment was a comment that was already made: Can public housing authorities compete in the at-risk set-aside? That's another comment that we'd like to see if possibly someday that can happen.

And then the third comment that I have is regarding experience certificate. I know back in 2004 when we first started this, the housing authority's experience certificate was issued to the housing authority and not an individual. And I'd like to see if we could go back to doing that because the housing authorities' CEOs come and go, and if they're the ones who are carrying the experience certificate, people like myself, who's not a CEO, who does everything in the tax credit world, cannot get an experience certificate because I'm not the CEO.

So that's another issue that I've been kind of questioning for the

last couple of years. So those are really my comments at this time and I thank you for your time.

MS. YEVICH: Do we have anyone else here?

(Pause.)

MS. YEVICH: Okay. She'll bring the microphone.

Comment (35). Comment also provided at October 9 Board Meeting.

MS. STEPHENS: Good morning. I'm Lisa Stephens and I wanted to speak on the sponsor characteristics, particularly the 100 percent participation by a HUB, and I'd like to suggest that that participation level first be looked at at 75 percent instead of 100 percent. 100 percent is a very steep threshold and a bar to hit.

Alternatively, I'd like to suggest that perhaps that HUB participation be allowed to be achieved with multiple HUB entities instead of limiting it to one HUB entity. The intent behind having the HUB is to provide experience and capacity-building for HUB entities. So to limit it to one HUB entity with 100 percent is not as meaningful and does not provide as much capacity-building as utilizing multiple HUBs within your development.

And I understand that you don't want 15 HUBs, but perhaps limit it to three or four HUBs that could participate in the development and therefore qualify under the 100 percent participation. Thank you.

MS. YEVICH: Thank you, Ms. Stephens.

Are you representing an organization or are you here for yourself?

MS. STEPHENS: I'm with Sagebrook Development.

MS. YEVICH: Okay. Thank you.

Do we have anyone else here to speak on the Qualified Allocation Plan?

(No response.)

MS. YEVICH: Okay. Hearing none, we'll move to the Multifamily Housing Revenue Bond Program Rules. This document establishes the 2013 rules for the Multifamily Housing Revenue Bond Program. This program issues tax-exempt and taxable bonds to fund loans to nonprofit and for-profit developers.

Is there anyone here to speak on the Multifamily Housing Revenue Bond Rules?

(No response.)

MS. YEVICH: Hearing none, we'll move over to the Uniform Multifamily Rules. TDHCA's governing board approved organizational changes on April 12 of this year, of which a key component was the consolidation of the multifamily program activities in the Multifamily Finance Division to establish consistency and efficiency among all the multifamily programs. This rule establishes the general requirements associated in making an award of multifamily development funding.

The rule provides general information regarding the Department's multifamily funding and includes an expanded section on definitions, which now includes those definitions that were previously in the following rules: Qualified Allocation Plan, Home Multifamily Program Rule, Real Estate Analysis Rule, and Compliance Administration Qualified Contract.

Is there anyone here to speak on the Uniform Multifamily

Rules?

(Pause.)

MS. YEVICH: Thank you. Mr. Moreau?

MR. MOREAU: Walter Moreau with Foundation Communities. Correct me if I'm wrong -- I think these rules contain the right of first refusal language changes?

MS. YEVICH: I am getting an affirmative from the person who works in Multifamily, yes.

MR. MOREAU: Okay. I've talked with staff some already about a couple of issues. One, there needs to be some language added that makes it absolutely clear that the LURA takes precedence over anything that might be contradictory in the rules.

Every year the LURA language and the way the ROFR, the right of first refusal, was written was slightly different. Some reference the minimum sales price; some are for 90 days; some are for two years; some reference the fair market value, and there may be situations you can't contemplate in the rules where you really have to go back to the plain reading in black and white of the LURA. I think Tom and Kerry both agree that was something that they would take a look at.

The rules also say that if an owner picks a nonprofit to sell at whatever the price is and then the nonprofit subsequently can't close, then they're released from their right of first refusal to the nonprofit, and I think that's a huge loophole. So a project owner could pick a friendly nonprofit that has no chance of closing and then they get released from that.

One thought is that there be -- that 90-day period allows backup offers so that if there is another nonprofit or two at the same price and terms that can close, an owner can't gain the right of first refusal.

There's not provision -- in some of the ROFRs the property has to be sold equal to the minimum purchase price but we're looking at a situation now where than minimum sales price may actually be more than the property's worth and so there's no provision in the rules.

I think at that point if there are no offers in 90 days from any nonprofit at that price, you've met the requirement of the ROFR and they could sell for probably less but it wasn't clear that there was a mechanism for that to happen.

Finally, most of the ROFRs are written so that if there are multiple nonprofit offers TDHCA has the right to determine what basis they will use to choose which nonprofit gets to buy the property. The rules are written now to basically punt that decision and give it to the project owner and let the project owner, in a non-public way, using whatever basis they want.

I think that's problematic. I think that any decision on a nonprofit should be something that the TDHCA Board is done in public. It has to be done through the transfer process.

I want to give some more thought and propose some language to a fair way that a nonprofit that has a track record, that does services, that has a good history -- TDHCA may not want to just defer that entire right to the project owner. That's all.

And I'll try to -- I'm working on formulating alternative language

that could be put into the rules.

MS. YEVICH: Certainly. Thank you, Walter.

Is there anyone else here to speak on the Uniform Multifamily Rules? And I recognize some of you mentioned that earlier in your QAP and that will be incorporated under realized when these are addressed.

Anyone else here for Uniform Multifamily Rules?

(No response.)

MS. YEVICH: The next item is the Real Estate Analysis Rules which this year is actually under the Uniform Multifamily Rules.

So is there anyone here specifically to speak on the Real Estate Analysis Rules?

MS. YEVICH: Hearing none, is there anyone else who would like to comment at this hearing?

(No response.)

MS. YEVICH: I wanted to remind everybody that all of the documents today are out for public comment until October 26. There's a handout up here with information on where you can email additional comments to the direct email address that pertains to whichever plan or document you're referring to.

And my name is Elizabeth Yevich. I'm director of the Housing Resource Center and I want to thank everybody for attending. And with that, this meeting is concluded. Thank you.

(Whereupon, at 11:00 a.m., the hearing was concluded.)

C E R T I F I C A T E

IN RE: 2012 State of Texas Consolidated Public Hearing

LOCATION: Austin, Texas

DATE: October 10, 2012

I do hereby certify that the foregoing pages, numbers 1 through 24, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Penny Bynum before the Texas Department of Housing & Community Affairs.

10/11/2012
(Transcriber) (Date)

On the Record Reporting
3307 Northland, Suite 315
Austin, Texas 78731

Comment (30)

2012 – 2013 QAP Comments

October 9, 2012

The following comments to the QAP represent the agreements made among four large housing authorities: SAHA, El Paso, Houston and Fort Worth. These comments are being read into the record on their behalf.

The current draft of the QAP includes several significant changes from the previous plan. Those of particular concern to the Public Housing Authorities are as follows:

- **Pre-Application Requirements; Notification Recipients.**

  As proposed, there is a notification of a Development requirement for projects located in an Extra Territorial Jurisdiction (ETJ) of a city to be sent to city officials (with districts adjacent to the Development).

  We believe this should not be added as a requirement as the ETJ has no jurisdiction over the proposed development area and there is wide variance among how the ETJ's are managed across the state. Tax Credit developments should only be required to fulfill the requirements in their respective ETJ's, if they apply. To require it as part of the tax credit process creates an unneeded burden and requirement on these developments.

  Competitive HTC Selection Criteria and Commitment of Development Funding by Unit of General Local Government would exclude Housing Authority Allocations. An application may receive up to thirteen points for a commitment of Development funding from the city or county in which the Development is proposed to be located. **Housing Authorities are established by resolution of the elected officials in each of their communities**. While the boards are appointed by the Mayor, they also serve at the pleasure of the Mayor and are, in fact, instrumentalities with quasi-governmental roles. Because of this,

  > Replacement Housing Factor Funds, Public Housing Operating subsidy and Section 8 vouchers should qualify as potential sources of funding,

- **Competitive HTC Selection Criteria; Community Revitalization Plan.**
  Applications may qualify for six points if the Development site is located in an area covered by a community revitalization plan and that meets certain criteria including the plan being adopted by the municipality or county in which the Development is proposed.

We request that in lieu of revitalization plans as defined in the proposed QAP, that there would be an allowance for:

- multiple overlapping planning efforts (San Antonio examples: transit oriented development plan, Eastside Revitalization, SA2020, Westside Revitalization, Inner city Reinvestment/Infill Policy- ICRIP and Tax Increment Reinvestment Zone - TIRZ) to be recognized as a "Community Revitalization Plan" provided at least one of those efforts has been adopted by City Council,
- Projects that are within a broader federal program initative, such as the CHOICE Neighborhoods, HOPE VI or Sustainable Communities efforts.
- Removing points earned for size of budget; small initiatives can be transformative if carefully planned and leveraged,
- Replace with points earned for scope of plan. Elements of scope are listed are: environmental remediation, transportation, education, safety, work force development, housing and health. Projects that address 3 elements receive 2 points; 5 elements receive 4 points; 7 elements receive 6 points.

  We are preparing proposed language which will be submitted at a later date for your consideration.

- **Cost of Development per Square Foot.** An application may qualify for up to ten points for this item based on the Building Costs per square footage relative to the mean cost per square foot for all similar development types.

  We Recommend:

  - Costs should be reflective of local conditions and, while the previous average cost per square foot was disconcerting to staff in underwriting, it is only one of several factors to take into consideration for the applications. We recommend that it remain as it was previously.

- **Undesirable Site Features.** Developments within proximity to certain undesirable features are considered ineligible. These features are within 300 feet of junkyards, railroads, heavy industrial uses, sold waste sites and overhead high voltage transmission lines.

We Recommend:

- The railroad feature should be eliminated as it should not be considered a negative. As in previous developments there are many ways in which to attenuate noise levels.
- Undesirable site features that have been mitigated through the U.S. Department of Housing and Urban Development (HUD) should be exempted.

- **<u>Undesirable Area Features</u>**. Development sites located 301 feet to 1,000 feet of "Undesirable Site Features" are required to disclose information on the pre-application.

  Issue: Section is vague and will increase challenges for development in these areas that result in an improvement to the community,

  We Recommend:

  - Initiate a waiver process and, once Board approves, it should not be challengeable.

- **<u>Tie Breaker Factors</u>**

  Issue: Factors the Department will utilize in the event there are Competitive HTC applications that receive the same number of points in any given set-aside category, rural or urban regional allocation, or rural or state collapse. The factors that will define the tie-breaker are:

  - Applications ranking higher on the Opportunity Index number
  - Applications proposed to be located the greatest distance from the nearest Housing Tax Credit assisted development.

  We Recommend

  - Ranking based on higher Opportunity Index number should be removed.
  - If not removed, then it should be applied to Dallas (Region 3 only) and use distance from nearest Housing Tax Credit assisted development for all others.
  - Since many tax credit projects are undertaken in phases, the tie breaker should apply to the completion of a development phase.

- **<u>Dallas Lawsuit decision</u>**

  Issue: The decision to boost incentives for affordable housing development located in areas with good schools and low income poverty rates. The reforms will allow TDHCA to challenge opposition to low-cost housing from neighborhood groups.

  We Recommend

  Ruling and reforms should only be applied to the Dallas area/region and not be implemented statewide. Use previously approved 2011-2012 QAP for all of the remaining regions throughout the State.

SAHA

The path to a visionary future starts here

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October 22, 2012

Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

Re: Comments on Draft Qualified Allocation Plan (QAP)

Dear Mr. Irvine:

The San Antonio Housing Authority (SAHA) considers the federal housing tax credit (HTC) program one of the most crucial tools in the development of affordable rental housing. In September, the Texas Department of Housing and Community Affairs (TDHCA) approved a discussion draft of a comprehensive document that will govern all the multifamily development activity. This current draft includes several significant changes from the previous plan.

SAHA submits the following comments to the current 2013 QAP draft:

1. **Competitive HTC Selection Criteria and Commitment of Development Funding by Unit of General Local Government would exclude Housing Authority Allocations.** An application may receive up to thirteen points for a commitment of development funding from the city or county in which the development is proposed to be located. Housing Authorities are established by resolution of the elected officials in each of their communities. Specifically, SAHA's Board is appointed by the Mayor; they serve at the pleasure of the Mayor and are, in fact, instrumentalities with quasi-governmental roles. Because of this,

    - Replacement Housing Factor Funds, Public Housing Operating subsidy and Section 8 vouchers should qualify as potential sources of funding.

2. **Pre-Application Requirements; Notification Recipients.** As proposed, there is a notification of a Development requirement for projects located in an Extra Territorial Jurisdiction (ETJ) of a city to be sent to city officials (with districts adjacent to the Development):

    We believe this should not be added as a requirement as the ETJ has no jurisdiction over the proposed development area and there is wide variance among how the ETJ's are managed across the state. Tax Credit developments should only be required to fulfill the requirements in their respective ETJ's, if they apply. To require it as part of the tax credit process creates an unneeded burden and requirement on these developments.

3. **Competitive HTC Selection Criteria; Community Revitalization Plan.** Applications may qualify for six points if the Development site is located in an area covered by a community revitalization plan and that meets certain criteria including the plan being adopted by the municipality or county in which the Development is proposed.

We request that in lieu of revitalization plans as defined in the proposed QAP, that there would be an allowance for:

- Multiple overlapping planning efforts to be recognized as a "Community Revitalization Plan," provided at least one of those efforts has been adopted by City Council (San Antonio examples: transit oriented development plan, Eastside Revitalization, SA2020, Westside Revitalization, Inner city Reinvestment/Infill Policy- ICRIP and Tax Increment Reinvestment Zone - TIRZ).
- Projects that are within a broader federal program initiative, such as the CHOICE Neighborhoods, HOPE VI or Sustainable Communities efforts.

Additionally, we request removing points earned for size of budget, as small initiatives can be transformative if carefully planned and leveraged. We recommend replacing with points earned for the scope of plan, with scope elements including: environmental remediation, transportation, education, safety, work force development, housing and health. Projects that address 3 elements receive 2 points; 5 elements receive 4 points; 7 elements receive 6 points.

4. **Cost of Development per Square Foot.** An application may qualify for up to ten points for this item based on the Building Costs per square footage relative to the mean cost per square foot for all similar development types. We recommend that it remain as it was previously. Costs should be reflective of local conditions and, while the previous average cost per square foot was disconcerting to staff in underwriting, it is only one of several factors to take into consideration for the applications.

5. **Undesirable Site Features.** Developments within proximity to certain undesirable features are considered ineligible. These features are within 300 feet of junkyards, railroads, heavy industrial uses, solid waste sites and overhead high voltage transmission lines. We recommend:

- The railroad feature should be eliminated as it should not be considered a negative. As in previous developments there are many ways in which to attenuate noise levels.
- Undesirable site features that have been mitigated through the U.S. Department of Housing and Urban Development (HUD) should be exempted.

6. Undesirable Area Features. Development sites located 301 feet to 1,000 feet of "Undesirable Site Features" are required to disclose information on the pre-application. This section is vague and will increase challenges for development in these areas that result in an improvement to the community. We recommend initiating a waiver process and, once Board approves, it should not be challengeable.

7. Tie Breaker Factors. Factors the Department will utilize in the event there are Competitive HTC applications that receive the same number of points in any given set-aside category, rural or urban regional allocation, or rural or state collapse. The factors that will define the tie-breaker are: (1) applications ranking higher on the Opportunity Index number and (2) applications proposed to be located the greatest distance from the nearest Housing Tax Credit assisted development.

We recommend ranking based on higher Opportunity Index number should be removed. If not removed, then it should be applied to Dallas (Region 3 only) and use distance from nearest Housing Tax Credit assisted development for all others. Since many tax credit projects are undertaken in phases, the tie breaker should apply to the completion of a development phase.

We appreciate your consideration of SAHA's comments, as we continue to provide affordable housing that is well integrated into the fabric of neighborhoods and serves as a foundation to improve lives and advance resident independence.

Sincerely,

Lourdes Castro Ramírez
President and CEO

CORPUS CHRISTI HOUSING AUTHORITY
3701 Ayers Street
Corpus Christi, Texas 78415

Gary Allsup
President & Chief Executive Officer

Office: 361-889-3300
Fax: 361-889-3370

34

Comment (34)

October 22, 2012

ATTN: Ms. Teresa Morales
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

VIA Fax No. 512-475-0764

Re: Rule Comments on TDHCA Housing Tax Credit Program Qualified Allocation Plan

Dear Ms. Morales:

The following are my comments for consideration by TDHCA to the Housing Tax Credit Program QAP published in the September 21, 2012, Texas Register:

Section 11.4(b) Maximum Request Limit (Competitive HTC Only): TDHCA should not allow an applicant to request more than the credit amount available in a sub-region. This QAP provision to allow an applicant to request up to 150% of the credit amount available in a sub-region is not consistent with the provisions of Texas Government Code Chapter 2306 which requires TDHCA to use a formula to make regional allocations and has no provisions that allow TDHCA to allow an applicant to request more than the credit amount available in a sub-region. Additionally, the QAP prohibits awards to an applicant if there are not sufficient funds within the sub-region to fully award the application that then places the application in the rural or statewide collapse. ✓

Section 11.5(3)(D) At-Risk Set-Aside: There are at-risk developments that have existing rental assistance with rents lower than the tax credits rents and may not be financially feasible unless they are allowed to eliminate a portion of that benefit. For example, the existing rental assistance may be within the tax credits rents for units at 30% AMGI and the development should be required to retain the rental assistance for those units but be allowed to eliminate the existing rental assistance on the other units who will retain their affordability within the HTC income and rent restrictions. This provisions should provide "... unless regulatory or financial barriers necessitate elimination of a portion of that benefit for the Development." ✓

Section 11.9(b)(2) Sponsor Characteristics: Housing Authorities have extensive experience in providing affordable housing as developers, owners, and managers of Public Housing and Contract Administrators of HUD rental assistance contracts under Section 8 of the National Housing Act (Voucher Program). Many Texas Housing Authorities have as much as 75 years administering the Public Housing Program and 45 years administering the Section 8 Program. TDHCA needs to recognize this experience by awarding participation by Housing Authorities the maximum points under Sponsor Characteristics. ✓

Section 11.9(b)(2)(A) Sponsor Characteristics: Should include provisions awarding 1 point for a Housing Authority that has at least 51 percent ownership interest in the General Partner, materially participates in the Development and operation of the Development throughout the compliance period, and will receive at least 80 percent of the cash flow from operations and at least 25 percent of the developer fee.

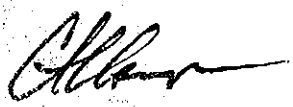
Section 11.9(b)(2)(B) Sponsor Characteristics: Should include provisions awarding 3 points for a Housing Authority that that is rated by HUD as a High Performer or 2 points if rated by HUD as a Standard Performer and has at least 51 percent ownership interest in the General Partner, materially participates in the Development and operation of the Development throughout the compliance period, and will receive at least 80 percent of the cash flow from operations and at least 25 percent of the developer fee.

Section 11.9(d)(3) Commitment of Development Funding by Unit Of General Local Government: TDHCA proposes to restrict the awards points for funding from only a City or County. In prior years these points were allowed for funding by a "Unit of General Local Government" such as a Housing Authority. There is no basis for TDHCA to now exclude consideration for funding by any Unit of Local Government limit the award of points to only funding by a City or County.

Additionally, TDHCA proposes to penalize participation by a government instrumentality such as a Public Facility Corporation PFC) created under Chapter 303 of the Texas Local Government Code that was adopted by the Texas Legislature so that local governments such a City, County, Housing Authority or other Units of Local Government can carry out activities with their instrumentalities such as a PFC. There are many HTC developments in Texas sponsored by Units of Local Government using their instrumentality PFCs. TDHCA needs to remove from the QAP all proposed restrictions on instrumentalities.

Section 11.9(e)(4)(A)(i) Leveraging of Private, State, and Federal Resources: Needs to include leveraging of funding from the Public Housing Program Capital Fund, Project Based Vouchers, and Section 8 Vouchers to assist families with their relocation.

Sincerely,



Gary Allsup

Comment (36)
Hal Fairbanks, HRI Properties

HRI PROPERTIES

October 22, 2012

Mr. J. Paul Oxer, Chairman and Board Members of the
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: 2013 Draft Uniform Multifamily Rules and QAP (9.6.12 Release Date)

Dear Chairman Oxer and Members of the TDHCA Board

Our Company, HRI Properties, is a public/private partnership developer that has a mission to serve cities and has an extensive track record in the adaptive reuse of historic buildings. Over the last few years we have been working with a number of municipalities in Texas as well as historic preservation and downtown development groups to propose QAP comments, to make development of downtown affordable & mixed-income housing projects easier and to increase opportunities to leverage Low Income Housing Tax Credits ("LIHTC") with Historic Tax Credits and funding from governmental, non-profit & for-profit private sector sponsors. We support the comments recently submitted by Ms. Donna Rickenbacker of Marque Real Estate Consultants, as well as those submitted by the City of San Antonio and the City of Houston.
Additionally, below is a list of the specific changes HRI Properties strongly endorses related to the current draft Uniform Multifamily Rules & QAP.

A. Chapter 10 of the Texas Administrative Code - Uniform Multifamily Rules:

Subchapter B – Site and Development Requirements and Restrictions.

§10.101. (a)(3) Undesirable Site Features (relating to Site and Development Requirements and Restrictions). We recommend the following changes to subparagraph (B) of this paragraph:

"(B) Developments located adjacent to or within 300 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone, or the railroad in question is commuter or light rail or unless the Development Site will comply with applicable site acceptability standards set forth in 24 CFR Part 51, Subpart B – Noise Abatement and Control."

§10.101. (b)(1)(A) General Ineligibility Criteria The scope of the public use requirements was clarified in Housing and Economic Recovery Act of 2008. The Act specifically states that a project does not fail to meet the public use requirement solely because of occupancy restrictions or preferences that favor tenants (i) with special needs, (ii) who are members of a

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909 POYDRAS STREET, SUITE 3100 • NEW ORLEANS, LOUISIANA 70112 • 504/566-0204 • FAX 504/525-3932

specified group under a State program, such as the Texas State Affordable Housing Corporation's Single Family Programs for Professional Educators (teachers) and Texas Heroes (first responders), or (iii) who are involved in artistic or literary activities. The TDHCA should affirm federal law and work in concert with the efforts of other State housing agencies. Supporting HTC housing developments for special needs populations and groups specified under Federal and State programs will encourage leveraging of the State's limited LIHTC allocations with both for profit and non-profit private sector resources. The QAP should be unambiguous in this regard. We recommend the following changes to this subparagraph:

"(v) A Development seeking Housing Tax Credits that is reasonably believed by staff to clearly not meet the general public use requirement under Treasury Regulation §1.42-9 unless Applicant has obtained a private letter ruling that the proposed development is permitted, however HTC Developments serving special needs populations or specified groups as authorized under §3004 (g) of the Housing and Economic Recovery Act of 2008, including Professional Educators or Texas Heroes as defined by the Texas State Affordable Housing Corporation's Single Family Programs, shall be deemed to meet the public use requirement; "or"

§10.101. (b)(5) Common Amenities (relating to Development Requirements and Restrictions). Inner city urban HTC projects usually involve zero-lot line or other land availability & cost constraints that would make the provision of many of the common amenities listed in this section, particularly outdoor amenities, infeasible, or difficult at best. However, proximity to employment centers and public amenities creates a high demand for downtown affordable housing. We therefore recommend the following changes to subparagraph (A) of this paragraph:

"(A) All Developments must provide sufficient common amenities as described in subparagraph (C) of this paragraph to qualify for at least the minimum number of points with urban zero lot line Developments required to qualify for only 50% of the required points, required in accordance with:"

We also recommend the addition of the following clarifications & amenities in subparagraph (C) of this paragraph:

"(i) Full perimeter fencing (may include building walls in Urban Developments) (2points)"
"(xvi) Dog Park area that is fully enclosed and intended for tenant owned dogs to run off leash or a dog wash station with plumbing for hot & cold water connections and tub drainage (requires that the Development allow dogs) (1 point)"
"(xxxi) Rooftop viewing deck (2 points)"
"(xxxii) High ceilings (> 10' avg.) in common areas (1 point)"

§10.101. (b)(6)(B) Unit Amenities (relating to Development Requirements and Restrictions). We recommend the following changes to this subparagraph to take into consideration an adjustment in required amenities when considering an Adaptive Reuse Development especially those that involve historic preservation of older buildings:

"Rehabilitation Developments will start with a base score of (3 points), and Supportive Housing and Adaptive Reuse Developments will start with a base score of (5 points)"
"(viii) Thirty (30) year shingle or metal roofing or flat roof equivalent (.5 point)"

B. Chapter 11 of the Texas Administrative Code – Qualified Allocation Plan:

§11.9(b)(2) Sponsor Characteristics (relating to Competitive HTC Selection Criteria). The words "in Texas" should be removed from subparagraph (A) and (B) of this paragraph. We agree with Ms. Rickenbacker's comments that the program should only require that Applicants and/or developers have experience in affordable housing, none of which is in material noncompliance. Competition and variety of thought and product is good for the program and should not be discouraged. This scoring category should be limited to incentivizing through points participation in the program by inexperienced parties through HUB participation. It is also critical if we are truly trying to promote and support HUB participation in this program that the HUB not be a *"Related Party"* to the Applicant.

§11.9(c)(7) Tenant Populations with Special Housing Needs This section of the QAP should clearly include special needs groups for which Federal law specifically authorizes occupancy restrictions or preferences. We recommend the following change:

"For purposes of this scoring item, Persons with Special Needs is defined as persons with alcohol and/or drug addictions, Colonia residents, persons with Disabilities, victims of domestic violence, persons with HIV/AIDS, homeless populations, groups covered by the clarification of the General Public Use Requirement in §3004 (g) of the Housing and Economic Recovery Act of 2008 and migrant farm workers."

We also suggest significantly increasing the minimum percentage commitment to serving Persons with Special Needs as required for points under this scoring item. Under the Americans with Disabilities Act Developments must design at least 5% of their units to accommodate persons with disabilities, so agreeing to set aside at least 5% of a Developments unit is not really a stretch. We believe the percentage should be at least 20% or higher in order to qualify for these points.

§11.9(e)(2) Cost of Development per Square Foot In order to avoid blacklisting inner city adaptive reuse projects, including historic preservation projects that qualify for Historic Tax Credits that offset a Development's cost, we recommend the following changes to this subparagraph:

"(less any structured parking cost that is not included in Eligible Basis or the amount of federal historic tax credits for which the Development is eligible)"
"(A) Each Application will be categorized as:
(i) Qualified Elderly and Elevator Served Development, Adaptive Reuse Developments, more than 75 percent single family design, and Supportive Housing Developments; or
(ii) All other Applications proposing New Construction or Reconstruction; or
(iii) All other Applications proposing Rehabilitation; or
(iv) All other Applications proposing both Adaptive Reuse and Elevator Served Development or Development using federal historic tax credit financing."

§11.9(e)(5) Extended Affordability or Historic Preservation The heading here says it all. An Applicant cannot get points for both Extended Affordability *and* Historic Preservation under the current draft. Although both features are presumably desirable enough for the TDHCA to incentivize, they are unrelated and are certainly not mutually exclusive. By pairing Historic Preservation as an either/or item, in which any Applicant can choose the alternative, Historic

Preservation is effectively denied any points relative to other Applications, which seems to be a direct conflict with the Housing and Economic Recovery Act of 2008's requirements for preferential consideration of Historic Preservation projects in the allocation of LIHTCs. Historic Preservation is in important public objective and such projects should receive stand alone points. Accordingly, we recommend that in the heading and at the end of subparagraph (A) the word "or" be changed to "and/or", and that the points available under the scoring item be changed from "two (2) points" to "up to four (4) points".

We appreciate your consideration of these comments and your ongoing efforts to support the development of quality affordable housing across the State.

Sincerely,

Hal Fairbanks
Vice President of Acquisitions

Cc: Tim Irvine
Cameron Dorsey
Teresa Morales
Jean Latsha

Comment (37)
Morgan Little & John A. Miterko
Texas Coalition of Veterans Organizations

37

October 22, 2012

Texas Department of Housing and Community Affairs
Ms. Teresa Morales
P.O. Box 13941
Austin, Texas 78711-3941

- via facsimile (512) 475-0764 -

On behalf of its 36 member veteran service organizations, which represent over 600,000 veterans, the Texas Coalition of Veterans Organizations (TCVO) appreciates the opportunity to provide comments on the proposed addition to the Texas Administrative Code concerning the Housing Tax Credit Program Qualified Allocation Plan (10 TAC, Chapter 11, §§11.1 - 11.10).

The Housing Tax Credit Program Qualified Allocation Plan was the subject of considerable discussion by the Texas Coordinating Council for Veteran Services, which was established as the result of legislation passed by the 82nd Legislature in order to coordinate the activities of state agencies that assist Veterans, servicemembers, and their families; coordinate outreach efforts that ensure that Veterans, servicemembers, and their families are made aware of services; and facilitate collaborative relationships among state, federal, and local agencies and private organizations to identify and address issues affecting Veterans, servicemembers, and their families.

The Texas Coordinating Council for Veteran Services recently released its final first report, which determined that Veterans' need for housing justifies their inclusion in the Low-Income Housing Tax Credits Program and recommended "the inclusion of language in the rules governing the Low Income Housing Tax Credit (LIHTC) program that will provide for clear opportunities for eligible Veterans to obtain LIHTC assisted housing."

We support this recommendation and request that the Texas Department of Housing and Community Affairs examine the proposed rule to make Veterans a specific and integral part of it. One way this could be accomplished was noted in the report: require a percentage of low income units to be held for special populations, particularly Veterans, for a certain period prior to being offered to all eligible tenants.

We also urge the Texas Department of Housing and Community Affairs to review tenant services throughout its rules to ensure that they address needs and services related to Veterans.

general rule

Thank you so much for considering our comments. Please do not hesitate to contact me if you have any questions or need additional information.

Sincerely,

Morgan Little
Chair
Texas Coalition of Veterans Organizations

John A Miterko
Legislative Liaison
Texas Coalition of Veterans Organizations

cc: Timothy Irvine, Executive Director, Texas Department of Housing and Community Affairs

Thomas Palladino, Executive Director, Texas Veterans Commission

Senator Leticia Van de Putte, Chair, Senate Committee on Veterans Affairs and Military Installations

Representative Joe Pickett, Chair, House Committee on Defense and Veterans Affairs

Representative Sylvester Turner, Vice Chair, House Committee on Appropriations

Comment (38)
Wayne Pollard, Tarrant County Housing Authority

(38)

TARRANT COUNTY

HOUSING ASSISTANCE OFFICE

Wayne Pollard
Director of Housing

Telephone: (817) 531-7640
Fax: (817) 212-3052

October 22, 2012

ATTN: Ms. Teresa Morales
Texas Department of Housing and Community Affairs
VIA Fax No. 512-475-0764

Re: Rule Comments on TDHCA Housing Tax Credit Program Qualified Allocation Plan

Dear Ms. Morales:

The following are my comments for consideration by TDHCA to the Housing Tax Credit Program QAP published in the September 21, 2012, Texas Register:

Section 11.4(b) Maximum Request Limit (Competitive HTC Only): TDHCA should not allow an applicant to request more than the credit amount available in a sub-region. This QAP provision to allow an applicant to request up to 150% of the credit amount available in a sub-region is not consistent with the provisions of Texas Government Code Chapter 2306 which requires TDHCA to use a formula to make regional allocations and has no provisions that allow TDHCA to allow an applicant to request more than the credit amount available in a sub-region. Additionally, the QAP prohibits awards to an applicant if there are not sufficient funds within the sub-region to fully award the application that then places the application in the rural or statewide collapse. ✓

Section 11.5(3)(D) At-Risk Set-Aside: There are at-risk developments that have existing rental assistance with rents lower than the tax credits rents and may not be financially feasible unless they are allowed to eliminate a portion of that benefit. For example, the existing rental assistance may be within the tax credits rents for units at 30% AMGI and the development should be required to retain the rental assistance for those units but be allowed to eliminate the existing rental assistance on the other units who will retain their affordability within the HTC income and rent restrictions. This provisions should provide " . . . unless regulatory or financial barriers necessitate elimination of a portion of that benefit for the Development." ✓

Section 11.9(b)(2) Sponsor Characteristics: Housing Authorities have extensive experience in providing affordable housing as developers, owners, and managers of Public Housing and Contract Administrators of HUD rental assistance contracts under Section 8 of the National Housing Act (Voucher Program). Many Texas Housing Authorities have as much as 75 years administering the Public Housing Program and 45 years administering the Section 8 Program. TDHCA needs to [redacted] this experience by awarding participation by Housing Authorities the maximum points under [redacted] Characteristics. ✓

Section 11.9(b)(2)(A) Sponsor Characteristics: Should include provisions awarding 1 point for a Housing Authority that has at least 51 percent ownership interest in the General Partner, materially participates in the Development and operation of the Development throughout the compliance period, and will receive at least 80 percent of the cash flow from operations and at least 25 percent of the developer fee.

Section 11.9(b)(2)(B) Sponsor Characteristics: Should include provisions awarding 3 points for a Housing Authority that that is rated by HUD as a High Performer or 2 points if rated by HUD as a Standard Performer and has at least 51 percent ownership interest in the General Partner, materially participates in the Development and operation of the Development throughout the compliance period, and will receive at least 80 percent of the cash flow from operations and at least 25 percent of the developer fee.

Section 11.9(d)(3) Commitment of Development Funding by Unit Of General Local Government: TDHCA proposes to restrict the awards points for funding from only a City or County. In prior years these points were allowed for funding by a "Unit of General Local Government" such as a Housing Authority. There is no basis for TDHCA to now exclude consideration for funding by any Unit of Local Government limit the award of points to only funding by a City or County.
Additionally, TDHCA proposes to penalize participation by a government instrumentality such as a Public Facility Corporation PFC) created under Chapter 303 of the Texas Local Government Code that was adopted by the Texas Legislature so that local governments such a City, County, Housing Authority or other Units of Local Government can carry out activities with their instrumentalities such as a PFC. There are many HTC developments in Texas sponsored by Units of Local Government using their instrumentality PFCs/ TDHCA needs to remove from the QAP all proposed restrictions on instrumentalities.

Section 11.9(e)(4)(A)(i) Leveraging of Private, State, and Federal Resources: Needs to include leveraging of funding from the Public Housing Program Capital Fund, Project Based Vouchers and Section 8 Vouchers to assist families with their relocation.

Wayne E. Pollard, Jr.

10/22/12
Date

2100 Circle Drive * Suite 200 * Fort Worth, Texas 76119

Comment (39)
Mary Vela, Alamo Housing Authority

(39)

ALAMO HOUSING AUTHORITY

309 N. 9th St.
ALAMO, TX 78516

TELEPHONE (956) 787-2352
FAX (956) 781-8886

October 22, 2012

ATTN: Ms. Teresa Morales
Texas Department of Housing and Community Affairs
VIA Fax No. 512-475-0764

Re: Rule Comments on TDHCA Housing Tax Credit Program Qualified Allocation Plan

Dear Ms. Morales:

The following are the Alamo Housing Authority's comments for consideration by TDHCA to the Housing Tax Credit Program QAP, published in the September 21, 2012 Texas Register:

Section 11.4(b) Maximum Request Limit (Competitive HTC Only): TDHCA should not allow an applicant to request more than the credit amount available in a sub-region. This QAP provision to allow an applicant to request up to 150% of the credit amount available in a sub-region is not consistent with the provisions of Texas Government Code Chapter 2306 which requires TDHCA to use a formula to make regional allocations and has no provisions that allow TDHCA to allow an applicant to request more than the credit amount available in a sub-region. Additionally, the QAP prohibits awards to an applicant if there none sufficient funds within the sub-region, which then places the application in the rural or statewide collapse.

Section 11.5(3)(D) At-Risk Set-Aside: There are at-risk developments that have existing rental assistance, with rents lower than the tax credits rents and may not be financially feasible, unless they are allowed to eliminate a portion of that benefit. For example, the existing rental assistance may be within the tax credit rents for units at 30% AMGI and the development should be required to retain the rental assistance for those units; however, be allowed to eliminate the existing rental assistance on the other units that will retain their affordability within the HTC income and rent restrictions. These provisions should provide " . . . unless regulatory or financial barriers necessitate elimination of a portion of that benefit for the Development."

Section 11.9(b) (2) Sponsor Characteristics: Housing Authorities have extensive experience in providing affordable housing as developers, owners, and managers of Public Housing and Contract Administrators of HUD rental assistance contracts under the Section 8 of the National Housing Act (Voucher Program). Many Texas Housing Authorities have as much as 75 years experience administering the Public Housing Program and 45 years administering the Section 8 Program. TDHCA needs to recognize this experience by awarding participation by Housing Authorities the maximum points under Sponsor Characteristics.

Section 11.9(b) (2) (A) Sponsor Characteristics: Should include provisions awarding 1-point to a Housing Authority that has at least 51 percent ownership interest as General Partner, that materially participates in the development and operations of the development, throughout the compliance period, that will receive at least 80 percent of the cash flow from operations, and at least 25 percent of the developer fee.

Section 11.9(b) (2) (B) Sponsor Characteristics: Should include provisions awarding 3-Points to a Housing Authority that is rated by HUD as a High Performer or 2 points if Rated Standard Performer.

Section 11.9(d) (3) Commitment of Development Funding by Unit of General Local Government: TDHCA proposes to restrict the awards points for funding from only a City or County. In prior years, these points allowed for funding by a "Unit of General Local Government" such as a Housing Authority. There is no basis, for TDHCA to exclude consideration of funding to any Unit of Local Government, limiting the award of points to funding a City or County.

Additionally, TDHCA proposes to penalize participation by a government instrumentality such as a Public Facility Corporation PFC) created under Chapter 303 of the Texas Local Government Code that was adopted by the Texas Legislature, so that local governments such as a City, County, Housing Authority or other Units of Local Government can carry out activities with their instrumentalities as such. There are many HTC developments in Texas sponsored by Units of Local Government using their instrumentality's PFC;TDHCA needs to remove from the QAP the proposed restrictions on instrumentalities.

Section 11.9(e) (4) (A) (I) Leveraging of Private, State, and Federal Resources: Needs to include leveraging of funding from the Public Housing Program Capital Fund, Project Based Vouchers, and Section 8 Vouchers to assist families with their relocation.

Respectfully,

Mary Vela
Executive Director

Comment (40)
Alice Menendez, HK Capital Management

Alice Menendez, HK Capital Mgmt (40)

I would like to register a comment regarding the Revitalization Plan scoring element. Limiting revitalization plan points to sites targeted for CDBG-Disaster Recovery funding unnecessarily penalizes viable, beneficial rehabilitation projects which are outside of these target areas. There are many locally-recognized plans for revitalization, including one for the Gulfton neighborhood where I work, which was funded by the Department of Education, for example, which address the need for quality affordable housing, which are not linked to the CDBG-DR process. Additionally, my impression is that the CDBG-DR funding recipients in Houston will not be determined in time for these awards to be considered in this 9% LIHTC application cycle.

I would encourage TDHCA to broaden this scoring element to include other types of revitalization plans which are recognized by the City or relevant authority.

I understand that this scoring element is closely tied to the lawsuit Civil Action No. 3:08-CV-0546-D with the Inclusive Communities Project. I hope that this can be resolved in such a way that projects (particularly if they are not new construction) in difficult to develop areas, which do not have a high concentration of tax credit developments, and which have revitalization plans unconnected to CDBG-DR funds will remain competitive with developments in High Opportunity Areas.

Comment (41)
Ron Kowal, Housing Authority of the City of Austin &
The Austin Affordable Housing Corporation

From: JEN JOYCE
To: teresa.morales@tdhca.state.tx.us;
Subject: QAP Public Comment
Date: Monday, October 22, 2012 3:44:27 PM

Hi Teresa, here is the comment I referred to earlier. Would you mind confirming that you received this? Also, as we discussed, for the record, please record this comment as coming from Ron Kowal (signature below), on behalf of HACA and AAHC. Thanks so much! – Jen

Ms. Morales,

On behalf of the Housing Authority of the City of Austin ("HACA") and the Austin Affordable Housing Corporation ("AAHC"), I hereby submit the following comments to the draft 2013 Qualified Allocation Plan, §11.5(3)(D), regarding the At-Risk Set-Aside.

Pursuant to §11.5(3)(D), the redevelopment of public housing qualifies for At-Risk designation where "no less than 25 percent of the proposed Units must be public housing units" in the final project. While HACA and AAHC understands that some of the language in this section regarding the At-Risk set-aside is required by statute, we ask that the TDHCA Board use its discretion so that the proposed language is modified to read that, "no less than 25 percent of the proposed Units must be public housing units or units assisted by a project-based rental subsidy agreement with a term of at least 15 years."

We believe that the 25% benchmark standard is appropriate as written; however, restricting the designation to, "public housing units" fails to include units subsidized via a project-based rental assistance contract, which is the direction of national housing policy with the U.S. Department of Housing and Urban Development ("HUD"). Due to financial and budgetary constraints, HUD must identify other funding sources to preserve and improve aging properties, as it can no longer continue to subsidize Public Housing Authorities ("PHAs") at previous levels. Under the current public housing financing model, PHAs cannot access private debt. Through current HUD programs and initiatives, such as the Rental Assistance Demonstration and the Choice Neighborhood Initiative, HUD encourages the conversion of existing public housing units to units covered by a long-term, project-based rental assistance contract. These new initiatives are based on HUD's recognition that the lack of federal funding will make maintaining the current public housing structure untenable, and that future funding must be focused on tenant rental subsidy, and not the funding of public housing authority entities or physical assets. The conversion of the assistance from public housing to project-based rental assistance enables PHAs and owners to access private debt and equity to address immediate and long-term capital needs. At their core, these initiatives focus on the preservation and improvement of "at-risk" public housing properties, without additional federal subsidy funding. We believe our proposed language is in line with current HUD policy, and the spirit of the At-Risk set-aside when enacted under §2306. Our proposed language would marry HUD's concept of preserving public housing properties by accessing private debt and equity, with TDHCA's priority of preserving at-risk public housing units.

Ron Kowal

Vice-President, Asset Management/Housing Development

Austin Affordable Housing Corporation

A subsidiary of The Housing Authority City of Austin

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"75 years of Empowering Families and Fostering Community"

P Please consider the environment before printing this e-mail.

Comment (42)
David Liette, Miller Valentine Group

Miller Valentine Group
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513-683-6165 Fax

October 22, 2012

Mr. J. Paul Oxner, Chairman and
Board Members of the
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, Texas 78701

Re: 2013 Qualified Allocation Plan

Dear Chairman Oxner and Members of the TDHCA Governing Board,

In regards to the board approved draft of the 2013 QAP, we ask that you consider revising the following scoring items. We appreciate the open process as well as the ability for applicants to comment on the allocation plan and feel that the following changes will help to provide high-quality affordable housing in areas of the greatest need.

Sponsor Characteristics – While we are in agreement that there should be a level of experience in affordable housing required to gain this point, we do not agree that the experience requirement should be limited to just development experience in the state of Texas. This scoring item discourages competition and does not recognize the benefit gained from allowing experienced, out-of-state developers, with a proven track record of successfully operating LIHTC properties, to compete on a level playing field. The LIHTC program benefits when an objective process is used to award the highest quality developments in areas of the greatest need. If the intent of this scoring item is to incentivize high-quality developers, with a proven track record of success, we recommend increasing the 8609 requirement to fifty (50) properties and deleting the requirement for these properties to be located in Texas. This change would ensure that only highly experienced development groups would qualify for these points.

In addition, if it is the intent of the department to incentivize experienced development groups to partner with Historically Underutilized Businesses, maximum points should be reasonably achievable for out-of-state development companies that elect to partner with inexperienced HUBs. Allowing only in-state development groups

to maximize these points discourages competition and in no way creates a better affordable housing program or better housing options for low-income residents.

Points for Quantifiable Community Participation – As it currently stands, developments that received opposition in previous rounds but have now gained support are eligible to receive two additional points. This scoring item will obviously benefit only a select number of applicants and does not create a fair and level playing field. Furthermore, in no way does this scoring item work to achieve the objective of creating high-quality housing in areas with the greatest need.

Community Revitalization Plan - The points currently associated with this scoring item do not take into consideration the population of the city in which the revitalization plan is located. Larger urban cities, such as Houston and Dallas, have sufficient budgets to qualify for maximum points under this item. Smaller cities will not be able to receive these points due to budgetary constraints. This in turn will cause most developers to target revitalization areas in large cities. Consequently, these areas are typically located in QCTs and other low-income areas. We believe that this will result in a high number of awards in QCTS and therefore not meet the objectives citied in the remedial plan. This will also not contribute to achieving TDHCAs goal of placing high-quality housing in High Opportunity Areas, as defined in the QAP.

Cost of Development Per Square Foot – The previous requirement of having hard cost caps allows applicants to have a clear understanding of the cost requirement before beginning the costly process of producing an application. We recommend that this scoring item remain consistent with the scoring requirements of the 2012 QAP.

Thank you for taking the time to review our comments. Miller Valentine is dedicated to creating high-quality, affordable housing in the areas of Texas with the greatest need. We appreciate your consideration and look forward to working with you in the future.

Best regards,

David R. Liette, Partner
President
MV Residential Development

cc: Tim Irvine, Executive Director
Cameron Dorsey, Director of Housing Tax Credits

Comment (43)
David Mark Koogler, Mark-Dana Corporation

MARK-DANA CORPORATION
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(281) 419-1991 Fax
dkoogler@mark-dana.com

October 22, 2012

Texas Department of Housing and
Community Affairs
221 East 11th Street
Austin, Texas 78701-2410
Attn.: TDHCA Board Members
TDHCA Staff

Re: Comments to 2013 Multifamily Program Rules - Qualified Allocation Plan (collectively the "QAP") Approved by the Governing Board of the Texas Department of Housing and Community Affairs ("TDHCA") For Public Comment At Its September 6, 2012 Board Meeting

Ladies and Gentlemen,

We appreciate the opportunity to provide comments to the proposed 2013 QAP.

We have reviewed the proposed QAP, attended the TDHCA QAP Workgroup Session in Austin, and the September 6, 2012 and October 9, 2012 THDCA Board meetings.

We have participated in developing the TAAHP consensus comments that have been and are being delivered to you and we support those comments. We are not repeating the TAAHP consensus comments in this letter unless we have additional points to make with respect to a particular comment.

We have the following additional questions / comments that we would like to bring to your attention.

1. General Comments

We strongly believe that the HTC program should promote good quality safe affordable housing with an emphasis on affordable. The current 2012 QAP and the proposed 2013 QAP have provisions that increase the cost of affordable housing unnecessarily, such as:

- requiring a minimum rehabilitation amount of $25,000 per unit (§10.101(b)(3));
- requiring an increased number of required amenities for larger projects and for rehab projects (§10.101(b)(5));
- requiring numerous tenant services (§11.9(c)(3));

- requiring a detailed civil engineering feasibility study which requires the civil engineer to review items that can be reviewed less expensively by the developer or others (such as the environmental site assessment and soils report) (§10.205(5)); and
- requiring sites to be within 1 mile (2 miles for Rural) of 6 amenities (§10.101(a)(2)). This requirement increases the cost of the land and increases the likelihood of neighborhood opposition.

2. Specific Questions/Comments

Our comments follow in the order of the particular section of the QAP:

§10.3(a)(56) Definition of Historically Underutilized Businesses (HUB):
Please make sure that limited liability companies are included. (The definition mentions Corporations, Sole Proprietorship, Partnership, or Joint Venture (which are capitalized terms, but we did not see a definition), but not limited liability company.)

§10.101(b)(4)(J) Mandatory Development Amenities:
Item (J) of Mandatory Development Amenities requires all developments to have "Energy-Star lighting in all Units which may include compact fluorescent bulbs." Please provide that LED light bulbs are acceptable as well.

§10.101(b)(5) Common Amenities:
Developments must provide a certain number of common amenities depending on the ranges of the number of Units in the development. We recommend adjusting the range for clause (iii) to be 41 to 80 Units (to more closely relate to the maximum number of Units permitted for Rural Developments) and adjusting clause (iv) to be 81 to 99 Units.

§10.204(5) Experience Requirement:
The experience requirement provision appears to have not changed from the 2012 QAP, however clause (A)(i) of Section 10.204(5) permits the use of "an experience certificate issued by the Department in the past two (2) years." In 2012 that meant that experience certificates issued in 2011 and 2010 were acceptable but in 2012 the same language will mean that experience certificates would need to be issued in 2011 or 2012 to be acceptable and experience certificates issued in 2010 will no longer be acceptable. We request that clause (A)(i) be written to read "an experience certificate issued by the Department in 2010, 2011, or 2012."

§10.204(7)(E)(i) Operating and Development Cost Documentation (Site Work costs):
In prior QAPs a detailed cost break down of site work costs prepared by a Third Party engineer was only required if site work costs exceeded $9,000 per Unit. The proposed 2013 QAP requires that a Third Party engineer prepare a detailed cost breakdown of projected Site Work costs in all circumstances where there are Site Work costs. It has been our experience that Third Party engineers do not typically determine cost estimates for site work costs. Requiring a Third Party engineer to certify to all estimated Site Work costs will increase the cost of preparing the HTC application further. Please only require Third Party engineer certification of Site Work costs for costs exceeding a threshold such as $15,000 per Unit (which is the threshold set forth in the 2013 QAP for requiring a CPA letter for allocating Site Work costs).

§10.205(5) Civil Engineer Feasibility Study:
As we noted last year, requiring a civil engineer feasibility study increases the cost of submitting an application significantly. Much of this work has to be re-done when complete construction plans are drawn. We feel it is inappropriate to ask all applicants to incur these costs at the application stage when a small percentage of applications will actually be awarded credits. Many of the items required to be included in the civil engineer feasibility study are items that should be the function of the developer and are not items that the civil engineer typically performs.

If you do not delete the requirement of a civil engineer feasibility study, please consider narrowing the scope of the study to reduce the time and cost of the study and to make clear that it is a preliminary study (as this provision is currently drafted, it reads as if a full and final study is required). If the civil engineering feasibility study is not deleted in its entirety, we request that you remove the following from the scope of the study:

- Survey
- Delete the following from the preliminary site plan: topography (unless, topography is generally available from online databases (at no additional cost)), water and waste water utility distribution, and retaining walls.
- Review of the Environmental Site Assessment.
- Review of the Geotechnical Report/Study
- Topography review (unless, topography is generally available from online databases (at no additional cost))
- Electric, Gas, and Telephone Service Summary
- Zoning/Site Development Ordinances
- Building Permit Process Summary, Fees and Timing (civil engineers sometimes work on site work permits, but do not usually work on building permits)

§10.402(h) Construction Status Report:
What is the purpose of submitting these reports? We believe that investors and lenders will want the partnership and construction loan documents kept confidential. We also note that the copy of the construction contract required to be delivered quarterly under clause (3) should probably be moved to clause (2) and only be required to be delivered at the time the construction loan documentation is delivered. Also, please note that construction lenders accept AIA G702 and G703 (or equivalent) forms that are not certified by the architect of record from time to time, especially near the end of construction when items covered by the draw may not need to be verified by the architect. Therefore we request that clause (3) be revised to remove the requirement of certification by the architect.

§11.9(b)(2) Sponsor Characteristics:
We request that the provisions under Sponsor Characteristics requiring Texas Housing Tax Credit experience be removed. As has been discussed at the past two TDHCA Board meetings, the Housing Tax Credit allocation process should be open to competition for in-State and out-of-State developers.

§11.9(d)(3) Commitment of Development Funding by Unit of General Local Government:
This provision requires that the Unit of Local Government be a city or county. Instrumentalities of a city or county will not qualify for points unless such instrumentalities are first awarding funds to the city or county for their administration or at least 60% of the governing board of the instrumentality is city council members or county commissioners, as applicable.

- As currently worded, this provision does not appear to include Economic Development Corporations (ECD) as a unit of local government. We are not sure that an ECD can first award the funds to the city. Also, it appears that ECDs may not have at least 60% of their governing board be city council members. For more information on ECDs please visit the Comptroller's web site: http://www.texasahead.org/tax_programs/typeab/. Also, see Annex A attached to this letter for excerpts from the Comptroller's web site describing how cities can form EDCs and who may be appointed to serve on their governing boards.
- We request that ECDs qualify as a Unit of Local Government.
- It appears arbitrary to require that an instrumentality have 60% of their governing board be city council members or county commissioners in order to qualify as a unit of local government under this section. We recommend that an instrumentality qualify as a unit of local government if its governing board is appointed by the city or county. An instrumentality's governing board may change from time to time, resulting in a situation in which the ECD would qualify under the this section of the QAP on one day and not on the next because a board member leaves, dies, resigns or is otherwise replaced.

We also note that HOME and CDBG funds administered by the State of Texas cannot be utilized for points under this scoring item. We are concerned that by permitting the use of HOME and CDBG funds from participating jurisdictions (PJs) but not from the State (non-PJs), only those areas in each Region that have PJ funds will attract applications for Housing Tax Credits.

We support TAAHPs recommendation that the award of such funds be required to occur no later than Commitment Notice (rather than August 1).

With respect to the determination of points under this provision, we request that the factor be determined based on a population of 250,000 (e.g. a factor of 0.06 in funding per Low Income Unit and $15,000 in funding per Low Income Unit, and so on for each of the point categories).

§11.9(d)(6) Community Revitalization Plan:
We suggest that Developments in Rural Areas be able to obtain six points if they can meet the criteria under subsections (A) or (B) of this section. Also, with respect to subsection (C), please consider increasing the time periods from 12 months to 24 months. It can take quite a while for projects of the type included in subsection (C) to be completed and the Development itself will more than likely not be completed within the currently required 12 month period. Also, please consider deleting the one (1) mile requirement for the construction of a new fire or police station and only require that the Development Site be in their service area. Finally, please consider including emergency care centers in clause (IV) relating to hospitals or expansion of hospitals.

§11.9(e)(2) Cost of Development per Square Foot:
We support TAAHP's recommendation with respect to this provision. If TDHCA decides not to follow TAAHP's recommendation and continue with this as proposed, please consider separating Qualified Elderly and Elevator Served Developments, more than 75% single family design, and Supportive Housing Developments into three separate categories under clause (A).

§11.9(e)(4) Leveraging of Private, State, and Federal Resources:
Has TDHCA Staff studied the impact of this proposed provision? It would be interesting to see how this new provision would have impacted the 2012 HTC applications. We suggest increasing each of the percentages by 0.75 (e.g. percentage in clause (ii) would change to 7.75 percent).

We appreciate the opportunity to provide comments to the QAP and hope that you will consider and make the changes that we have discussed. If you have any questions about our comments, please let us know.

Sincerely,

David Mark Koogler
President

ANNEX A

Type A and B Economic Development Corporations Overview

The Development Corporation Act of 1979 gives cities the ability to finance new and expanded business enterprises in their local communities through economic development corporations (EDCs). Chapters 501, 504, and 505 of the Local Government Code outline the characteristics of Type A and Type B EDCs, authorize cities to adopt a sales tax to fund the corporations and define projects EDCs are allowed to undertake.

Establishing the Corporation

Development Corporations

For both Type A and Type B, the Development Corporation Act requires cities to establish a corporation to administer the sales and use tax funds. The corporation must file a certificate of formation with the Secretary of State. The articles of incorporation must state that the corporation is governed by the Development Corporation Act of 1979 found in Chapters 501-505 of the Local Government Code.

Board of Directors

The boards of directors of both Type A and Type B EDCs serve at the pleasure of the city council and may be removed and replaced at any time and without cause. All funding agreements approved by an EDC must also be approved by the city council.
The composition of a corporation's board of directors and the length of a member's term differ between Type A and Type B.

Under Type A

The city council must appoint a board of directors with at least five members to serve terms up to six years. The statute does not specify qualifications for Type A corporation board members.

Under Type B

The city council must appoint a board of seven directors — up to four of whom can be employees or officers of the city or city council members — to serve two-year terms. If the city's population is 20,000 or more, the directors must be residents of the city. For cities with fewer than 20,000 residents, directors must be residents of the county in which the majority of the city is located, or reside within 10 miles of the city and in a county which borders the county in which a majority of the city is located.

Comment (44)
Donna Rickenbacker, Marque Real Estate Consultants

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Donna@MarqueConsultants.com

October 21, 2012

Mr. J. Paul Oxer, Chairman and
Board Members of the
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: 2013 Draft Uniform Multifamily Rules and QAP (9.6.12 Release Date)

Dear Chairman Oxer and Members of the TDHCA Governing Board:

We would like to submit the following comments and recommended changes to the 2013 Draft of the Uniform Multifamily Rules and QAP approved by the TDHCA Governing Board on September 6, 2012 (Draft). Marque supports all recommendations of TAAHP submitted to the Department by letter dated October 19, 2012. The comments in this letter represent additional suggested changes not covered by TAAHP and will only touch on TAAHP recommendations to the extent of any supplemental comments to certain provisions covered in their letter for consideration by TDHCA.

A. Chapter 10 of the Texas Administrative Code - Uniform Multifamily Rules:

1. **Subchapter B – Site and Development Requirements and Restrictions.**

a. **§10.101. (a)(3) Undesirable Site Features** (relating to Site and Development Requirements and Restrictions). We recommend the following changes to subparagraph (B) of this paragraph:

"(B) Developments located adjacent to or within 300 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone, or the railroad in question is commuter or light rail or unless the Development Site will comply with applicable site acceptability standards set forth in 24 CFR Part 51, Subpart B – Noise Abatement and Control."

b. **§10.101. (b)(5) Common Amenities** (relating to Development Requirements and Restrictions). These amenities are not associated with any selection criteria points and are applicable to competitive and bond financed transactions. The Applicant must provide sufficient common amenities based on the number of units in the proposed Development. However, these amenities do not take into consideration the location of the site or the proposed Development type. It is impossible to comply with the number of amenities required if proposing a zero or minimum lot line Development common in downtown and city center areas of our state. We recommend the following changes to subparagraph (A) of this paragraph:

"(A) All Developments must provide sufficient common amenities as described in subparagraph (C) of this paragraph to qualify for at least the minimum number of points with zero lot line Developments required to qualify for only 50% of the required points, required in accordance with:"

c. **§10.101. (b)(6)(B) Unit Amenities** (relating to Development Requirements and Restrictions). We recommend the following changes to this subparagraph to take into consideration an adjustment in required amenities when considering an Adaptive Reuse Development especially those that involve historic preservation of older buildings:

"Rehabilitation Developments will start with a base score of (3 points), and Supportive Housing and Adaptive Reuse Developments will start with a base score of (5 points)."

2. **Subchapter C – Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules.**

a. **§10.208. Forms and Templates.** This section includes the 2013 Electronic Application Filing Agreement, Templates and other Application certifications and forms to be used in the Uniform Application. We recommend removing this Section from the Uniform Multifamily Rules. These forms and templates are not rules and any changes made to these documents will require Board approval.

B. Chapter 11 of the Texas Administrative Code – Qualified Allocation Plan:

1. **§11.8(b)(1)(B) Pre-Application Threshold Criteria** (relating to Pre-Application Requirements). We recommend that the funding request be an *"approximate"* request. The Applicant will not have the benefit of all Third Party Reports and other information by Pre-Application necessary to make a final tax credit determination.

2. **§11.8(b)(1)(E) Pre-Application Threshold Criteria** (relating to Pre-Application Requirements). We recommend that the Total Number of Units being proposed be an *"approximate"* number of total Units. Again, the Applicant may not know at Pre-Application the exact number of Units it plans to develop. There needs to be some ability to adjust the total number of Units between Pre-Application and Application.

3. **§11.9(b)(2) Sponsor Characteristics** (relating to Competitive HTC Selection Criteria). We recommend removing from this scoring category any requirement to have Texas based experience. The program should require that Applicants and/or developers have experience in affordable housing none of which is in material noncompliance. Competition and variety of thought and product is good for the program and should not be discouraged. This scoring category should be limited to incentivizing through points participation in the program by inexperienced parties through HUB participation. It is also critical if we are truly trying to promote and support HUB participation in this program that the HUB not be a *"Related Party"* to the Applicant.

4. **§11.9(c)(2)(B) Rent Levels of Tenants** (relating to Criteria to Serve and Support Texans Most in Need). We recommend the following change to this subparagraph to make it consistent with §11.9(c)(1) Income Levels of Tenants. Without the following adjustment, Urban sites in Regions 11 and 13 (by way

of example) would be required to provide the same deep rent skewing as the MSAs of our largest Texas cities:

"(B) At least 10 percent of all low income Units at 30 percent or less of AMGI, or for a Development located in a Rural Area or in the non-MSAs of Dallas, Fort Worth, Houston, San Antonio or Austin 7.5 percent of all low income Units at 30 percent or less of AMGI (9 points)."

5. **§11.9(d)(2)(A) Community Input other than Quantifiable Community Participation** (relating to Criteria Promoting Community Support and Engagement). We recommend that TDHCA remove letters of opposition to count against letters of support from a community or civic organization. To the best of our knowledge there is no statutory or remedial plan requirement for this provision. The provision imposes an additional barrier to working in NIMBY areas of our state which in a lot of instances are HOAs and the mechanism would impede HOA development in conflict with the remedial plan.

6. **§11.9(d)(3) Commitment of Development Funding by Unit of General Local Government** (relating to Criteria Promoting Community Support and Engagement). This is a statutorily imposed scoring category and worth under the 2013 Draft QAP up to 13 points. For all practical purposes, if the Applicant does not receive these points then its application will not be competitive. As currently drafted, the use of HOME Investment Partnership Program or Community Development Block Grant funds administered by the State of Texas cannot be utilized for points under this scoring item. This prevents non-Participating Jurisdictions (non-PJ) from using these funds to qualify for these points putting many Non-PJ Urban areas at a tremendous disadvantage, many of which are in underserved HOAs with good schools exactly where the court order remedial plan is mandating that the program locate the housing. These smaller Urban cities and counties can't afford to make direct loans to affordable housing developments in the amounts proposed in order to maximize points in this scoring category, nor is it fair to require them to do so simply because their entitlement funds are administered by TDHCA. Please find as **Attachment I**, our recommended changes to this scoring item that supports the following:

a. Allowing entitlement funds administered by TDHCA to be utilized for points under this scoring item. This change will give an Applicant proposing a Development in a Non-PJ area a better chance of competing against proposed Developments in the larger Urban cities of Houston, Dallas, Ft. Worth, San Antonio and Austin that are allowed to utilize their HOME and CDBG funds as a qualifying funding source in this scoring item; and

b. Adjusting the scaling of points to encourage the leveraging of non-CDBG and HOME funding sources in the transaction. This follows the Department's desire to see more "local" participation in the transaction, and incentivizes those Applicants that have secured "non-traditional" sources of funds.

Although, not reflected in **Attachment I**, we also recommend that TDHCA adjust the amount of funding necessary to maximize the points. The funding amount is based on population. Under the current rules, a community of 100,000 or greater in population would be required to provide a loan in the amount of $15,000 per HTC unit which for a 120-unit development would mean a commitment of $1,800,000. This is an unfair funding requirement imposed on a medium sized Urban area of 100,000 in population that is

located and competing for tax credits in the same sub-region as one of the larger Urban cities of Houston, Dallas, Ft. Worth, San Antonio and Austin. We recommend moving the breakpoint from 100,000 to 250,000 in population, by changing the funding factor as follows:

(i) $15,000 = .06;
(ii) $10,000 = .04;
(iii) $5,000 = .02;
(iv) $1,000 = .004; and
(v) $500 = .002.

7. **§11.9(d)(6) Community Revitalization Plan** (relating to Criteria Promoting Community Support and Engagement). Please find as **Attachment II**, our recommended changes to this scoring item that supports the following:

a. Recognition that cities have several defined areas where they are incentivizing revitalization and redevelopment activities. The changes provide flexibility to allow the city to certify to an area that may not be defined as a "community revitalization plan" but has boundaries and where the city is or plans to spend significant resources to accomplish a defined purpose.

b. The points are based on where the project is located instead of a budget amount proposed to be used within the plan area. Points based on budgets are problematic when considering the size of the city and the revitalization efforts and type of funding to be used in a particular area.

8. **§11.9(e)(3) Pre-Application Participation** (relating to Criteria Promoting the Efficient Use of Limited Resources and Applicant Accountability). We recommend the *removal* of subparagraph (3)(A), which prevents the Applicant from qualifying for Pre-Application points if the total number of Units increases by more than 10 percent from Pre-Application to Application. The Applicant should not be penalized if after they complete their due diligence and receive final reports and funding decisions from Units of General Local Government they elect to increase the Total Units by more than 10 percent. Please be advised that re-notification is required if the number of units increase by more than 10 percent pursuant to §10.203 (Public Notifications of the Uniform Multifamily Rules) so all interested parties will be made aware of the election.

9. **§11.9(e)(4) Levering of Private, State, and Federal Resources** (relating to Criteria Promoting the Efficient Use of Limited Resources and Applicant Accountability). We recommend the following change to subparagraph (A)(i) of this paragraph:

"The Development leverages CDBG Disaster Recovery, HOPE VI, or Choice Neighborhoods funding, or is located in a Rural area or non MSA areas of Houston, Dallas, Ft. Worth, San Antonio and Austin, and the Housing Tax Credit Funding Request is less than 8 percent of the Total Housing Development Costs (3 points); or."

The levering required to achieve the maximum points in this scoring item is very difficult to achieve in Rural and non-MSA areas and will simply cause the Applicant to reduce the quality of the Development compromising the sustainability of the housing.

We appreciate the Board's consideration of these comments and recommended changes to the 2013 Rules and QAP. Thank you very much for all of the hard work that you do for the affordable housing program in Texas.

Sincerely,

Donna Rickenbacker

Donna Rickenbacker

cc: Tim Irvine, Executive Director
Cameron Dorsey, Director of Housing Tax Credits

Attachment I

(3) Commitment of Development Funding by Unit of General Local Government. (§2306.6710(b)(1)(E)). An Application may receive up to thirteen (13) points for a commitment of Development funding from the city or county in which the Development is proposed to be located. Development funding from instrumentalities of a city or county will not qualify for points under this scoring item unless such instrumentalities are first awarding such funds to the city or county for their administration or at least 60 percent of the governing board of the instrumentality is city council members from the city in which the Development will be located (for Developments located in a city) or county commissioners from the county in which the Development will be located (for Developments not located in a city). A government instrumentality may not be a Related Party to the Applicant. Development funding must be provided in the form of a construction and/or permanent loan with an interest rate no higher than the Applicable Federal Rate (AFR) and term of at least 5 years, a grant, an in-kind contribution, a contribution which will support the Development, such as vouchers, or combination thereof. Funds cannot have been provided to the Unit of General Local Government by the Applicant or a Related Party. ~~HOME Investment Partnership Program or Community Development Block Grant funds administered by the State of Texas cannot be utilized for points under this scoring item.~~ The Applicant must provide evidence in the Application that an application or request for the development funds has been submitted in the form of an acknowledgement from the applicable city or county. The acknowledgement must also state that a decision with regard to the awards of such funding will occur no later than August 1. A firm commitment of funds is required by Commitment or the points will be lost (except for Applicants electing the point under subparagraph (~~B~~C) of this paragraph).

(A) Applications will qualify for points based on the amount of funds at the levels described in clauses (i) – (v) of this subparagraph. For the purpose of this calculation, the Department will use the population of the Place from which the Development's Rural or Urban Area designation is derived. For developments located outside a census designated place, the Department will use the population of the nearest place.

(i) ~~twelve (12~~Ten (10) points for a commitment by a Unit of General Local Government of the lesser of the population of the Place multiplied by a factor of 0.15 in funding per Low Income Unit and $15,000 in funding per Low Income Unit;

(ii) ~~eleven (11~~Nine (9) points for a commitment by a Unit of General Local Government of the lesser of the population of the Place multiplied by a factor of 0.10 in funding per Low Income Unit and $10,000 in funding per Low Income Unit;

(iii) ~~ten (10~~eight (8) points for a commitment by a Unit of General Local Government of the lesser of population of the Place multiplied by a factor of 0.05 in funding per Low Income Unit and $5,000 in funding per Low Income Unit;

(iv) ~~nine (9~~seven (7) points for a commitment by a Unit of General Local Government of the lesser of the population of the Place multiplied by a factor of 0.025 in funding per Low Income Unit and ~~-~~$1,000 in funding per Low Income Unit; or

(v) ~~eight (8~~six (6) points for a commitment by a Unit of General Local Government of the lesser of the
population of the Place multiplied by a factor of 0.01 in funding per Low Income Unit and $500 in funding per Low Income Unit.

~~(B~~(B) Two (2) points may be added to the points in subparagraph (A) of this paragraph if at least 10% of the total Development funding is derived from non-HOME Investment Partnership Program or Community Development Block Grant funds.

(C) One (1) point may be added to the points in subparagraph (A) of this paragraph if the Applicant provides a firm commitment for funds in the form of a resolution from the Unit of General Local Government in the Application.

Attachment II

(6) Community Revitalization Plan.

(A) For Developments located in an Urban Area of Region 3.

(i) An Application may qualify to receive up to six (6) points if the proposed Development is located in an area covered by a community revitalization plan and that meets the criteria described in subclauses (I) – (VII) of this clause:

(I) The community revitalization plan must have been adopted by the municipality or county in which the Development is proposed to be located.

(II) The adopting municipality or county must have performed, in a process providing for public input, an assessment of the factors in need of being addressed as a part of such community revitalization plan. Factors to be considered may include:

(-a-) adverse environmental conditions, natural or manmade, that are material in nature and are inconsistent with the general quality of life in typical average income neighborhoods. By way of example, such conditions might include significant and recurring flooding, presence of hazardous waste sites or ongoing localized emissions not under appropriate remediation, nearby heavy industrial uses, or uses presenting significant safety or noise concerns such as major thoroughfares, nearby active railways (other than commuter trains), or landing strips; significant and widespread (e.g., not localized to a small number of businesses or other buildings) rodent or vermin infestation acknowledged to present health risks requiring a concerted effort; or fire hazards;

(-b-) presence of blighted structures;

(-c-) presence of inadequate transportation;

(-d-) lack of accessibility to and/or presence of inadequate health care facilities, law enforcement and fire fighting facilities, social and recreational facilities, and other public facilities comparable to those typically found in neighborhoods containing comparable but unassisted housing;

(-e-) the presence of significant crime;

(-f-) the presence, condition, and performance of public education; ~~or~~

(-g-) the presence of local business providing employment opportunities;

(-h-) any other factors that the municipality or county has targeted and committed resources to address within a defined area.

(III) A municipality is not required to identify and address all of the factors identified in clause (i) of this subparagraph, but it must set forth in its plan those factors that it has identified and determined it will address.

(IV) The adopting municipality or county must have based its plan on the findings of the foregoing assessment and must have afforded the public an opportunity to provide input and comment on the proposed plan and the factors that it would address. To the extent that issues identified require coordination with other authorities, jurisdictions, or the like, such as school boards or hospitals, the adopting municipality should include coordination with such bodies in its plan and, to the extent feasible, secure their cooperation.

(V) The adopted plan, taken as a whole, must be a plan that can reasonably be expected to revitalize the community and address in a substantive and meaningful way the material factors identified. ~~The adopted plan~~

must specifically address how the providing of affordable rental housing fits into the overall plan and is a necessary component thereof.

(VI) The adopted plan must describe the planned sources and uses of funds to accomplish its purposes.

(VII) To be eligible for points under this item, the community revitalization plan must already be in place as of the Pre-Application Final Delivery Date pursuant to §11.2 of this chapter evidenced by a certification that:

(-a-) the plan was duly adopted with the required public comment processes followed;

(-b-) the funding and activity under the plan has already commenced; and

(-c-) the adopting municipality or county has no reason to believe that the overall funding for the full and timely implementation of the plan will be unavailable.

(ii) Points will be awarded based on:

(I) Applications will receive six (6) points will be awarded if the proposed Development covered by the community revitalization plan hasis located in a total budgetQualified Census Tract; or projected economic value of $6,000,000 or greater;

(II) Applications will receive fourFour (4) points ifwill be awarded if the proposed Development covered by the community revitalization plan hasis not located in a total budget or projected economic value of at $4,000,000; orQualified Census Tract.

(III) Applications will receive two (2) points if the community revitalization plan has a total budget or projected economic value of at least $2,000,000.

(iii) At the time of the tax credit award the site and neighborhood of any Development must conform to the Department's rules regarding unacceptable sites.

(iv) It is recognized that municipalities and counties will need to devote time and effort to adopt a concerted revitalization plan that complies with the requirements of this scoring item. Therefore, for purposes of the 2013 Application Round only, the Department's Board may, in a public meeting, determine whether a revitalization plan substantively and meaningfully satisfies a revitalization effort, notwithstanding one or more of the factors in this subparagraph not having been satisfied. Such pre-clearance shall be prompted by a request from the Applicant pursuant to the waiver provisions in §10.207 of this title (relating to Waiver of Rules for Applications).

(B) For Developments located in Urban Areas outside of Region 3.

(i) An Application may qualify for up to six (6) points for meeting the criteria under subparagraph (A) of this paragraph (with the exception of being located in Region 3); or

(ii) An Application will qualify for six (6) points if the city or county has an existing plan for Community Development Block Grant – Disaster Relief Program (CDBG-DR) or Community Development Block Grant or HOME Investment Partnership Entitlement (CDBG or HOME Entitlement) funds that includes and meets the requirements of subclauses (I) – (V) of this clause. In order to qualify for points, the Development Site must be located in the targeta targeted area defined in the plan, and the Application must have a commitment of CDBG-DRthe applicable funds and receive a HUD Site and Neighborhood Clearance with HUD review and approval of such clearancefrom the municipality or county:

(I) the plan defines specific target areas for redevelopment ofthat includes housing that do not encompass the entire jurisdiction;

(II) the plan affirmatively addresses Fair Housing;

~~(III) the plan is subject to administration in a manner consistent with the findings of an Analysis of Impediments approved or accepted by HUD within the last three (3) calendar years;~~

~~(IV~~ (III) the plan is in place prior to the Pre-Application Final Delivery Date; and

(V) the plan (in its entirety) and a letter from a local governmental official with specific knowledge and oversight of implementing the plan are included in the pre-application.

Comment (45)
Eric Johnson
State Representative District 100

ERIC JOHNSON

DISTRICT 100
HOUSE OF REPRESENTATIVES

CAPITOL OFFICE:
P.O. BOX 2910
AUSTIN, TEXAS 78768-2910
(512) 463-0586 OFFICE
(512) 463-8147 FAX

DISTRICT OFFICE:
1409 S. LAMAR ST., SUITE 9
DALLAS, TEXAS 75215
(214) 565-5663 OFFICE
(214) 565-5668 FAX

October 15, 2012

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941

Dear Mr. Irvine:

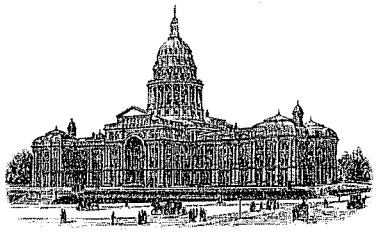
I believe the purpose of the *Low-Income Housing Tax Credit (LIHTC)* program is to provide low-income neighborhoods with the means to help revitalize their communities, particularly when conventional financing and affordable housing are not available.

I seek your continued support on this critical and urgent matter. Affordable housing in our urban, low-income neighborhoods is desperately needed.

I understand that the Inclusive Communities Project sued the Texas Department of Housing and Community Affairs (TDHCA) citing "disparate impact" under the Fair Housing Act due to a concentration of LIHTC having been awarded to projects in Qualified Census Tracts [QCT] and not enough in more affluent, High Opportunity Areas. As you know, the Federal courts' ruling that the TDHCA implement a proposed remedial plan in Dallas and surrounding counties will virtually curtail awards of LIHTC to inner-city neighborhoods.

It's my understanding that the TDHCA believes this ruling misconstrues Federal enabling law IRC §42, which requires preference be given to projects in low-income neighborhoods under revitalization, and the Fair Housing Act. I support that position.

Additionally, I support the TDHCA's Motion to alter or amend the recent judgment or if necessary, encourage you to seek a new trial, arguing that the Judge's ruling is in error: *"Section 42 of the Act shows a clear Congressional preference for assisting those with the lowest incomes, serving low-income tenants for the longest periods of time, and placing projects in QCTs .... Congress clearly intended that LIHTCs should be used to help low-income tenants for long periods of time and to revitalize low-income areas."*



COMMITTEES:
APPROPRIATIONS • HIGHER EDUCATION
JOINT OVERSIGHT COMMITTEE ON HIGHER EDUCATION GOVERNANCE, EXCELLENCE & TRANSPARENCY

For the TDHCA to now prefer projects in affluent suburbs would be discriminatory, thwart our communities' revitalization efforts, and would be unfair to residents wanting to continue to reside in their neighborhoods of choice. In furtherance of the court ruling, the TDHCA has proposed a new Qualified Action Plan (QAP) for 2013, which will be used for the scoring of the highly competitive LIHTC process throughout the state. The impact of the Remedial Plan and the Proposed QAP for 2012 has resulted in no projects in the North Texas QCT receiving an award (except for the Dallas Central Business District).

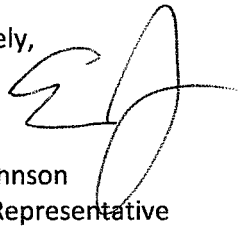
In collaboration with other community groups and State Representatives, I respectfully urge the following:

1. If the Judge denies the TDHCA's Motion to Alter the Judgment, or to have a new trial, TDHCA should appeal the decision and order;
2. TDHCA should file a motion requesting a Stay of the Judge's order until which time a court of final resort determines the case;
3. TDHCA should have only one QAP for the entire State of Texas, and
4. TDHCA should revise sections of its proposed 2013 QAP, so that projects in low-income neighborhoods that are part of a comprehensive revitalization supported by the City have a competitive opportunity to receive an award.

Low-income communities and their residents deserve the opportunity to have their neighborhoods revitalized into vital, thriving, vibrant communities. There is no conventional financing available and the LIHTC is our only hope to provide new affordable housing.

Please don't hesitate to contact me if you have any questions, or if I can provide any additional information on this issue.

Sincerely,



Eric Johnson
State Representative
District 100

cc:

Teresa Morales

Comment (46)
Bill Fisher, Sonoma Housing Advisors, LLC

From: Cameron Dorsey
To: Teresa Morales;
Subject: FW: QAP comments for the public comment period
Date: Monday, October 22, 2012 8:26:12 AM

From: Bill Fisher [mailto:bill.fisher@sonomaadvisors.com]
Sent: Sunday, October 21, 2012 2:29 PM
To: cameron.dorsey@tdhca.state.tx.us
Cc: jean.latsha@tdhca.state.tx.us
Subject: QAP comments for the public comment period

1. 11.7 B 1 (I) and 11.9.6. A Community Revitalization plans in pre app and full application: The revitalization plans you suggest are not allowed and should not be allowed under the approved remediation order in the ICP case. The Judge specifically left this out of his order (rejection of Frazier intervention) and stated his reasons why he left it out. For region 3, it will simply cause HTC to go to areas that created the fair housing issues raised in the case in lieu of them going to a more appropriate and impactful development in an opportunity area. This whole approach seems to be designed to give the credits to Frazier Court, which is clearly not agreed to in the remediation order and his fully served by HTC developments in that area. Those types of developments are not responsive to the needs of the community for affordable housing in HOA's (high opportunity areas). It is just projects like Frazier Court that work as 4% tax exempt bond transactions because they have subsidy and are in a boost area already. With community funds and low cost land and private contributions and funds from grants and other non-profit resources all help further these developments in the 4% round not the 9% round. I predict you will double up your problem with non-concentration by allowing 9% credit to some of these development site while addition 4% deal get done South of the Trinity River anyway. With the involvement of the federal court here we can no longer gamble with our fair housing compliance, particularly in region 3. What is the plan if the Judge does not allow it when he rules on the appeal you filed with him? Bad policy for the 9% round; good policy for the 4% projects.

2. 11.9.2 Sponsor Characteristics: HUD ownership must be protected

and rewarded as you suggest in the current version of the QAP. I fully support any and all preferences for sponsors with TEXAS experience. We get tons of HOME COOKING in other states. To be compliant here, all a newer out of state developer needs is to partner with an experienced Texas developer, likely a not for profit, so they get all these points anyway. It prevents hit and run development from out of state companies. It is also in the interest of Texans to have local or experienced folks to rely upon for compliance with our rules.

3. 4. Opportunity index: The register left out a Not I think here in the first paragraph. "..but the elementary school can NOT have a below acceptable rating". The NOT may be in your document.

4. 6. Under served criteria: As was discussed in comments to the Board, we have to have a proximity to the Colonias not the Colonias today to make this meaningful. I support a 1mile radius from a Colonia designated area.

5. d (1) B QCP: Technical assistance should specifically allow a referral of the community group by a developer to a pro bono legal source who can help insure they comply with the QAP requirements to insure their comments are scored and meaningful. Lone star legal aid or any other pro bono legal source where they do not get paid by the developer or affiliates and they do not also represent anyone on the development team should be encouraged and specifically articulated in this section of the QAP.

6. For the record, the combination of No neighborhood organization points with 4 points for Input other than QCP, exclusively when there is not organization equaling the standard points for the QCP from an established community organization is not compliant with the Statue and constitutes a work around of the requirement of the enabling legislation. It cannot combined score anywhere above the highest available score not mandated by the legislative waterfall of descending scoring criteria. See request for AG opinion by Rene O..

7. 3 Commitment of Development funding by UGLG: The HOME funds administered by TDHCA for NON Pj's are our HOME funds. They serve our non PJ areas of the State. You, TDHCA, are the closes unit of local

government to which these areas qualify for HOME funds. Those are non PJ HOME resources and MUST count as they have for 10 years as funding under this criteria. To count Brownsville HOME and not Cameron Counties non PJ HOME funds as a commitment here cuts out large areas of many regions without good cause. It is bad policy as proposed. Our NON PJ HOME must count for points like anyone's HOME investment money. Your policy reason is you want to use more TDHCA HOME in bond deals but they only work for the investors in Dallas, Houston, Austin and San Antonio MSA areas where the rents are high enough to support the reduction in equity in a 4% transaction. To focus the HOME funds in just these large MSA's is bad policy and not consistent with entire service region approach mandated by the legislator when allocating HOME resources. HFC's are a primary resource for funding affordable housing in many communities around the State. They have developed resources over the years in their HFC's to further fair housing and affordable housing in their jurisdictions. Funds from HFC's must count for this purpose without further political requirements.

8. 3. Same as 7 above: Interest rates related to AFR are impractical and we will be taking not adding resources to leverage 9% HTC. I suggest the interest rate be allowed to float or be fixed and the benchmark be Prime minus 1% as an acceptable below market interest rate benchmark. I further suggest that there is no difference to projections permanent capital stack from either 3 or 5 year loans. For many HFC's loan, which also must count for a contribution from the UGLG, and that a term of 3 years is more workable in the practical timeline of a HTC development. The permanent capital stack has to be in place for the long term stability of the development well before 5 years. So the 3 year timeline minimum is best. You could consider in the future awarding points related to the length of time the funding is in place. Rewarding permanent 15-17 year capital stacks over shorter terms like 3-5 years. HFC's are a primary resource for funding affordable housing in many communities around the State. They have developed resources over the years in their HFC's to further fair housing and affordable housing in their jurisdictions. Their funds must count for this purpose without further political requirements.

9. 11.9.6 A: Bad policy and not consistent with the remediation order. Use this approach once you get approval from the Court, not before. I

support county CDBG DR funding in a plan as worthy but we cannot dictate what they ache in their plans. If the community is putting resources compliant with the HUD and GLO contract requirements that is all that should be needed to score these points. You must have these funds in hand at commitment notice deadline or you lose these points and the pre applications points. We are dictating their plan requirements too late in the CDBG DR processes to hold them to your criteria. These are long delayed funds and we need more not less flexibility to leverage them in these transactions. I ask you to strike B (ii) (I) and (V). Do long as the funds are timely committed and come through the GOC, HUD and GLO approved contract we should get all these points.

10. e (2) Cost of development per SF: I support the cost per SF rule you propose so long as we do not underwrite them to low cost levels. If marshal and swift underwriting says $80 per SF and the applicant tried to get by with $75 per SF we cannot allow that deal to go forward. I am supporting the 5% of the underwriters estimate for this determination. So if you go low on construction costs you can jeopardize your allocation. Costs have gone up in Texas by at least 10% in the last year due to the current boom in market MF. Do not fund or reward un-realistically low costs.

11. 7 Development Size points for $500K or less credit request for at least 50 HTC units: Good policy, consider giving this more weight, say an additional 5 points not 1 point. Please increase this to 5 points in the final version of the QAP. We will get a lot more projects built and lot more housing done with this approach. Try it; you will like it.

Comments from you board book review sheet, October 9, 2012:

1. Stop deviating from the RAF and keep them capped at the regions max award. 150% robs credits from other regions. We should try a year or two just staying with the 100% rules.

2. CDBG DR, 30% boost is good.

3. Leave HUB and TX Experience per my comments #2 above

4. HOA or Opportunity Index is fine as proposed

5. Colonia's underserve at 2500-5280 feet is good policy and makes practical sense.

6. Cost per SF: you are good with my comments on kicking out too low cost deals in underwriting, see #10 above

7. Leveraging: PHA using their own sources for extra points is not good policy. Keep your proposed policy. You must allow full points for TDHCA HOME funds in a qualifying NON PJ. Bad policy to do otherwise, see #9 above.

8. Development size should count on the HTC units not total units so I support the change to 50 units of HTC. Reward this and the $500K request or lower cap with 5 not 1 point.

9. As discussed in the board meeting on the 9th. If you make a good faith attempt and have good reason to believe you meet the criteria for the points at pre application or application you should not be penalized. But if you took points you clearly did not qualify for and hoped TDHCA missed it them a deduction seems like a reasonable deterrent to this application practice. If that is how it will be applied I support the current version.

I know staff is trying hard to turn a ship that needs to be turned for a lot of reasons. But we must encourage and score good practices. Equally we should discourage and not count for points bad practices or policies, current or past.

Please incorporate the proposed changes into the final board approval draft for the November 2012 meeting.

So it on the record, The Board is not using good policy by not allowing for forward commitments at all. For next year, we should allow this up to a % of

each year's cap, say 15% and establish criteria for them being done for specific reasons or circumstances. One circumstance or criteria we can use is comply with the fair housing act, which has not been our strength in the past.

If these comments need to be sent to someone specific in the department to be considered please let me know or just forward them to the right person.

Thank you

Bill

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Comment (47)
Stuart Shaw, Bonner Carrington

BONNER CARRINGTON

Chapter 10 – Uniform Multifamily Rules Comments (see attached pages for direct reference in rules published by the Department)

- 10.101 a 2 - Mandatory Site Characteristics - The department needs to expand to a 2 mile radius for Urban and 3 miles for Rural.

Please remove this requirement for Bond projects especially if the TDHCA is not the issuer. Let the local issuer, lenders and investors decide whether or not the market has amenities that are close by that could serve the community. There exist plenty of good bond project locations between urban and rural areas for instance, that would not qualify but are commercially and residential satisfactory or good sites.

The Department should allow multiple points for multiple amenities that fall into the same category. If there are multiple amenities near by that fall into the same category they are still amenities and therefore multiple points should be allowed.

Please add additional options or a mechanism for the Applicant to request approval for amenities that are not on the list.

- 10.101 a 3 - Please add an option for sound mitigation. Also add an option to address proximity to junk yards by measuring from the nearest residential building to the junk yard to allow for places where, for example, an entry could be within 300 feet of a junk yard, but the residential buildings are much farther away. The junk yard provision needs to be added because there could revitalization areas that have junk yards present. Another option to measuring the distance from the junk yard mitigation methods could be used (fences, landscaping, etc).

- 10.101 a 4 - Please remove this requirement or provide a better definition to the features that would render a site undesirable. There is too much subjectivity, especially in item D, and this should be removed. Almost any site could have a situation where this rule could be applied without further definition. After weighing options we believe this item should be removed from all other regions except Region 3. In region 3 please provide concise definition or method of determining how this item would be applied and how to mitigate features that may be considered negative. This is contradictory for revitalization areas as well.

- 10.101 b 6 B - Unit Amenities - reduce requirements for bond deals to 6 points or provide more options to arrive at the 7 points.

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- 10. 101 b 7 Tenant Supportive Services - Add "or other services as may be approved by the Department."

- 10.204 (4) - Create a clear policy on how to request a verification for Urban or Rural.

- 10.208 Public Notification Template -
Remove the word low-income and replace with "low-income to moderate-income." This is basic marketing and honesty.

This needs to be changed because most communities have a negative reaction to the word low-income. The people that live in many HTC communities fall into the moderate-income range and we need to accurately portray that in the notifications that are sent out.

Chapter 11 – Qualified Allocation Plan Comments (see attached pages for direct reference in rules published by the Department)

- 11.4 4 b - Maximum Request Limit - Please increase the award amount per application to $2,000,000. In order for communities to be sustainable, over long periods of time, developers need to be able to develop larger communities. It's quality not quantity of communities and larger communities are more effective to manage.

- 11.7 1 - Tie-breaker one favors General Population. We recommend ranking application by Median Household income and award based on highest Median Household Income. In this scenario there would never be a need for the second tie-breaker. Ranking by MHI gives all applications an equal opportunity to compete.

- 11.8 b 1 I - Pre-App Submission - please move the requirement for submission of the revitalization plan to the full application deadline date for the 2013 round to give municipalities time to comply with the current requirements for a revitalization zone.

- 11.8 b 2 B i and ii Sponsor Characteristics - Please clarify the rule. Do these two items together mean that an Applicant can receive 3 points for having 5 existing tax credit developments or at least 3 existing tax credit developments?

- 11.8 b 4 - We recommend that there should be additional categories for points. For example, add a category that would allow any Development that does not serve General Population (elderly or supportive) in the top two quartiles of MHI that have an exemplary or recognized elementary school (4 points). As it stands right now the points awarded for the second quartile for non General Population communities is not equitable.

- 11.9 c 6 - Underserved Area - Instead of saying never on items C & D change the time limit to not having an award in the last 5 years.

Also, allow for two points for any Target Population instead of favoring General.

- 11.9 d 1 C Points for QCP - remove the two bonus points for groups that previously opposed a transaction. If this point item is kept the effect could cause the program problems in the future. There is an opportunity for developers to encourage groups to oppose competitors' applications so that they may reapply in the area of opposition the next year.

This rule encourages opposition and frankly our industry does not need to encourage local groups to oppose applications. In order to accommodate the requirements of the Remedial Plan please limit the bonus scoring to Region 3 only.

- 11.9 d 3 Commitment of Development Funding by UGLG - Please allow TDHCA HOME funds to count towards this item. Otherwise it unfairly penalizes Developments in Non-PJs or do not allow HOME funds to count towards this item from any jurisdiction.

- 11.9 e 2 Cost Per Square Foot - Please return to the method used in the 2012 QAP. This is too big of a variable for developers considering how much money and time goes into an application. Really the new norm will be applications that center around the $80 PSF which encourages a race the bottom in terms of quality of units built.

- 11.9 e 5 Leveraging of Private, State and Federal Resources - Please increase item ii to 10% and item 3 to 11%. The very nature of this scoring item is going to force developers to underwrite more debt. The Department should be encouraging long term viability and not encourage Applicants to pursue riskier Developments.

- 11.10 5 - Please remove the ability to challenge this item. This is too subjective and open to frivolous challenges.

Chapter 12 - Multifamily Housing Revenue Bond Rules Comments (see attached pages for direct reference in rules published by the Department)

- 12.5 7 - Pre-Application Threshold Requirements - Please remove this as a requirement for bond deals or, at the very least, increase the area two 2 miles for Urban and 3 Miles for Rural.

Chapter 10 Comments - October 22, 2012

Summary of Comments on Uniform Multifamily Rules (Board approved Draft) (PDF)

Page: 15

Subchapter B – Site and Development Requirements and Restrictions

§10.101. Site and Development Requirements and Restrictions.

(a) Site Requirements and Restrictions. The purpose of this section is to identify specific restrictions related to a Development Site seeking multifamily funding or assistance from the Department.

(1) Floodplain. New Construction or Reconstruction Developments located within the one-hundred (100) year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site so that all finished ground floor elevations are at least one foot above the floodplain and parking and drive areas are no lower than six inches below the floodplain, subject to more stringent local requirements. If no FEMA Flood Insurance Rate Maps are available for the proposed Development Site, flood zone documentation must be provided from the local government with jurisdiction identifying the one-hundred (100) year floodplain. Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from the U.S. Department of Housing and Urban Development (HUD) or U.S. Department of Agriculture (USDA) are exempt from this requirement. However, where existing and ongoing federal assistance is not applicable such Rehabilitation (excluding Reconstruction) Developments will be allowed in the one-hundred (100) year floodplain provided the Unit of General Local Government has undertaken and can substantiate sufficient mitigation efforts and such documentation is submitted in the Application or the existing structures meet the requirements that are applicable for New Construction or Reconstruction Developments.

(2) Mandatory Site Characteristics. Developments Sites must be located within a one mile radius (two-mile radius for Developments located in a Rural Area) of at least six (6) services. Only one service of each type listed in subparagraphs (A) - (R) of this paragraph will count towards the number of services required. A map must be included identifying the Development Site and the location of the services by name. All services must exist or, if under construction, must be under active construction, post pad (e.g. framing the structure) by the date the Application is submitted:

(A) full service grocery store;

(B) pharmacy;

(C) convenience store/mini-market;

(D) department or retail merchandise store;

(E) bank/credit union;

(F) restaurant (including fast food);

(G) indoor public recreation facilities, such as civic centers, community centers, and libraries;

(H) outdoor public recreation facilities such as parks, golf courses, and swimming pools;

(I) medical offices (physician, dentistry, optometry) or hospital/medical clinic;

(J) public schools (only eligible for Developments that are not Qualified Elderly Developments);

(K) senior center;

(L) religious institutions;

(M) day care services (must be licensed - only eligible for Developments that are not Qualified Elderly Developments);

(N) post office;

(O) city hall;

(P) county courthouse;

(Q) fire station; or

Author: ccbump Subject: Highlight Date: 10/21/12 9:09:04 PM

10.101 a 2 - Mandatory Site Characteristics - The department needs to expand to a 2 mile radius for Urban and 3 miles for Rural.

Please remove this requirement for Bond projects especially if the TDHCA is not the issuer. Let the local issuer, lenders and investors decide whether or not the market has amenities that are close by that could serve the community. There exist plenty of good bond project locations between urban and rural areas for instance, that would not qualify but are commercially and residential satisfactory or good sites.

The Department should allow multiple points for multiple amenities that fall into the same category. If there are multiple amenities near by that fall into the same category they are still amenities and therefore multiple points should be allowed.

Please add additional options or a mechanism for the Applicant to request approval for amenities that are not on the list.

(R) police station.

(3) Undesirable Site Features. Development Sites with the undesirable features identified in subparagraphs (A) - (G) of this paragraph will be considered ineligible. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD or USDA are exempt. For purposes of this requirement, the term 'adjacent' means sharing a boundary with the Development Site. The distances are to be measured from the nearest boundary of the Development Site to the boundary of the undesirable feature. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph, staff may request a determination from the Board as to whether such feature is unacceptable.

(A) Developments located adjacent to or within 300 feet of junkyards;

(B) Developments located adjacent to or within 300 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail;

(C) Developments located adjacent to or within 300 feet of heavy industrial uses such as manufacturing plants, refinery blast zones, etc.;

(D) Developments located adjacent to or within 300 feet of a solid waste or sanitary landfills;

(E) Developments in which the buildings are located within the easement of any overhead high voltage transmission line or inside the engineered fall distance of any support structure for high voltage transmission lines, radio antennae, satellite towers, etc. This does not apply to local service electric lines and poles;

(F) Developments in which the buildings are located within the accident zones or clear zones for commercial or military airports; or

(G) Developments located adjacent to or within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined as stated in Local Government Code, §243.002.

(4) Undesirable Area Features. If the Development Site is located between 301 feet – 1,000 feet of any of the undesirable area features in subparagraphs (A) – (D) of this paragraph then the Applicant must disclose the presence of such feature to the Department. The standard to be applied in making a determination under this paragraph is whether the undesirable area feature is of a nature that would not be typical in a neighborhood that would qualify under the Opportunity Index pursuant to §11.9(c)(4) of this title (relating to Competitive HTC selection Criteria). For a Housing Tax Credit Application the Applicant is required to disclose the presence of such feature at the time the pre-application (as applicable) is submitted to the Department so as to expedite the review of such information. For all other types of Applications, and for those Housing Tax Credit Applicants who did not submit a pre-application, the Applicant is required to disclose the presence of such feature at the time the Application is submitted to the Department. Disclosure of such features affords the Applicant the opportunity to obtain pre-clearance of a particular Site from the Department in accordance with §10.207 of this chapter (relating to Waiver of Rules for Applications). Non-disclosure of such information may result in the Department's withholding or denial of pre-clearance. Denial or withholding of pre-clearance deems the Site ineligible and is grounds for termination of the Application. Should Department staff withhold or deny pre-clearance, Applicants may appeal the decision to the Board pursuant to §10.902 of this chapter (relating to Appeals Process. (§2306.0321; §2306.6715)). Should the Board uphold staff's decision or initially withhold or deny pre-clearance, the resulting determination of site ineligibility and termination of the Application cannot be appealed. The Board's decision cannot be appealed.

(A) A history of significant or recurring flooding;

(B) Significant presence of blighted structures;

(C) Fire hazards that could impact the fire insurance premiums for the proposed Development; or

Author: ccbump Subject: Highlight Date: 10/21/12 9:14:27 PM
10.101 a 3 - Please add an option for sound mitigation. Also add an option to address proximity to junk yards by measuring from the nearest residential building to the junk yard to allow for places where, for example, an entry could be within 300 feet of a junk yard, but the residential buildings are much farther away. The junk yard provision needs to be added because there could revitalization areas that have junk yards present. Another option to measuring the distance from the junk yard mitigation methods could be used (fences, landscaping, etc).

Author: ccbump Subject: Highlight Date: 10/21/12 9:14:57 PM
10.101 a 4 - Please remove this requirement or provide a better definition to the features that would render a site undesirable. There is too much subjectivity, especially in item D, and this should be removed. Almost any site could have a situation where this rule could be applied without further definition. After weighing options we believe this item should be removed from all other regions except Region 3. In region 3 please provide concise definition or method of determining how this item would be applied and how to mitigate features that may be considered negative. This is contradictory for revitalization areas as well.

Author: ccbump Subject: Highlight Date: 10/19/12 11:45:27 AM
10.101 b 6 B - Unit Amenities - reduce requirements for bond deals to 6 points or provide more options to arrive at the 7 points.

Rehabilitation, etc.) as provided in the most recent version of the Enterprise Green Communities Criteria found at http://www.greencommunitiesonline.org.

(III) LEED (4 points). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a LEED Certification, regardless of the rating level achieved (i.e. Certified, Silver, Gold or Platinum).

(IV) National Green Building Standard (NAHB Green) (4 points). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NAHB Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(6) **Unit Requirements**.

(A) **Unit Sizes**. Developments proposing New Construction or Reconstruction will be required to meet the minimum sizes of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with any selection criteria. Developments proposing Rehabilitation (excluding Reconstruction) or Supportive Housing Developments will not be subject to the requirements of this subparagraph.

(i) five hundred (500) square feet for an Efficiency Unit;

(ii) six hundred (600) square feet for a one Bedroom Unit;

(iii) eight hundred (800) square feet for a two Bedroom Unit;

(iv) one thousand (1,000) square feet for a three Bedroom Unit; and

(v) one thousand, two-hundred (1,200) square feet for a four Bedroom Unit;

(B) **Unit Amenities**. Housing Tax Credit Applications may select amenities for scoring under this section but must maintain the points associated with those amenities by maintaining the amenity selected or providing substitute amenities with equal or higher point values. Tax Exempt Bond Developments must include enough amenities to meet a minimum of (7 points). Applications not funded with Housing Tax Credits (e.g. HOME Program) must include enough amenities to meet a minimum of (4 points). The amenity shall be for every Unit at no extra charge to the tenant. The points selected at Application and corresponding list of amenities will be required to be identified in the LURA, and the points selected at Application must be maintained throughout the Compliance Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of (3 points) and Supportive Housing Developments will start with a base score of (5 points).

(i) Covered entries (0.5 point);

(ii) Nine foot ceilings in living room and all bedrooms (at minimum) (0.5 point);

(iii) Microwave ovens (0.5 point);

(iv) Self-cleaning or continuous cleaning ovens (0.5 point);

(v) Refrigerator with icemaker (0.5 point);

(vi) Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the property site (0.5 point);

(vii) Laundry equipment (washers and dryers) for each individual Unit including a front loading washer and dryer in required UFAS compliant Units (1.5 points);

(viii) Thirty (30) year shingle or metal roofing (0.5 point);

(ix) Covered patios or covered balconies (0.5 point);

(x) Covered parking (including garages) of at least one covered space per Unit (1 point);

(xi) 100 percent masonry on exterior (1.5 points) (Applicants may not select this item if clause (xii) of this subparagraph is selected);

(xii) Greater than 75 percent masonry on exterior (0.5 point) (Applicants may not select this item if clause (xi) of this subparagraph is selected);

(xiii) R-15 Walls / R-30 Ceilings (rating of wall/ceiling system) (1.5 points);

(xiv) 14 SEER HVAC (or greater) or evaporative coolers in dry climates for New Construction, Adaptive Reuse, and Reconstruction or radiant barrier in the attic for Rehabilitation (excluding Reconstruction) (1.5 points);

(xv) High Speed Internet service to all Units (1 point).

(7) **Tenant Supportive Services**. The supportive services include those listed in subparagraphs (A) – (T) of this paragraph. Tax Exempt Bond Developments must select a minimum of (8 points); Applications not funded with Housing Tax Credits (e.g. HOME Program or other Direct Loans) must include enough amenities to meet a minimum of (4 points). The points selected and complete list of supportive services will be included in the LURA and the timeframe by which services are offered must be in accordance with §10.614 of this chapter (relating to Monitoring for Social Services) and maintained throughout the Compliance Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. No fees may be charged to the tenants for any of the services and there must be adequate space for the intended services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item.

(A) joint use library center, as evidenced by a written agreement with the local school district (2 points);

(B) weekday character building program (shall include at least on a monthly basis a curriculum based character building presentation on relevant topics, for example teen dating violence, drug prevention, teambuilding, internet dangers, stranger danger, etc. (2 points);

(C) daily transportation such as bus passes, cab vouchers, specialized van on-site (4 points);

(D) Food pantry/common household items accessible to residents at least on a monthly basis (1 point);

(E) GED preparation classes (shall include an instructor providing on-site coursework and exam) (1 point);

(F) English as a second language classes (shall include an instructor providing on-site coursework and exam) (1 point);

(G) quarterly financial planning courses (i.e. homebuyer education, credit counseling, investing advice, retirement plans, etc.). Courses must be offered through an on-site instructor; a CD-Rom course is not acceptable (1 point);

(H) annual health fair (1 point);

(I) quarterly health and nutritional courses (1 point);

(J) organized team sports programs or youth programs offered by the Development (1 point);

(K) scholastic tutoring (shall include weekday homework help or other focus on academics) (3 points);

(L) Notary Public Services during regular business hours (§2306.6710(b)(3)) (1 point);

(M) weekly exercise classes (2 points);

(N) twice monthly arts, crafts and other recreational activities such as Book Clubs and creative writing classes (2 points);

(O) annual income tax preparation (offered by an income tax prep service) (1 point);

Author: ccbump Subject: Highlight Date: 10/19/12 11:45:22 AM
10. 101 b 7 Tenant Supportive Services -

Add "or other services as may be approved by the Department."

(3) Contents of Notification. The notification must include, at a minimum, all information described in subparagraphs (A) – (F) of this paragraph:

(A) the Applicant's name, address, individual contact name and phone number;

(B) the Development name, address, city and county;

(C) a statement indicating the program(s) to which the Applicant is applying with the Texas Department of Housing and Community Affairs;

(D) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse or Rehabilitation;

(E) the type of Development being proposed (single family homes, duplex, apartments, townhomes, high-rise etc.); and

(F) the total number of Units proposed and total number of low-income Units proposed.

§10.204. Required Documentation for Application Submission.

The purpose of this section is to identify the documentation that is required at the time of Application submission unless specifically indicated or otherwise required by Department rule. If any of the documentation indicated below is not resolved, clarified or corrected to the satisfaction of the Department through either original Application submission or the Administrative Deficiency process, the Application will be terminated. Unless stated otherwise, all documentation identified in this section must not be dated more than six (6) months prior to the close of the Application Acceptance Period or the date of Application submission as applicable to the program. The Application may include documentation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, Development Site, or Development.

(1) Certification of Development Owner. This form, included in §10.208 of this chapter (relating to Forms and Templates), must be executed by the Development Owner and addresses the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification. Applicants are encouraged to read the certification carefully as it contains certain construction and Development specifications that each Development must meet.

(2) Certification of Principal. This form, included in §10.208 of this chapter, must be executed by all Principals and identifies the various criteria relating to eligibility requirements associated with multifamily funding from the Department.

(3) Architect Certification Form. This form, included in §10.208 of this chapter, must be executed by the Development engineer, an accredited architect or Department-approved Third Party accessibility specialist. (§2306.6722 and §2306.6730)

(4) Designation as Rural or Urban. Each Application must identify whether the Development Site is located in an Urban Area or Rural Area of a Uniform State Service Region. The Department shall make available a list of places meeting the requirements of Texas Government Code, §2306.004(28-a)(A) and (B) for designation as a Rural Area and those that are an Urban Area in the Site Demographics Characteristics Report. Notwithstanding the foregoing, an Applicant proposing a Development in a place listed as urban by the Department may be designated as located in a Rural Area if the municipality has less than 50,000 persons, as reflected in Site Demographics and Characteristics Report, and a letter or other documentation from USDA is submitted in the Application that indicates the Site is located in an area eligible for funding from USDA in accordance with Texas Government Code, §2306.004(28-a)(C). For any Development not located within the boundaries of a municipality, the applicable designation is that of the closest municipality or place.

(5) Experience Requirement. Evidence that meets the criteria as stated in subparagraph (A) of this paragraph must be provided in the Application. Experience of multiple parties may not be aggregated to meet this requirement.

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Author: rachel Subject: Highlight Date: 10/19/12 11:45:12 AM
10.204 (4) - create a clear policy on how to request a verification for Urban or Rural.

Public Notifications Template

[To be used as a template for meeting the requirements of §11.8(b)(2)(B) of the Qualified Allocation Plan, §12.5 of the Multifamily Housing Revenue Bond Rules as certified the Certification of Notifications at Pre-Application and §10.203(2), as certified in the Certification of Notifications at Application.]

[Date]
[Appropriate Individual/entity pursuant to §§11.8(b)(2)(B)(i) through (viii) and 10.203(2)(A) through (H) of the Multifamily General Rules]
[Address]
[City, State, Zip]

Dear **[xxxxxx]**,

[Applicant Name] is making an application for [Name all TDHCA Programs the application is for] with the Texas Department of Housing and Community Affairs for the **[Development name, address, city, and county]**. This **[New Construction/Reconstruction/Adaptive Reuse or Rehabilitation]** is an **[apartment, single family, townhome, high rise, duplex, scattered site, etc.]** community comprised of approximately **[#]** units of which **[% of total]** will be for low-income tenants.

There will be a public hearing to receive public comment on the proposed development. Information regarding the date, time, and location of that hearing will be disseminated at least 30 days prior to the hearing date on the Department's website.

Sincerely,

[Representative of the Applicant Name]
[Title]
[Name, Address, email, fax and telephone number if not on letterhead]

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Author: ccbump Subject: Highlight Date: 10/21/12 9:18:43 PM
10.208 Public Notification Template -

Remove the word low-income and replace with "low-income to moderate-income." This is basic marketing and honesty.

This needs to be changed because most communities have a negative reaction to the word low-income. The people that live in many HTC communities fall into the moderate-income range and we need to accurately portray that in the notifications that are sent out.

Chapter 11 Comments - October 22, 2012

(G) that the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under paragraph (1)(A) of this subsection. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual.

(3) Where a specific source of funding is referenced in paragraph (2)(A) - (D) of this subsection, a commitment or resolution documenting a commitment of the funds must be provided in the Application or prior to the Resolutions Delivery Date (for Tax Exempt Bond Developments the resolution must be submitted no later than 14 days prior to the Board meeting where the tax credits will be considered).

(d) Limitations on Developments in Certain Census Tracts. An Application that proposes the New Construction or Adaptive Reuse of a Development proposed to be located in a census tract that has more than 30 percent Housing Tax Credit Units per total households as established by the U.S. Census Bureau for the most recent Decennial Census shall be considered ineligible unless:

(1) the Development is in a Place whose population is less than 100,000; or

(2) the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and submits to the Department a resolution referencing this rule.

(e) Additional Phase. Applications proposing an additional phase of an existing tax credit Development serving the same Target Population, or Applications proposing Developments that are adjacent to an existing tax credit Development serving the same Target Population, or Applications that are proposing a Development serving the same Target Population on a contiguous site to another Application awarded in the same program year, shall be considered ineligible unless the other Developments or phase(s) of the Development have been completed and have maintained occupancy of at least 90 percent for a minimum six (6) month period as reflected in the submitted rent roll.

§11.4. Tax Credit Request and Award Limits.

(a) Credit Amount (Competitive HTC Only). (§2306.6711(b)) The Board may not allocate to an Applicant, Developer, Affiliate or Guarantor (unless the Guarantor is also the General Contractor, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an amount greater than $3 million in a single Application Round. All entities that share a Principal are Affiliates. For purposes of determining the $3 million limitation, a Person is not deemed to be an Applicant, Developer, Affiliate or Guarantor solely because it:

(1) raises or provides equity;

(2) provides "qualified commercial financing;"

(3) is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services; or

(4) receives fees as a Development Consultant or Developer that do not exceed 10 percent of the Developer Fee (or 20 percent for Qualified Nonprofit Developments) to be paid or $150,000, whichever is greater.

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150 percent of the credit amount available in the sub-region based on estimates released by the Department on December 1, or $1,500,000, whichever is less, or $2,000,000 for Applications under the At-Risk Set-Aside. The Department will consider the amount in the Funding Request of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant's request to the maximum allowable under this subsection if exceeded. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than $2 million in a single Application Round. (§2306.6711(b))

Summary of Comments on Qualified Allocation Plan (Board approved Draft) (PDF)

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Author: ccbump Subject: Highlight Date: 10/21/12 9:04:00 PM
11.4 4 b - Maximum Request Limit -

Please increase the award amount per application to $2,000,000. In order for communities to be sustainable, over long periods of time, developers need to be able to develop larger communities. It's quality not quantity of communitiesi and larger communities are more effective to manage.

(F) Contingent Qualified Nonprofit Set-Aside Step (Step 6). If an insufficient number of Applications participating in the Nonprofit Set-Aside are selected after implementing the criteria described in subparagraphs (A) – (F) of this paragraph to meet the requirements of the 10 percent Nonprofit Set-Aside, action must be taken to modify the criteria described in subparagraphs (A) – (F) of this paragraph to ensure the set-aside requirements are met. Therefore, the criteria described in subparagraphs (C) – (F) of this paragraph will be repeated after selection of the highest scoring Application(s) under the Nonprofit Set-Aside statewide are selected to meet the minimum requirements of the Nonprofit Set-Aside. This step may cause some lower scoring Applications in a sub-region to be selected instead of a higher scoring Application not participating in the Nonprofit Set-Aside.

(4) Waiting List. The Applications that do not receive an award by July 31 and remain active and eligible will be recommended for placement on the waiting list. Applications on the waiting list are selected for an award when the remaining balance of tax credits is sufficient to award the next Application on the waiting list. The waiting list is not static. The allocation process will be used in determining the Application to award. For example, if credits are returned, those credits will first be made available in the set-aside or sub-region from which they were originally awarded. This means that the first Application on the waiting list is in part contingent on the nature of the credits that became available for award. (§2306.6710(a) - (f); §2306.111)

§11.7. Tie Breaker Factors. In the event there are Competitive HTC Applications that receive the same number of points in any given set-aside category, rural regional allocation or urban regional allocation, or rural or state collapse, the Department will utilize the factors in this section, in the order they are presented, to determine which Development will receive preference in consideration for an award. The tie breaker factors are not intended to specifically address a tie between equally underserved sub-regions in the rural or statewide collapse.

(1) Applications ranking higher on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.

(2) Applications proposed to be located the greatest distance from the nearest Housing Tax Credit assisted Development.

§11.8. Pre-Application Requirements (Competitive HTC Only).

(a) General Submission Requirements. The pre-application process allows Applicants interested in pursuing an Application to assess potential competition across the thirteen (13) state service regions, sub-regions and set-asides. Based on an understanding of the potential competition they can make a more informed decision whether they wish to proceed to prepare and submit an Application. A complete pre-application is a pre-application that meets all of the Department's criteria, as outlined in subsections (a) and (b) of this section, with all required information and exhibits provided pursuant to the Multifamily Programs Procedures Manual.

(1) The pre-application must be submitted, along with the required pre-application fee as described in §10.901 of this chapter (relating to Fee Schedule), no later than the Pre-application Final Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits). If such pre-application and corresponding fee are not submitted on or before this deadline the Applicant will be deemed to have not made a pre-application.

(2) The pre-application shall consist of one (1) CD-R containing a PDF copy and Excel copy to the Department in the form of a single file and individually bookmarked as presented in the order as required in the Multifamily Programs Procedures Manual.

(3) Only one pre-application may be submitted by an Applicant for each Development Site.

(4) Department review at this stage is limited, and not all issues of eligibility and threshold are reviewed or addressed at pre-application. Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. While the pre-application is more limited in scope than an Application, pre-applications are subject to the same limitations,

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Author: ccbump Subject: Highlight Date: 10/19/12 3:31:28 PM
11.7 1 - Tie-breaker one favors General Population. We recommend ranking application by Median Household income and award based on highest Median Household Income. In this scenario there would never be a need for the second tie-breaker. Ranking by MHI gives all applications an equal opportunity to compete.

restrictions, or causes for disqualification or termination as a full Application, and pre-applications will thus be subject to the same consequences for violation, including but not limited to loss of points and termination of the pre-application.

(b) Pre-Application Threshold Criteria. Pursuant to Texas Government Code, §2306.6704(c) pre-applications will be rejected unless they meet the threshold criteria described in paragraphs (1) and (2) of this subsection:

(1) Submission of the competitive HTC pre-application in the form prescribed by the Department which identifies at a minimum:

(A) Site Control meeting the requirements of §10.204(9) of this title (relating to Required Documentation for Application Submission);

(B) Funding request;

(C) Target Population;

(D) Requested set-asides (At-Risk, USDA, Nonprofit, and/or Rural);

(E) Total Number of Units proposed;

(F) Census tract number in which the Development Site is located;

(G) Expected score for each of the scoring items identified in the pre-application materials;

(H) All issues requiring waivers necessary for the filing of an eligible Application; and

(I) Any community revitalization plan the Applicant anticipates using for points under §11.9(d)(6) of this chapter (relating to Competitive HTC Selection Criteria).

(2) Evidence in the form of a certification provided in the pre-application, that all of the notifications required under this paragraph have been made. (§2306.6704)

(A) Neighborhood Organization Requests. The Applicant must request a list of Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site:

(i) No later than the Pre-application Neighborhood Organization Request Date identified in §11.2 of this chapter, the Applicant must e-mail, fax or mail with registered receipt a completed Neighborhood Organization Request letter as provided in the pre-application to the local elected official, as applicable, based on where the Development is proposed to be located. If the Development is located in an area that has district based locally elected officials, or both at-large and district based locally elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located in an area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or it's ETJ, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format;

(ii) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as provided by the local elected officials, or that the Applicant has knowledge of (regardless of whether the organization is on record with the county or state) as of the date of pre-application submission.

(B) Notification Recipients. No later than the date the pre-application is submitted, notification must be sent to all of the persons or entities prescribed in clauses (i) – (viii) of this subparagraph whose jurisdiction or boundaries include the Development Site. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with registered return receipt or similar tracking mechanism in the format required in the Pre-application Notification Template provided in the pre-application. The Applicant is encouraged to retain proof of delivery in the event the Department requires proof of notification. Acceptable evidence of such delivery is demonstrated by signed receipt

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Author: ccbump Subject: Highlight Date: 10/19/12 11:50:47 AM
11.8 b 1 I - Pre-App Submission - please move the requirement for submission of the revitalization plan to the full application deadline date for the 2013 round to give municipalities time to comply with the current requirements for a revitalization zone.

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)) An Application may qualify for up to fourteen (14) points under subparagraphs (A) and (B) of this paragraph.

(A) Unit Sizes (7 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), for Developments receiving funding from USDA, or for Supportive Housing Developments without meeting these square footage minimums only if requested in the Self Scoring Form.

(i) five-hundred-fifty (550) square feet for an Efficiency Unit;

(ii) six-hundred-fifty (650) square feet for a one Bedroom Unit;

(iii) eight-hundred-fifty (850) square feet for a two Bedroom Unit;

(iv) one-thousand-fifty (1,050) square feet for a three Bedroom Unit; and

(v) one-thousand, two-hundred-fifty (1,250) square feet for a four Bedroom Unit.

(B) Unit Features (7 points). Applications in which Developments provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in §10.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions) and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments will start with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. §42(m)(1)(C)(iv) (2). An Application may qualify to receive points under subparagraph (A) or (B) of this paragraph.

(A) An Application may qualify to receive up to one (1) point provided the ownership structure meets one of the requirements described in clauses (i) – (iii) of this subparagraph:

(i) A Person with at least 50 percent ownership interest in the General Partner also owns at least 50 percent interest in the General Partners of at least three (3) existing tax credit developments in Texas, none of which are in Material Noncompliance. The IRS Form(s) 8609 must have been issued for each of the properties used for points under this paragraph and each must have a Uniform Physical Condition Standard (UPCS) score of at least 85 based on their most recent inspection.

(ii) The ownership structure of the Development Owner includes a joint venture between an experienced Developer and an inexperienced owner. In order to qualify for this point, the inexperienced party must be unable to obtain an Experience Certificate under §10.204(5) of this title (relating to Required Documentation for Application Submission). In addition, the experienced Owner must own at least 30 percent interest in the General Partner and also own at least 50 percent interest in the General Partner of at least three (3) existing tax credit developments in Texas, none of which are in Material Non-Compliance. The IRS Form(s) 8609 must have been issued for each of the properties used for points under this subparagraph and each must have a UPCS score of at least 85 based on their most recent inspection.

(iii) A HUB as certified by the Texas Comptroller of Public Accounts has at least 51 percent ownership interest in the General Partner, materially participates in the Development and operation of the Development throughout the Compliance Period, and will receive at least 20 percent of the cash flow from operations and at least 10 percent of the developer fee.

(B) An Application may qualify to receive up to three (3) points provided the ownership structure meets some combination of the requirements described in clauses (i) – (iii) of this subparagraph:

(i) A Person with at least 50 percent ownership interest in the General Partner also owns at least 50 percent interest in the General Partners of at least three (3) existing tax credit developments in Texas, none of which are in Material Noncompliance. The IRS Form(s) 8609 must have been issued for each of the properties used for points under this paragraph, and each must have a

Author: rachel Subject: Highlight Date: 10/19/12 11:51:10 AM

11.8(b)(2)(B)(i) and (ii) Sponsor Characteristics - Please clarify the rule. Do these two items together mean that an Applicant can receive 3 points for having 5 existing tax credit developments or at least 3 existing tax credit developments?

provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item.

(4) Opportunity Index. If the proposed Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (or 35 percent for Developments in Regions 11 and 13), an Application may qualify to receive up to seven (7) points upon meeting the additional requirements in subparagraphs (A) – (E) of this paragraph. The Department will base poverty rate on data from the most recent 5-year American Community Survey as available on November 15. Developments located in Rural Areas are exempt from meeting the elementary school and poverty rate factors under each of subparagraphs (A) – (E) of this paragraph, but the elementary schools in which tenants may attend can have a rating below acceptable in order to qualify for points. An elementary school attendance zone for the Development Site does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, districts with district-wide enrollment and only one elementary school are acceptable. The applicable school rating will be the 2011 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions.

(A) Development targets the general population; income in the census tract is in the top quartile of median household income for the county or MSA as applicable and the elementary school is exemplary or recognized (7 points);

(B) Development targets the general population; income in the census tract is in the top two quartiles of median household income for the county or MSA as applicable and the elementary school is exemplary or recognized (5 points);

(C) Any Development, regardless of population served is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable and the elementary school is exemplary or recognized (5 points);

(D) Any Development, regardless of population served is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable (3 points); or

(E) Any Development, regardless of population served is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable (1 point).

(5) Educational Excellence. An Application may qualify to receive up to three (3) points for a Development Site located within the attendance zone of a public school with an academic rating of recognized or exemplary (or comparable rating) by the Texas Education Agency, as described in subparagraphs (A) and (B) of this paragraph. An attendance zone does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, districts with district-wide enrollment and only one elementary, middle or high school (as applicable) are acceptable. The applicable school rating will be the 2011 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade

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Author: rachel Subject: Highlight Date: 10/19/12 11:55:57 AM
11.8(b)(4) We recommend that there should be additional categories for points. For example, add a category that would allow any Development that does not serve General Population (elderly or supportive) in the top two quartiles of MHI that have an exemplary or recognized elementary school (4 points). As it stands right now the points awarded for the second quartile for non General Population communities is not equitable.

center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings.

(A) Development is within the attendance zone of an elementary school, a middle school and a high school with an academic rating of recognized or exemplary (3 points); or

(B) Development is within the attendance zone of an elementary school and either a middle school or high school with an academic rating of recognized or exemplary (1 point).

(6) Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive up to two (2) points for proposed Developments located in one of the areas in subparagraphs (A) – (D) of this paragraph. Points will be awarded based on the Development's Target Population as identified in subparagraph (E) or (F) of this paragraph.

(A) A Colonia;

(B) An Economically Distressed Area;

(C) A municipality, or if outside of the boundaries of any municipality, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation; or

(D) For Rural Areas only, a census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation serving the same Target Population.

(E) General or Supportive Housing Developments (2 points); or

(F) Qualified Elderly Developments (1 point).

(7) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive up to two (2) points for Developments in which at least 5 percent of the Units are set aside for Persons with Special Needs. For purposes of this scoring item, Persons with Special Needs is defined as persons with alcohol and/or drug addictions, Colonia residents, Persons with Disabilities, victims of domestic violence, persons with HIV/AIDS, homeless populations and migrant farm workers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require a minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant. After the twelve-month period, the Development Owner will no longer be required to hold Units vacant for households with special needs, but will be required to continue to affirmatively market Units to household with special needs.

(d) Criteria promoting community support and engagement.

(1) Quantifiable Community Participation. (§2306.6710(b)(1)(B); §2306.6725(a)(2)) An Application may qualify for up to sixteen (16) points for written statements from a Neighborhood Organization. The Neighborhood Organization must be on record with the Department or county in which the Development Site is located and whose boundaries contain the Development Site, and which has been in existence no later than the Pre-Application Final Delivery Date. The written statement must meet the requirements in subparagraph (A) of this paragraph.

(A) Statement Requirements.

(i) the Neighborhood Organization's name, a written description and map of the organization's boundaries, signatures and contact information (phone, email and mailing address) for at least two individual members with authority to sign on behalf of the organization;

(ii) certification that the boundaries of the Neighborhood Organization contain the Development Site and that the Neighborhood Organization meets the definition pursuant to Texas Government Code, §2306.004(23-a) and includes at least two separate residential households; and

(iii) an explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason forming the basis of that opposition. A Neighborhood Organization is encouraged to be prepared to provide additional information with regard to opposition.

Author: ccbump Subject: Highlight Date: 10/19/12 10:44:41 AM
11.9 c 6 - Underserved Area - Instead of saying never on items C & D change the time limit to not having an award in the last 5 years.

Also, allow for two points for any Target Population instead of favoring General.

(B) Technical Assistance. For purposes of this section, if there is no Neighborhood Organization already on record, the Applicant, Development Owner, or Developer is allowed to provide technical assistance in the creation of and/or placing on record of a Neighborhood Organization provided that no Neighborhood Organization exists.

(i) Technical assistance is limited to:

(I) the use of a facsimile, copy machine/copying, email and accommodations at public meetings; and

(II) assistance in completing the QCP Neighborhood Information Packet, providing boundary maps and assisting in the Administrative Deficiency process;

(ii) No person required to be listed in accordance with §2306.6707 may participate in any way in the deliberations of a Neighborhood Organization of the Development to which the Application requiring their listing relates. This does not preclude their ability to present information and respond to questions at a duly held meeting where such matter is considered;

(iii) For non-Identity of Interest Applications the seller or their agents could be a member of the Neighborhood Organization if the seller will maintain primary residence within the Neighborhood Organizations boundaries.

(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in clauses (i) – (vi) of this subparagraph. Points will not be cumulated. Where more than one written statement is received for an Application, the averaged weight of all statements received in accordance with this subparagraph will be assessed and awarded.

(i) sixteen (16) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement, that qualified as Quantifiable Community Participation, opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(ii) fourteen (14) points for explicitly stated support from a Neighborhood Organization;

(iii) twelve (12) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement, that qualified as Quantifiable Community Participation, opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(iv) ten (10) points for statements of neutrality from a Neighborhood Organization or statements not meeting all the explicit requirements of this section, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality;

(v) ten (10) points for areas where no Neighborhood Organization is in existence; or

(vi) zero (0) points for statements of opposition meeting the requirements of this subsection.

(D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local governmental entity. If any such comment is challenged, the challenger must declare the basis for the challenge. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any support for the accuracy of its assertions. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination. The determination will be final and may not be waived or appealed.

(2) Community Input other than Quantifiable Community Participation. If there is no Neighborhood Organization on record, then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters must be submitted within the Application. At no time will the Application receive a score lower than zero (0) for this item.

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Author: ccbump Subject: Highlight Date: 10/19/12 11:59:45 AM

11.9 d 1 C Points for QCP - remove the two bonus points for groups that previously opposed a transaction. If this point item is kept the effect could cause the program problems in the future. There is an opportunity for developers to encourage groups to oppose competitors' applications so that they may reapply in the area of opposition the next year. This rule encourages opposition and frankly our industry does not need to encourage local groups to oppose applications. In order to accommodate the requirements of the Remedial Plan please limit the bonus scoring to Region 3 only.

(A) An Application may receive (2 points) for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose of the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide some documentation of its tax exempt status and its existence and participation in the community in which the Development is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts), or taxing entities. Should an Applicant elect this option and the Application receives letters in opposition, then two (2) points will be subtracted from the score for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this subparagraph.

(B) An Application may receive (2) points for a letter of support, from a property owners association created for a master planned community whose boundaries include the Development Site that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (1) of this subsection.

(C) An Application may receive (2) points for a letter of support from a Special Management District, whose boundaries, as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site and for which there is not a Neighborhood Organization on record with the county or state.

(D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, standing alone, cause staff or the Department to terminate the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(3) Commitment of Development Funding by Unit of General Local Government. (§2306.6710(b)(1)(E)) An Application may receive up to thirteen (13) points for a commitment of Development funding from the city or county in which the Development is proposed to be located. Development funding from instrumentalities of a city or county will not qualify for points under this scoring item unless such instrumentalities are first awarding such funds to the city or county for their administration or at least 60 percent of the governing board of the instrumentality is city council members from the city in which the Development will be located (for Developments located in a city) or county commissioners from the county in which the Development will be located (for Developments not located in a city). A government instrumentality may not be a Related Party to the Applicant. Development funding must be provided in the form of a construction and/or permanent loan with an interest rate no higher than the Applicable Federal Rate (AFR) and term of at least 5 years, a grant, an in-kind contribution, a contribution which will support the Development, such as vouchers, or combination thereof. Funds cannot have been provided to the Unit of General Local Government by the Applicant or a Related Party. HOME Investment Partnership Program or Community Development Block Grant funds administered by the State of Texas cannot be utilized for points under this scoring item. The Applicant must provide evidence in the Application that an application or request for the development funds has been submitted in the form of an acknowledgement from the applicable city or county. The acknowledgement must also state that a decision with regard to the awards of such funding will occur no later than August 1. A firm commitment of funds is required by Commitment or the points will be lost (except for Applicants electing the point under subparagraph (B) of this paragraph).

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Author: rachel Subject: Highlight Date: 10/18/12 10:23:50 AM

11.9(d)(3) Commitment of Development Funding by UGLG -

Please allow TDHCA HOME funds to count towards this item. Otherwise it unfairly penalizes Developments in Non-PJs or do not allow HOME funds to count towards this item from any jurisdiction.

this clause or six (6) points for at least two (2) of the items described in subclauses (I) – (IV) of this clause:

(I) Paved roadways or expansion of paved roadways by at least one lane;

(II) Water and/or wastewater service;

(III) Construction of a new police or fire station within one (1) mile of the Development Site that has a service area that includes the Development Site; and

(IV) Construction of a new hospital or expansion of an existing hospital's capacity by at least 25 percent within five (5) miles of the Development Site and ambulance service to and from the hospital is available at the Development Site.

(ii) The Applicant must provide a letter from a government official with specific knowledge of the project. However, the Department staff may rely on other documentation that reasonably documents that the substance of this clause is met, in Department Staff's sole determination. A letter must include:

(I) the nature and scope of the project;

(II) the date completed or projected completion;

(III) source of funding for the project;

(IV) proximity to the Development Site; and

(V) the date of any applicable city or county approvals, if not already completed.

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) An Application may qualify to receive a maximum of eighteen (18) points for this item. To qualify for points, a 15-year itemized pro forma that includes all projected income, operating expenses and debt service, and underlying growth assumptions, reflecting a minimum must-pay debt coverage ratio of 1.15 for each year must be submitted. The pro forma must include the signature and contact information evidencing that it has been reviewed and found to be acceptable by an authorized representative of a proposed construction or permanent Third Party lender. An acceptable form of lender approval letter is found in the application. If the letter evidences review of the Development alone it will receive sixteen (16) points. If the letter evidences review of the Development and the Principals, it will receive eighteen (18) points.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(H); §42(m)(1)(C)(iii)) An Application may qualify to receive up to ten (10) points based on the Building Cost (less any structured parking cost that is not included in Eligible Basis) per square foot of the Application, as originally submitted and certified to by the General Contractor, relative to the mean cost per square foot for all similar development types. Structured parking costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking. The square footage used will be the Net Rentable Area (NRA). For the purposes of this paragraph only, if a building is in a Qualified Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors (Elevator Served Development) the NRA will include elevator served interior corridors. If the proposed Development is a Supportive Housing Development, the NRA will include elevator served interior corridors and 50 square feet of common area per Unit. As it relates to this paragraph, an interior corridor is a corridor that is enclosed, heated and/or cooled and otherwise finished space. The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule of the Application.

(A) Each Application will be categorized as:

(i) Qualified Elderly and Elevator Served Development, more than 75 percent single family design, and Supportive Housing Developments; or

Page: 21

Author: ccbump Subject: Highlight Date: 10/19/12 12:00:29 PM
11.9 e 2 Cost Per Square Foot - Please return to the method used in the 2012 QAP. This is too big of a variable for developers considering how much money and time goes into an application. Really the new norm will be applications that center around the $80 PSF which encourages a race the bottom in terms of quality of units built.

(ii) All other Applications proposing New Construction, Reconstruction, or Adaptive Reuse; or

(iii) All other Applications proposing Rehabilitation.

(B) Within each category listed in subparagraph (A), points will be awarded as follows:

(i) Within 8 percent and equal to or less than the mean cost per square foot (10 points);

(ii) Within 5 percent and greater than the mean cost per square foot (10 points);

(iii) Within 13 percent and equal to or less than the mean cost per square foot (9 points);

(iv) Within 10 percent and greater than the mean cost per square foot (8 points);

(v) Within 18 percent and equal to or less than the mean cost per square foot (7 points);

(vi) Within 15 percent and greater than the mean cost per square foot (6 points); or

(vii) Within 20 percent of the mean cost per square foot (5 points)

(C) Developments with Building Costs of less than $80 per square foot shall receive no less than eight (8) points. Points under this subparagraph are not in addition to the points achieved under subparagraph (B) of this paragraph.

(3) Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted during the Pre-Application Acceptance Period and meets the requirements described in subparagraphs (A) – (I) of this paragraph:

(A) The total number of Units does not increase by more than 10 percent from pre-application to Application;

(B) The designation of the proposed Development as Rural or Urban remains the same;

(C) The proposed Development serves the same Target Population;

(D) The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, and/or Rural);

(E) The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than six (6) points from what was reflected in the pre-application self score;

(F) All necessary waivers and pre-clearance were requested in the pre-application;

(G) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number listed at pre-application is the same at Application;

(H) The pre-application met all applicable requirements; and

(I) The community revitalization plan the Applicant used for points under subsection (d)(6) of this section was submitted at the time of pre-application.

(4) Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3))

(A) An Application may qualify to receive up to three (3) points if at least 5 percent of the total Units are restricted to serve households at or below 30 percent of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) – (iv) of this subparagraph:

(i) the Development leverages CDBG Disaster Recovery, HOPE VI, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 8 percent of the Total Housing Development Cost (3 points); or

(ii) If the Housing Tax Credit funding request is less than 7 percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than 8 percent of the Total Housing Development Cost (2 points); or

Page: 22

Author: ccbump Subject: Highlight Date: 10/19/12 12:01:19 PM

11.9 e 5 Leveraging of Private, State and Federal Resources - Please increase item ii to 10% and item 3 to 11%. The very nature of this scoring item is going to force developers to underwrite more debt. The Department should be encouraging long term viability and not encourage Applicants to pursue riskier Developments.

involve USDA as a lender if the Applicant is not determined to be at fault for not meeting the deadline.

(D) Any penalties assessed by the Board for subparagraph (A) or (B) of this paragraph based on a Housing Tax Credit Commitment from the preceding Application Round will be attributable to the Applicant or Affiliate of an Application submitted in the current Application Round.

§11.10. Challenges of Competitive HTC Applications.

Challenges. The Department will address challenges received from unrelated entities to a specific active Application. The Department will utilize a preponderance of the evidence standard and determinations made by the Department concerning challenges cannot be appealed by a party unrelated to the Applicant that is the subject of the challenge. The challenge process shall be as stated in paragraphs (1) - (12) of this section. A matter, even if raised as a challenge, that staff chooses to treat as an Administrative Deficiency will be treated and handled as an Administrative Deficiency, not as a challenge.

(1) The challenge must be received by the Department no later than the Application Challenges Deadline as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) and must be accompanied by the corresponding non-refundable challenge processing fee as described in §10.901 of this title (relating to Fee Schedule). Unless the required fee is received with the challenge, no challenge will be deemed to have been submitted, and the challenge fee must be paid for each Application challenged by a challenger.

(2) A challenge must be clearly identified as such, using that word in all capital letters at the top of the page, and it must state the specific identity of and contact information for the person making the challenge.

(3) Challengers must provide, at the time of filing the challenge, any briefing, documentation or other information that the challenger offers in support of the challenge. Challengers must provide sufficient credible evidence that, if confirmed, would substantiate the challenge.

(4) Challenges to the financial feasibility of the proposed Development are premature and will not be accepted; as such issues will be addressed during the underwriting phase of the process.

(5) Challenges relating to undesirable area features as described in §10.101(a)(4) of this chapter (relating to Site and Development Requirements and Restrictions) will not be accepted unless they relate to a failure to disclose substantive issues not already disclosed.

(6) Challengers are encouraged to be prudent in identifying issues to challenge, realizing that most issues will be identified and addressed through the routine review and Administrative Deficiency process;

(7) Once a challenge on an Application has been submitted, subsequent challenges on the same Application from the same challenger will not be accepted;

(8) The Department shall promptly post all items received and purporting to be challenges and any pertinent information to its website;

(9) The Department shall notify the Applicant that a challenge was received within seven (7) business days of the challenge deadline;

(10) The Applicant must provide a response regarding the challenge within fifteen (15) business days of their receipt of the challenge; and

(11) The Department shall promptly post its determinations of all matters submitted as challenges. Because of statutory requirements regarding the posting of materials to be considered by the Board, staff may be required to provide information on late received items relating to challenges as handouts at a Board meeting.

(12) Staff determinations regarding all challenges will be reported to the Board as report items.

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Author: ccbump Subject: Highlight Date: 10/17/12 5:14:05 PM
11.10 5 - Please remove the ability to challenge this item. This is too subjective and open to frivolous challenges.

Chapter 12 Comments - October 22, 2012

(1) Applications that meet any of the criteria under §11.9(c)(4) of this title (relating to Competitive HTC Selection Criteria).

(2) Applications proposed to be located the greatest distance from the nearest Housing Tax Credit assisted Development.

(d) Inducement Resolution. After the pre-applications have been scored and ranked, the pre-application and proposed financing structure will be presented to the Department's Board for consideration of an inducement resolution declaring the Department's initial intent to issue Bonds with respect to the Development. Approval of the inducement resolution does not guarantee final Board approval of the Bond Application. Department staff may recommend that the Board not approve an inducement resolution for a pre-application. Because each Development is unique, making the final determination to issue Bonds is often dependent on the issues presented at the time the full Application is presented to the Board.

§12.5. Pre-Application Threshold Requirements.

The threshold requirements of a pre-application include the criteria listed in paragraphs (1) – (10) of this section. As the Department reviews the pre-application the assumptions as reflected in Chapter 10, Subchapter D of this title (relating to Underwriting and Loan Policies) will be utilized even if not reflected by the Applicant in the pre-application.

(1) Submission of the multifamily bond pre-application in the form prescribed by the Department;

(2) Completed Bond Review Board Residential Rental Attachment for the current program year;

(3) Site Control, evidenced by the documentation required under §10.204(9) of this title (relating to Required Documentation for Application Submission). The Site Control must be valid through the date of the Board meeting at which the inducement resolution is considered and must meet the requirements of §10.204(9) at the time of Application;

(4) Zoning evidenced by the documentation required under §10.204(10) of this title;

(5) Boundary Survey or Plat clearly identifying the location and boundaries of the subject Property;

(6) Current market information (must support affordable rents);

(7) Local area map that shows the location of the Development Site and the location of at least six (6) services within a one mile radius (two miles if in a Rural Area). The mandatory site characteristics are identified in §10.101(a)(2) of this title (relating to Site and Development Requirements and Restrictions);

(8) Organization Chart showing the structure of the Development Owner and of any Developer or Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner or the Developer or Guarantor, as applicable;

(9) Evidence of Entity Registration or Reservation with the Texas Office of the Secretary of State;

(10) A certification, as provided in the pre-application, that the Applicant met the requirements and deadlines for public notifications as identified in §10.203 of this title (relating to Public Notifications (§2306.5705(9))). Notifications must not be older than three (3) months prior to the date of Application submission. Re-notification will be required by Applicants who have submitted a change in the Application, whether from pre-application to Application or as a result of an Administrative Deficiency that reflects a total Unit increase of greater than 10 percent.

§12.6. Pre-Application Scoring Criteria.

The section identifies the scoring criteria used in evaluating and ranking pre-applications. The criteria identified below include those items required under Texas Government Code, §2306.359 and other criteria considered important by the Department. Any scoring items that require supplemental information to substantiate points must be submitted in the pre-application, as further outlined in the Multifamily Bond Pre-Application Submission Procedures Manual. Applicant's proposing multiple sites will be required to submit a

Summary of Comments on Multifamily Housing Revenue Bond Rule (Board approved Draft) (PDF)

Page: 4

Author: ccbump Subject: Highlight Date: 10/19/12 12:11:21 PM
12.5 7 - Pre-Application Threshold Requirements - Please remove this as a requirement for bond deals or, at the very least, increase the area two 2 miles for Urban and 3 Miles for Rural.

Comment (48)
Apolonio (Nono) Flores, Flores Residential, L.C.

(48)

APOLONIO (Nono) FLORES
FLORES RESIDENTIAL, L.C.
201 Cueva Lane, San Antonio, Texas 78232-1137
Telephone 210-494-7944 210-494-5948
Cell Telephone 210-289-5952
Facsimile 210-494-0853
e-mail: nono62@swbell.net

October 22, 2012

ATTN: Ms. Teresa Morales
Texas Department of Housing and Community Affairs
VIA Fax No. 512-475-0764

Re: Rule Comments on TDHCA Housing Tax Credit Program Qualified Allocation Plan

Dear Ms. Morales:

The following are my comments for consideration by TDHCA to the Housing Tax Credit Program QAP published in the September 21, 2012, Texas Register:

Section 11.4(b) Maximum Request Limit (Competitive HTC Only): TDHCA should not allow an applicant to request more than the credit amount available in a sub-region. This QAP provision to allow an applicant to request up to 150% of the credit amount available in a sub-region is not consistent with the provisions of Texas Government Code Chapter 2306 which requires TDHCA to use a formula to make regional allocations and has no provisions that allow TDHCA to allow an applicant to request more than the credit amount available in a sub-region. Additionally, the QAP prohibits awards to an applicant if there are not sufficient funds within the sub-region to fully award the application that then places the application in the rural or statewide collapse.

Section 11.5(3)(D) At-Risk Set-Aside: There are at-risk developments that have existing rental assistance with rents lower than the tax credits rents and may not be financially feasible unless they are allowed to eliminate a portion of that benefit. For example, the existing rental assistance may be within the tax credits rents for units at 30% AMGI and the development should be required to retain the rental assistance for those units but be allowed to eliminate the existing rental assistance on the other units who will retain their affordability within the HTC income and rent restrictions. This provisions should provide " . . . unless regulatory or financial barriers necessitate elimination of a portion of that benefit for the Development."

Section 11.9(b)(2) Sponsor Characteristics: Housing Authorities have extensive experience in providing affordable housing as developers, owners, and managers of Public Housing and Contract Administrators of HUD rental assistance contracts under Section 8 of the National Housing Act (Voucher Program). Many Texas Housing Authorities have as much as 75 years administering the Public Housing Program and 45 years administering the Section 8 Program. TDHCA needs to recognize this experience by awarding participation by Housing Authorities the maximum points under Sponsor Characteristics.

Section 11.9(b)(2)(A) Sponsor Characteristics: Should include provisions awarding 1 point for a Housing Authority that has at least 51 percent ownership interest in the General Partner, materially participates in the Development and operation of the Development

throughout the compliance period, and will receive at least 80 percent of the cash flow from operations and at least 25 percent of the developer fee.

Section 11.9(b)(2)(B) Sponsor Characteristics: Should include provisions awarding 3 points for a Housing Authority that that is rated by HUD as a High Performer or 2 points if rated by HUD as a Standard Performer and has at least 51 percent ownership interest in the General Partner, materially participates in the Development and operation of the Development throughout the compliance period, and will receive at least 80 percent of the cash flow from operations and at least 25 percent of the developer fee.

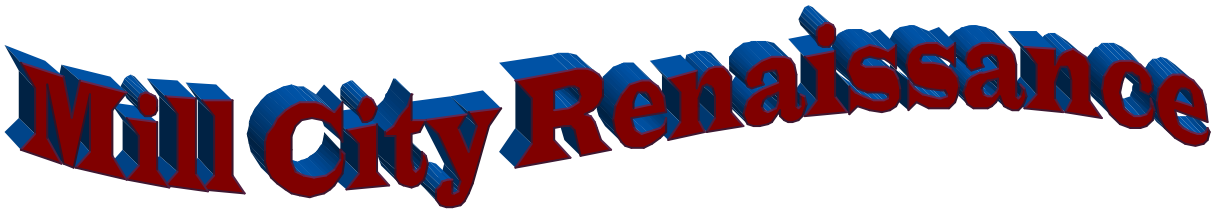
Section 11.9(d)(3) Commitment of Development Funding by Unit Of General Local Government: TDHCA proposes to restrict the awards points for funding from only a City or County. In prior years these points were allowed for funding by a "Unit of General Local Government" such as a Housing Authority. There is no basis for TDHCA to now exclude consideration for funding by any Unit of Local Government limit the award of points to only funding by a City or County.

Additionally, TDHCA proposes to penalize participation by a government instrumentality such as a Public Facility Corporation PFC) created under Chapter 303 of the Texas Local Government Code that was adopted by the Texas Legislature so that local governments such a City, County, Housing Authority or other Units of Local Government can carry out activities with their instrumentalities such as a PFC. There are many HTC developments in Texas sponsored by Units of Local Government using their instrumentality PFCs/ TDHCA needs to remove from the QAP all proposed restrictions on instrumentalities.

Section 11.9(e)(4)(A)(i) Leveraging of Private, State, and Federal Resources: Needs to include leveraging of funding from the Public Housing Program Capital Fund, Project Based Vouchers, and Section 8 Vouchers to assist families with their relocation.

Apolonio Flores

Comment (49)
Jim Slaughter, Mill City Renaissance



Mill City Neighborhood Association (MCNA)
3814 S. Fitzhugh Ave.
Dallas, Texas 75210

October 19, 2012

Tim Irvine, Exec. Director
TDHCA
P.O. Box 13941
Austin, TX 78711-3941

RE: LIHTC M/F Development Ref. ICP v. TDHCA Lawsuit
Neighborhood Support Letter

Dear Mr. Irvine;

Please allow me to introduce myself, I am Jim Slaughter, Acting President of the Mill City Neighborhood Association, located in the city of Dallas, Texas.

The Mill City Neighborhood Association (MCNA) physical location boundaries are depicted by the outline of Census Tract 27.02. We are located in postal zip code zone 75210. The organization is also listed with the City of Dallas, Strategic Customer Services- Community Associations. For a map of our designated area, please visit their website at: www.dallascityhall.com/scs/community_mapping_project.html.

Started in July'2004, the MCNA is committed to revitalizing the community through grass roots efforts. Our neighborhood improvements projects are directed at projects such as; vacant house blight, trash/brush pickup, crime watch activities, stray animal control, code enforcement, housing rehabilitation and new housing/retail development.

We previously supported the proposed 136 unit Hatcher Square Project, proposed by Frazier Revitalization Initiative in your last round of Tax Credits. Unfortunately, the Hatcher Square Project was not funded by your agency. We are still hopefully optimistic about future rounds.

Since that time, we have become aware of the issues related to the ICP vs TDHCA lawsuit, and the negative effect the lawsuit is having on affordable housing development in low income areas; such as our neighborhood boundaries. It is our understanding that the current Judge's Order in this case will put our community out of the "preference boundaries" for any future LIHTC projects.

Mr. Irvine, if this is the case, we will never be able to rebuilt our community for lack of adequate financing. Conventional financing will not be able to fund below market rate rents development projects; thus new construction will be a thing of the past in our neighborhood. Not only is this a problem for our community, it is a problem for the state and nation as a whole. If we take away the financing vehicle for projects serving low-income citizens, then how and will these individuals find adequate housing needs in the future? Relocating families to a non-impacted area only further isolates them from their family support systems and encourages their failure to move above low income status.

The LIHTC program, approved by Congress, and used by States throughout the United States; have clearly shown to assist those with the lowest incomes, for long periods of time. Placing project in QCTs (low-income neighborhoods) have proven to be a very effective tool in enhancing neighborhoods while providing much needed housing. I believe this was the initial intent of Congress when the program was first developed.

Therefore, I urge you, with the support of our neighborhood association; to do the following:

- Appeal the decision and Order if the Judge denies the current Motion.
- File another motion requesting a stay of the Judge's Order until a court of final resort can determine the case, and
- Revise sections of the Proposed 2013 QAP, so that projects in OCTs, that are part of a comprehensive revitalization plan supported by the local city, have a fair competitive chance to receive an award.

I'm available at (214) 500-4233, if you need further clarification on any comment mentioned in this letter.

Thanks for your continued time and support.

Respectfully submitted,

Jim Slaughter

Jim Slaughter
Acting President
Mill City Neighborhood Assn.
Jim_slaughter@sbcglobal.net

Cc: Frazier HS, LP, P.O. Box 796368, Dallas, TX 75379
Mill City Renaissance Neighborhood Assn. Officers
Members of the TDHCA Board of Directors
State Senator Royce West, District 23
State Representative Eric Johnson, District 100
US Rep. Congresswoman Eddie B. Johnson, District 30

Comment (50)
Laura Llanes, Housing Authority of the City of Laredo

50

HOUSING AUTHORITY OF THE CITY OF LAREDO

October 22, 2012

VIA FAX NUMBER: (512) 475-0764
ATTN: Ms. Teresa Morales
Texas Department of Housing and Community Affairs

Re: Rule Comments on TDHCA Housing Tax Credit Program Qualified Allocation Plan

Dear Ms. Morales:

The following are my comments for consideration by TDHCA to the Housing Tax Credit Program QAP published in the September 21, 2012, Texas Register:

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Section 11.5(3)(D) At-Risk Set-Aside: There are at-risk developments that have existing rental assistance with rents lower than the tax credits rents and may not be financially feasible unless they are allowed to eliminate a portion of that benefit. For example, the existing rental assistance may be within the tax credits rents for units at 30% AMGI and the development should be required to retain the rental assistance for those units but be allowed to eliminate the existing rental assistance on the other units who will retain their affordability within the HTC income and rent restrictions. This provisions should provide ". . . unless regulatory or financial barriers necessitate elimination of a portion of that benefit for the Development."

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2000 San Francisco Avenue
Laredo, Texas 78040
Phone (956) 722-4521 Facsimile (956) 722-6561 TTY-TDD (722) 722-2243

Section 11.9(b)(2)(A) Sponsor Characteristics: Should include provisions awarding 1 point for a Housing Authority that has at least 51 percent ownership interest in the General Partner, materially participates in the Development and operation of the Development throughout the compliance period, and will receive at least 80 percent of the cash flow from operations and at least 25 percent of the developer fee.

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Section 11.9(e)(4)(A)(i) Leveraging of Private, State, and Federal Resources: Needs to include leveraging of funding from the Public Housing Program Capital Fund, Project Based Vouchers, and Section 8 Vouchers to assist families with their relocation.

Laura Llanes
Executive Director

2000 San Francisco Avenue
Laredo, Texas 78040
Phone (956) 722-4521 Facsimile (956) 722-6561 TTY-TDD (722) 722-2243

Comment (51)
United States Green Building Council (USGBC)

51

USGBC
2101 L STREET, NW
SUITE 500
WASHINGTON, DC 20037
202.828.7422
USGBC.ORG

Texas Department of Housing and Community Affairs
Attn: Teresa Morales, Rule Comments
P.O. Box 1394
Austin, Texas 78711-3941
f: (512) 475-0764

Re: PUBLIC COMMENT
TDHCA Board Approved Draft of the Uniform Multifamily Rules

Section:
Chapter 10 of the Texas Administrative Code
Subchapter B – Site and Development Requirements and Restrictions
(5) Common Amenities.

In this section "Green Building Certifications" are awarded with points. This section states: "Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices." The criteria awards LEED and NAHB's National Green Building Standard (NGBS) certification with four points.

COMMENT:
USGBC recommends that only the Emerald level of NAHB's National Green Building Standard be adopted as a compliance path for this program.

Recommended Language Change (for 2013 QAP):

Change "National Green Building Standard" to "National Green Building Standard Emerald Level"

There are vast differences in the minimum requirements of LEED and NAHB's National Green Building Standard (NGBS) and they should not be viewed as equal programs. NGBS does not require performance testing to achieve certification. Performance tests are used in all certification levels of LEED to verify very important Energy Efficiency and Indoor Air Quality measures. Performance testing has become an industry standard as an analytical tool for the qualification of green building programs yet NGBS does not require performance tests for any level other than Emerald, their highest.

An example of how the exclusion of performance testing is an oversight can be found in the Build Green New Mexico green building program. Build Green New

Mexico amended NGBS to require performance testing starting at the Silver level.

http://buildgreennm.com/index.php?page=certification-process

A second example can be found in a 2010 analysis that was conducted for the City of Cincinnati's LEED tax abatement program. NAHB members approached Cincinnati and recommended that they adopt NGBS as equal to LEED for this program. An independent group (AIA) concluded that NGBS is not equal to LEED because minimum requirements in the energy category (including performance tests) were not the same level or rigor as LEED. The City of Cincinnati did not adopt NGBS for this program and continues to recognize only LEED.

http://www.cincinnati-oh.gov/community-development/linkservid/55F0DFC5-FD35-8C39-023C6EA45E0D2261/showMeta/0/

Comment (52)
Barry Palmer, Coats Rose

COATS | ROSE
A Professional Corporation

BARRY J. PALMER

bpalmer@coatsrose.com
Direct Dial
(713) 653-7395
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(713) 890-3944

October 22, 2012

Mr. Tim Irvine
Executive Director
TDHCA
221 East 11th Street
Austin, Texas 78701

Re: QAP Comments

Dear Tim:

Please accept these comments on the proposed QAP and related rules.

Subchapter A – General Information and Definitions

10.3(109) and (116) The definitions of Supportive Housing and Transitional Housing are connected to one another and should be clarified so that ownership can be in the form of a tax credit partnership. In the definition of Transitional Housing, we recommend adding the following provision to paragraph 116(B): "is owned by a Development Owner that includes a governmental entity or a qualified nonprofit…"

10.3(101) – The "Right of First Refusal" definition should, consistent with federal law, allow a government agency to acquire a tax credit property pursuant to a right of first refusal. We propose replacing the phrase "nonprofit or tenant organization with the term "Qualified ROFR Organization. We propose adding the term "Qualified ROFR Organization" which is a logical outgrowth of the proposed rule to conform the rule to section 42 of the Internal Revenue Code, to be defined as "(1) a qualified nonprofit that meets the requirements of section 42(h)(5) of the Code, (2) a government agency, (3) a tenant organization, or (4) tenants."

Subchapter B – Site and Development Requirements and Restrictions

10.101 (a)(4) While we recognize that the Undesirable Area Features are part of the ICP remedial plan, we urge the Department to provide an exemption for properties that are required to obtain HUD environmental or site and neighborhood standards clearance. Practically, developers and TDHCA staff will find it impossible to determine which sites are prohibited by

undefined characteristics such as "high-crime area" or "significant presence of blighted structures". While private developers have the option of locating potential projects in areas where the prohibited area characteristics are least likely to exist, 10.101(a)(4) will effectively prevent severely distressed public housing sites from participating in TDHCA programs. It removes the only tool in the toolkit of large Texas housing authorities that need these programs to transform 50+ year old public housing developments.

We propose that the Department provide an exemption for any development that includes federal funding in its construction financing sources and must comply with HUD environmental assessment or federal site and neighborhood regulations. The process of obtaining HUD environmental or site and neighborhood standards clearance for a project utilizing federal funding is in place and well-established. Requiring that TDHCA staff visit the site for pre-clearance under 10.101(a)(4) would only be duplicated effort for these projects. We suggest that the Applicant be permitted to elect to proceed with the exemption, instead of pre-clearance by the TDHCA. The exemption would be only available if the project actually obtains the required environmental and/or site and neighborhood standards clearances and the underlying federal funding is actually closed. Choosing to rely upon federal funding for an exemption would mean loss of the tax credit allocation if the federal financing is not closed for any reason. We propose that tax credit allocations made pursuant to an exemption would not be subject to challenges under 10.101(a)(4).

In the event that you do not look favorably upon the suggested exemption described above, then we request that you consider exemptions for projects that are located in a city's revitalization area, as evidenced by a letter from the municipality's housing department.

QAP 11.2 Program Calendar

Two deadlines in the program calendar go beyond statutory requirements. The first is the December 17th requirement to request neighborhood organizations. This deadline is not in section 2306 of the Government Code, and mid-December is too early to require tax credit developers to have selected sites, especially with the adoption of the QAP by the board only a month before. The second deadline is the 10% Test, which is not required under federal law until one year after the carryover allocation is executed by the Department. We propose November 1st as the deadline for the 10% test

Commitment of Development Funding by Unit of General Local Government

The changes to this section are not consistent with past public comment or current market conditions. Tax credit prices are currently more than 90 cents per tax credit, so the need for gap financing is less than it has been in recent years. At the same time, budget cuts have been severe at the local government level in most cities in Texas. These conditions weigh heavily against TDHCA's proposed points for local government funding in the range of millions of dollars per project. We have proposed lowering the dollar amounts to a level within reach of local governments and consistent with the level of gap financing tax credit properties need at current equity pricing. Moreover, requiring more local government funding would have the unintended consequence of decreasing the total number of affordable housing units generated in the State by siphoning dollars from other types of developments to the tax credit program.

HOME Investment Partnership funding has always been an acceptable source of local government funding, primarily because this is the main source of affordable housing gap financing available at the local government level. The proposed removal of this source puts developers in the awkward position of asking local government not to use the primary affordable housing funding source, but rather to use funding that would otherwise be used for roads, hospitals, and parks, which is likely to increase the NIMBYism that we all hope to avoid.

Moreover, funding from public housing authorities should qualify. While chapter 2306 of the Government Code does not define "local political subdivision," it does define "local government" as an entity created under chapter 394 of the Local Government Code. (2306.004(19), and housing authorities are organized under that chapter of the government code. Because of the ambiguity in interpreting the statute regarding this section of the QAP, we recommend following the precedent of the Department for more than 10 years and allowing public housing authorities to qualify for these points.

We also propose changing the deadline for the final loan commitment to November 1st, not August 1st. Large cities will not be able to meet a deadline of August 1st.

Community Revitalization Plan Points

HUD site and neighborhood clearance for a site is not possible at the tax credit application stage. As you know, HUD processing time precludes this clearance so early in the development process.

Cost of Development by Square Foot Points

We do not support the concept of tying these points to the mean cost per square foot of other applications. This revision is potentially in conflict with section 2306 of the Government Code, which requires the Department to score and rank an application using a point system that prioritizes in descending order criteria regarding the cost of the development by square foot. If the Department decides to go forward with this proposed change, we urge the Department to calculate the mean cost per square foot for similar development types within the large cities separately. In other words, it costs more to build a new construction development in the City of Austin than in Manor or Taylor, and the rule should be revised to clarify that Austin deals will only be compared to one another in the calculation, Houston deals will be averaged only against each other. Otherwise, the Department will make the large cities uncompetitive in the tax credit round.

Leveraging Points

The Leveraging point category should be restored to the 2012-2013 QAP language. There are very few HOPE VI or Choice Neighborhood grants in Texas at this point, so CDBG Disaster Recovery funds will be the primary leveraging source, and that source is only available in certain regions of the state. In addition, the Tax Credit Funding Request percentages of Total Housing Development Cost are not consistent with typical tax credit investor requirements. We propose returning to the prior QAP language, or at least including HUD-insured loans and other loans with a 100-basis-point advantage over market rates in the list of programs that qualify.

If you have questions, please contact me. We appreciate the opportunity to provide QAP comments.

Sincerely,

Barry J. Palmer

Comment (53)
Ruben Sepulveda, Weslaco Housing Authority

(53)

Weslaco Housing Authority
P. O. BOX 95
WESLACO, TEXAS 78599-0095

October 22, 2012

ATTN: Ms. Teresa Morales
Texas Department of Housing and Community Affairs
VIA Fax No. 512-475-0764

Re: Rule Comments on TDHCA Housing Tax Credit Program Qualified Allocation Plan

Dear Ms. Morales:

The following are my comments for consideration by TDHCA to the Housing Tax Credit Program QAP published in the September 21, 2012, Texas Register:

Section 11.4(b) Maximum Request Limit (Competitive HTC Only): TDHCA should not allow an applicant to request more than the credit amount available in a sub-region. This QAP provision to allow an applicant to request up to 150% of the credit amount available in a sub-region is not consistent with the provisions of Texas Government Code Chapter 2306 which requires TDHCA to use a formula to make regional allocations and has no provisions that allow TDHCA to allow an applicant to request more than the credit amount available in a sub-region. Additionally, the QAP prohibits awards to an applicant if there are not sufficient funds within the sub-region to fully award the application that then places the application in the rural or statewide collapse.

Section 11.5(3)(D) At-Risk Set-Aside: There are at-risk developments that have existing rental assistance with rents lower than the tax credits rents and may not be financially feasible unless they are allowed to eliminate a portion of that benefit. For example, the existing rental assistance may be within the tax credits rents for units at 30% AMGI and the development should be required to retain the rental assistance for those units but be allowed to eliminate the existing rental assistance on the other units who will retain their affordability within the HTC income and rent restrictions. This provisions should provide " . . . unless regulatory or financial barriers necessitate elimination of a portion of that benefit for the Development."

Section 11.9(b)(2) Sponsor Characteristics: Housing Authorities have extensive experience in providing affordable housing as developers, owners, and managers of Public Housing and Contract Administrators of HUD rental assistance contracts under Section 8 of the National Housing Act (Voucher Program). Many Texas Housing Authorities have as much as 75 years administering the Public Housing Program and 45 years administering the Section 8 Program. TDHCA needs to recognize this experience by awarding participation by Housing Authorities the maximum points under Sponsor Characteristics.

Central Office (956) 969-1538
Section 8 (956) 968-5433
Fax (956) 969-8718 • E-mail weslacoha@weslacoha.com

Section 11.9(b)(2)(A) Sponsor Characteristics: Should include provisions awarding 1 point for a Housing Authority that has at least 51 percent ownership interest in the General Partner, materially participates in the Development and operation of the Development throughout the compliance period, and will receive at least 80 percent of the cash flow from operations and at least 25 percent of the developer fee.

Section 11.9(b)(2)(B) Sponsor Characteristics: Should include provisions awarding 3 points for a Housing Authority that that is rated by HUD as a High Performer or 2 points if rated by HUD as a Standard Performer and has at least 51 percent ownership interest in the General Partner, materially participates in the Development and operation of the Development throughout the compliance period, and will receive at least 80 percent of the cash flow from operations and at least 25 percent of the developer fee.

Section 11.9(d)(3) Commitment of Development Funding by Unit Of General Local Government: TDHCA proposes to restrict the awards points for funding from only a City or County. In prior years these points were allowed for funding by a "Unit of General Local Government" such as a Housing Authority. There is no basis for TDHCA to now exclude consideration for funding by any Unit of Local Government limit the award of points to only funding by a City or County. Additionally, TDHCA proposes to penalize participation by a government instrumentality such as a Public Facility Corporation PFC) created under Chapter 303 of the Texas Local Government Code that was adopted by the Texas Legislature so that local governments such a City, County, Housing Authority or other Units of Local Government can carry out activities with their instrumentalities such as a PFC. There are many HTC developments in Texas sponsored by Units of Local Government using their instrumentality PFCs/ TDHCA needs to remove from the QAP all proposed restrictions on instrumentalities.

Section 11.9(e)(4)(A)(I) Leveraging of Private, State, and Federal Resources: Needs to include leveraging of funding from the Public Housing Program Capital Fund, Project Based Vouchers, and Section 8 Vouchers to assist families with their relocation.

Sincerely,

Ruben Sepulveda
Executive Director

Comment (54)
J. Fernandez Lopez, Pharr Housing Authority

54

PHARR Housing Authority

J. Fernando Lopez
Executive Director

October 22, 2012

Ms. Teresa Morales
Texas Department of Housing and Community Affairs
512-475-0764 Fax

J. Fernando Lopez
Executive Director
104 W. Polk
Pharr, Texas 78577
956-783-1316
956-781-3758 Fax

Re: Rule Comments on TDHCA Housing Tax Credit Program Qualified Allocation Plan

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The following are my comments for consideration by TDHCA to the Housing Tax Credit Program QAP published in the September 21, 2012, Texas Register:

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Section 11.5(3)(D) At-Risk Set-Aside: There are at-risk developments that have existing rental assistance with rents lower than the tax credits rents and may not be financially feasible unless they are allowed to eliminate a portion of that benefit. For example, the existing rental assistance may be within the tax credits rents for units at 30% AMGI and the development should be required to retain the rental assistance for those units but be allowed to eliminate the existing rental assistance on the other units who will retain their affordability within the HTC income and rent restrictions. This provisions should provide " . . . unless regulatory or financial barriers necessitate elimination of a portion of that benefit for the Development." ✓

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Section 11.9(b)(2)(A) Sponsor Characteristics: Should include provisions awarding 1 point for a Housing Authority that has at least 51 percent ownership interest in the General Partner, materially participates in the Development and operation of the Development throughout the compliance period, and will receive at least 80 percent of the cash flow from operations and at least 25 percent of the developer fee.

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Section 11.9(e)(4)(A)(I) Leveraging of Private, State, and Federal Resources: Needs to include leveraging of funding from the Public Housing Program Capital Fund, Project Based Vouchers, and Section 8 Vouchers to assist families with their relocation.

Sincerely,

J. Fernando Lopez
Executive Director

Comment (55)
Jose A. Saenz, McAllen Housing Authority

55

McAllen Housing Authority
"Transforming Families, Strengthening Communities"

2301 JASMINE AVENUE
MCALLEN, TEXAS 78501

October 22, 2012

ATTN: Ms. Teresa Morales
Texas Department of Housing and Community Affairs
VIA Fax No. 512-475-0764

Re: **Rule Comments on TDHCA Housing Tax Credit Program Qualified Allocation Plan**

Dear Ms. Morales:

The following are my comments for consideration by TDHCA to the Housing Tax Credit Program QAP published in the September 21, 2012, Texas Register:

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Section 11.5(3)(D) At-Risk Set-Aside: There are at-risk developments that have existing rental assistance with rents lower than the tax credits rents and may not be financially feasible unless they are allowed to eliminate a portion of that benefit. For example, the existing rental assistance may be within the tax credits rents for units at 30% AMGI and the development should be required to retain the rental assistance for those units but be allowed to eliminate the existing rental assistance on the other units who will retain their affordability within the HTC income and rent restrictions. This provisions should provide "... unless regulatory or financial barriers necessitate elimination of a portion of that benefit for the Development."

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Section 11.9(b)(2)(A) Sponsor Characteristics: Should include provisions awarding 1 point for a Housing Authority that has at least 51 percent ownership interest in the General Partner, materially participates in the Development and operation of the Development throughout the compliance period, and will receive at least 80 percent of the cash flow from operations and at least 25 percent of the developer fee.

 Phone: (956) 686-3951 | Fax: (956) 686-3112

Section 11.9(b)(2)(B) Sponsor Characteristics: Should include provisions awarding 3 points for a Housing Authority that that is rated by HUD as a High Performer or 2 points if rated by HUD as a Standard Performer and has at least 51 percent ownership interest in the General Partner, materially participates in the Development and operation of the Development throughout the compliance period, and will receive at least 80 percent of the cash flow from operations and at least 25 percent of the developer fee.

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Section 11.9(e)(4)(A)(i) Leveraging of Private, State, and Federal Resources: Needs to include leveraging of funding from the Public Housing Program Capital Fund, Project Based Vouchers, and Section 8 Vouchers to assist families with their relocation.

McAllen Housing Authority

Jose A. Saenz
Executive Director

Comment (56)
Henry Flores, Madhouse Development

From: Cameron Dorsey
To: Teresa Morales;
Subject: FW: Comments to the 2013 QAP
Date: Monday, October 22, 2012 5:37:46 PM

From: henry@madhousedevelopment.net [mailto:henry@madhousedevelopment.net]
Sent: Monday, October 22, 2012 3:30 PM
To: jean.latsha@tdhca.state.tx.us
Cc: Cameron Dorsey (cameron.dorsey@tdhca.state.tx.us)
Subject: Comments to the 2013 QAP

Jean: On behalf of Madhouse Development, Henry IV and I wanted to offer the following comments regarding the Competitive HTC Selection Criteria from the draft Qualified Allocation Plan ("QAP") for 2013:

1) We are generally supportive of the language stated in section 11.9 (b)(2) Sponsor Characteristics and feel that successful experience in Texas should be part of the evaluation criteria but we feel that the use of the Uniform Physical Condition Standard ("UPCS") adds an unacceptable level of uncertainty to this standard because of inconsistencies in the scoring related to this inspection process. We agree that the benchmark standard should be three properties but we feel that the only relevant test that should be applied is that the aforementioned three properties must not be in Material Noncompliance. A minimum score of 70 should be considered acceptable If TDHCA insists on using a UPCS score in its review. We also believe that Section B (i) and B (ii) should be mutually exclusive. If not revised, a developer that has 5 developments that meet the current definition will qualify under those two criteria for a total of three points; I don't believe that it was TDHCA's intent to allocate points in this fashion.

2) The definition of eligible entities uses for Section 11.9 (b)(3) Commitment of Development Funding by Unit of General Local Government should be broad enough to include "multi-jurisdictional"

entities since these type of entities are found in abundance in the poorest parts of Texas. For example, Housing Finance Corporations ("HFC") are often formed by a contingent of counties in South Texas to gain efficiency of scale and maximize the value of the opportunities being presented to their constituents. The boards of these HFC entities are almost always comprised of the County Judges of the participating counties or at a minimum other elected officials and operate only within their territorial jurisdiction. I do agree that efforts to limit state wide entities is legitimate but these HFC type of entities should not be "punished" as part of the process.

3) Section 11.9 (b)(6) describes the criteria relative to the Community Revitalization Plan. We believe that the proposed criteria is overly restrictive and that Tax Increment Financing ("TIF") districts or other similar variations of this type of district which are intended to capture projected tax revenue should be included as eligible for consideration as "Community Revitalization Plans". A TIF is a public financing method that is used for subsidizing redevelopment, and other community-improvement projects in many parts of Texas. TIF is a method to use future gains in taxes to subsidize current improvements, which are projected to create the conditions for said gains. The completion of a public project often results in an increase in the value of surrounding real estate which generates additional tax revenue. When an increase in site value and private investment generates an increase in tax revenues, it is the "tax increment." Tax Increment Financing dedicates tax increments within a certain defined district to finance the debt that is issued to pay for the project. TIF is often designed to channel funding toward improvements in distressed, underdeveloped, or underutilized parts of a jurisdiction where development might otherwise not occur. TIF creates funding for public or private projects by borrowing against the future increase in these property-tax revenues. We believe that the dedication of these revenue sources by a community demonstrates exactly the local commitment required by this point item.

4) Section 11.9 (e)(2)(B) establishes the scoring criteria for points to be awarded relative to a "mean cost per square foot" test. The language being proposed is overly complicated and fails to address any significant public policy issue. We would suggest that the scoring method used last year for cost containment was more than adequate and we urge TDHCA to continue to use the existing protocol with $80 per square foot used as the new

benchmark standard. There is no reason to modify this simple test originally implemented to maximize the number of transactions funded per annual cycle while establishing an adequate cost threshold to ensure the quality of the properties developed under the program.

5) Section 11.9 (e)(7) Development Size suggests that a point be awarded to any application proposing a project with less than 50 units. The size of a Development should be a function of market demand and financial feasibility and TDHCA should allow these factors to determine the appropriate size of a proposed apartment community. TDHCA should eliminate this scoring item.

Madhouse appreciates the opportunity to offer these comments regarding the 2013 QAP. Please let either of us know if you have any questions. Thanks.
Henry Flores

From: Cameron Dorsey
To: Teresa Morales;
Subject: FW: Additional QAP comment
Date: Monday, October 22, 2012 5:35:30 PM

From: henry@madhousedevelopment.net [mailto:henry@madhousedevelopment.net]
Sent: Monday, October 22, 2012 3:35 PM
To: jean.latsha@tdhca.state.tx.us
Cc: Cameron Dorsey (cameron.dorsey@tdhca.state.tx.us)
Subject: Additional QAP comment

Jean: I wanted to offer one additional comment as Chairman of the Board of Commissioners of the Housing Authority of the City of Austin("HACA"). Pursuant to §11.5(3)(D), the redevelopment of public housing qualifies for At-Risk designation where "no less than 25 percent of the proposed Units must be public housing units" in the final project. While HACA understands that some of the language in this section regarding the At-Risk Set-Aside is required by statute, we ask that the TDHCA Board use its discretion so that the proposed language is modified to read that, "no less than 25 percent of the proposed Units must be public housing units or units assisted by a project-based rental subsidy agreement with a term of at least 15 years."

We believe that the 25% benchmark standard is appropriate as written; however, restricting the designation to, "public housing units" fails to include units subsidized via a project-based rental assistance contract, which is the direction of national housing policy with the U.S. Department of Housing and Urban Development ("HUD"). Due to financial and budgetary constraints, HUD must identify other funding sources to preserve and improve aging properties, as it can no longer continue to subsidize Public Housing Authorities ("PHAs") at previous levels. Under the current public housing financing model, PHAs cannot access private debt. Through current HUD programs and initiatives, such as the Rental Assistance Demonstration and the Choice Neighborhood Initiative, HUD encourages the conversion of existing public housing units to units covered by a long-term, project-based rental assistance contract. These new initiatives are based on HUD's recognition that the lack of federal funding will make maintaining the current public housing structure untenable, and that future funding must be

focused on tenant rental subsidy, and not the funding of public housing authority entities or physical assets. The conversion of the assistance from public housing to project-based rental assistance enables PHAs and owners to access private debt and equity to address immediate and long-term capital needs. At their core, these initiatives focus on the preservation and improvement of "At-Risk" public housing properties, without additional federal subsidy funding. We believe our proposed language is in line with current HUD policy, and the spirit of the At-Risk Set-Aside when enacted under §2306. Our proposed language would marry HUD's concept of preserving public housing properties by accessing private debt and equity, with TDHCA's priority of preserving At-Risk public housing units.

Thanks and let me know if you have any specific questions.

Henry

Comment (57)
Laolu Davies-Yemitan, Five Woods, LLC.

From: Cameron Dorsey
To: Teresa Morales;
Subject: FW: Historically Underutilized Businesses QAP Language
Date: Monday, October 22, 2012 5:32:27 PM

From: Laolu Davies-Yemitan [mailto:laolu@5woods.net]
Sent: Monday, October 22, 2012 3:51 PM
To: 'Cameron Dorsey'
Cc: laolu@5woods.net
Subject: Historically Underutilized Businesses QAP Language

Cameron,

I hope this email finds you in good spirits. I am writing you to offer some input on the language applied under Sponsor Characteristics as it pertains to involvement of a HUB as a 51% owner. It has come to my attention that language is being considered of a 100% threshold that would consist of the HUB's percentage ownership, percent of developer fee received, and percent of cash-flow received. It is my understanding that this approach is being proposed as a means of ensuring actual material participation by a HUB in the development. The concern is non-HUB developers have a certain threshold where if it becomes too onerous on their bottom-line to have a HUB participate in the development, they might forego pursuing that option altogether.

The language that was passed by the board in September 2012, where a 51% HUB General Partner receives 10% of the developer fee and 20% of the cash flows, in my estimation should be compelling enough for developers to make sure that their HUB partners do have material participation in a development, and in ultimately achieving the goal of helping HUBs build capacity to the point where they can develop projects on their own. An alternative threshold I would suggest would be a 90% combination of 51% ownership, and the remainder 39% be stipulated with a minimum 10% of developer fee received and the rest being made up for in either developer fee or cash flow. Causing developers to have to share more of their profits (in a 100% threshold schematic) with a HUB, who takes on little to no risk, may end up resulting in the unintended consequence of developers making a determination that

taking on a non-related HUB partner in a development deal just isn't worth it. If you do decide to leave the 100% threshold in place, then be sure to stipulate that HUB ownership should not exceed 60%, so that you don't have deals being loaded up with a HUB owning 80% of a deal for example.

Kindly let me know if I can provide further clarification regarding my perspective on this matter.

Best regards,

Laolu Davies-Yemitan
Five Woods, Llc
(281) 948-9154
Meeting Clients at The Point of Need

Comment (58)
Alyssa Carpenter

Comments Regarding the 2013 QAP
Submitted Monday, October 22, 2012

These comments concern Section 11.9(f)(1) Point Deductions. To begin, I disagree with this section of the QAP. I would like to point out that at the September 6, 2012, Board meeting, both Bobby Bowling and Michael Hartman spoke against this scoring item. And in response to Mr. Hartman's comments, Chairman Oxer responded "I happen to agree with transitioning to a new system like this it will take a little time to get everybody up to speed on how the points work." I understand that staff had a lot of problems with the At-Risk scoring last year; however, it should be noted that even at the Austin Application Workshop, TDHCA staff gave conflicting guidance on whether At-Risk applications were eligible for High Opportunity points. However, if staff insists that this section be included, then I respectfully request that two items be added to the list of scoring items that are exempt from the point deductions.

First, please consider adding Section 11.9(c)(6) Undeserved Area to the list of items that are exempt from point deductions under Section 11.9(f)(1) Point Deductions. Section 11.9(c)(6) provides points for developments located in colonias, economically distressed areas, municipalities and counties that have never received a tax credit allocation, and rural census tracts without existing same population tax credit developments. My concern with the Underserved Area points is the lack of concrete data for many of these categories

As you are aware, "Economically Distressed Area" is not something that can be confirmed by a list and may be subjective in determination. In addition, staff has changed the definition of "Economically Distressed Area" for this application cycle, which does not match what is provided on the TWDB website. Because of the difference in these definitions, I am concerned that there will be confusion about what would qualify under this item. There is also no clarity on what documentation would be required and what should occur if TDHCA staff requested more information.

I am also concerned about the existing data regarding HTC developments. The Department releases a list of 9% and 4% HTC properties with addresses and census tract information, but there are mistakes in this data. If you recall from last year, there was an instance where an applicant believed that a census tract did not have an existing HTC development based on the information provided in the TDHCA inventory, but later found out that the TDHCA inventory was incorrect. I understand and concur with the need for applicant due diligence, but I also believe that there should be some ability to rely on TDHCA's data. It is unfair for TDHCA to provide data, for that data to be used by an applicant, for that data to be incorrect, and then for TDHCA to penalize the applicant for its own incorrect data.

In addition, the current QAP language under 11.9(c)(6)(C) does not address prior HTC developments that have opted out of the program or are no longer affordable for another reason. These properties are no longer on TDHCA's list. In addition, there are developments in areas that may have "received a" tax credit allocation in the form of an award, but had to return the credits prior to Commitment Notice, Carryover, or some other date. Such an area may technically have received an allocation, but the area never benefited. In addition, these developments/awards are not on TDHCA's list. The way the language is currently drafted, 11.9(c)(6)(C) and (D) would include awards that never got built and properties that are no longer on the current TDHCA property inventory. I also ask that this be modified to only include properties that are active and affordable on TDHCA's list.

Second, please consider adding Section 11.9(e)(4) Leveraging to the list of items that are exempt from point deductions under Section 11.9(f)(1) Point Deductions. You have already exempted 11.9(e)(2) Cost of Development per Square Foot from the point deduction, which will be calculated compared to other applications that are submitted. This Cost per Square Foot item specifically states that "An Application

may qualify to receive up to ten (10) points based on the Building Cost (less any structured parking cost thatis not included in Eligible Basis) per square foot of the Application, as originally submitted and certified to by the General Contractor, relative to the mean cost per square foot for all similar development types." Per this language, this scoring item will be determined based on what is in the actual application with no indication that this will be recalculated based on administrative or underwriting changes.

However, the Leveraging scoring item is different. It says "(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule and will be rounded to the nearest hundredth. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary." I am assuming that "Administrative Deficiency" also includes changes requested or required by the REA division, though this is unclear in the QAP.

My concern here is that, if an applicant submits an original application using figures that satisfy both of these scoring items and based on a certification from the general contractor, and then REA requires the applicant to use different figures that are more in line with Marshall and Swift, then this would likely affect both the Cost per Square Foot and Leveraging scoring items. Even though Cost per Square Foot was affected, that scoring item is determined at application and would not be recalculated; however, the applicant could lose points under Leveraging *and then* lose another penalty point. I believe that the Leveraging scoring item should be calculated using the original numbers that are submitted in the application and should not be recalculated based on REA reviews, similar to the Cost per Square Foot scoring item. In other words, I do not believe that the Leveraging scoring item should be subject to penalties based on requested or required changes by the REA division.

To conclude, please consider exempting Section 11.9(c)(6) Underserved Area and Section 11.9(e)(4) Leveraging from point deductions under Section 11.9(f)(1).

Thank you for your consideration.

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Comment (59)
Demetria McCain, Inclusive Communities Project
Ann Lott, Inclusive Communities HDC

Inclusive Communities Project | Inclusive Communities HDC
3301 Elm Street, Dallas Texas 75226

October 22, 2012

Mr. J. Paul Oxer, Chair
Board of Directors
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Dear Chairman Oxer and Members of the Board:

The Inclusive Communities Project (ICP) and the Inclusive Communities Housing Development Corporation (ICHDC) express concern that certain changes recommended in TDHCA's proposed 2013 Multi-family Rules - Qualified Allocation Plan (QAP) will create barriers to the development of Low Income Housing Tax Credit (LIHTC) units in High Opportunity Area locations of the Dallas metropolitan area.

First, the proposed change that eliminates public housing authorities as participants in the commitment of development funding by a local political subdivision is not authorized or required by the Texas Government Code. This proposed change will interfere with ICHDC's facilitation of a consent decree between ICP and the Housing Authority for the City of McKinney, Texas for the creation of LIHTC units in McKinney's High Opportunity Areas.

Second, the proposed plan to eliminate TDHCA HOME funds as an eligible funding source in the commitment of development funding by a local political subdivision would remove a crucial component of funding for LIHTC units. This source of funding has qualified toward selection criteria points for several QAP cycles, and has resulted in elderly projects being developed in opportunity areas within the Dallas Metroplex. TDHCA HOME funds should remain eligible for selection criteria points as LITHC units for the general population are proposed and developed in High Opportunity Areas. Reinstatement of this funding source as a means of gaining selection criteria points would be a less discriminatory alternative than the one proposed.

ICP and ICHDC also note the practice of providing more points for LIHTC units in opportunity areas is common in other states. These states include North Carolina, Illinois, Massachusetts and Mississippi.

An overview of ICP's and ICHDC's observations and comments are attached to this cover letter and we request they be included as part of the public record.

Thank you for your consideration of these comments.

Sincerely,

Demetria McCain, Esq.
VP & Director of Programs and Advocacy, ICP

Ann Lott
Executive Director, ICHDC

§11.9(d)(3) Commitment of Development Funding by Unit of General Local Government

The proposed change eliminating housing authorities as a direct source of local political subdivision funding is not required or authorized by Texas Government Code 2306.6710(b)(1)(E).

The statute requires TDHCA to include a selection criterion that provides points for *the commitment of development funding by local political subdivisions.* The statute does not define "local political subdivisions." However, the statute does define "local government" as *a county, municipality, special district, or any other political subdivision of the state, a public, nonprofit housing finance corporation created under Chapter 394, Local Government Code, or a combination of those entities* (see Tex. Gov't Code Ann. § 2306.004).

The previous QAP set out the selection criteria for this scoring item using the phrase "Unit of General Local Government or a Governmental Instrumentality" without narrowing the scope to include only cities, counties, or entities governed by a majority of elected officials. According to Texas Local Government Code § 392.006, housing authorities are by statute, *a unit of government and the functions of a housing authority are essential governmental functions and not proprietary functions.* Additionally, a recent court ruling upheld that housing authorities are political subdivisions of the state (see *Housing Authority of City of Dallas v. Killingsworth*, 331 S.W.3d 806,810 - Tex. App.--Dallas 2011*).*

ICP recently filed a fair housing lawsuit against the City of McKinney and the McKinney Housing Authority. As a result of the litigation, the McKinney Housing Authority entered into a consent decree, in which they agreed to participate with ICP in the commitment of development funding for tax credit units in the High Opportunity Areas of West McKinney (see *The Inclusive Communities Project, Inc. v. The City of McKinney and The Housing Authority of the City of McKinney*, No. 4:08-CV-434 (E.D. Tex. filed Nov. 19, 2008)). The consent decree is in effect until 2015. The pledge of housing authority funding stimulated the interest of several tax credit developers and resulted in an application for funding in a High Opportunity Area of McKinney during the 2011 cycle (The Millennium - McKinney, TDHCA application #11262). While citizens within the local community supported the application, it received no other local support on record, and was not recommended for funding by TDHCA staff (see TDHCA Board Meeting, September 15, 2011, Transcript pages 214-219).

If the proposed QAP provision is adopted, this part of the consent decree will no longer be available to support tax credit units in the High Opportunity and non-minority concentrated area of McKinney. TDHCA has not provided any reason for the change in the selection criteria for local government development funding. The effect of the change will eliminate one proven conduit of ensuring tax credit units are available for use in non-minority areas of McKinney.

TDHCA HOME grant funding should be used to expand the supply of 9% LIHTC units in High Opportunity Areas

In addition to providing financial resources, TDHCA HOME funds have been used to obtain 9% program selection criteria points for local government development funding. The proposed QAP would limit the provision of these criteria points to HOME entitlement cities or consortium jurisdictions. The entitlement jurisdictions in the Dallas area are much less White non-Hispanic than the non-HOME entitlement jurisdictions in the area. In the past, the TDHCA HOME funds have been used to fund the construction of several elderly units in high opportunity areas of Dallas (i.e. Vista Ridge in Lewisville, Evergreen in Rockwall). This stipulation, if enacted, will hinder the development of general population units in high opportunity suburbs such as Allen, Frisco, Flower Mound, Lewisville, McKinney, and The Colony. Developers will find it difficult, if not impossible, to attain the necessary commitment of funding from the local unit of government.

TDHCA HOME funds provide a viable financing mechanism for the development of LIHTC units in High Opportunity Areas and, as such, should be eligible under this scoring item. The proposal to restrict TDHCA HOME funds as a means of providing points, at a juncture when TDHCA is required to expand housing opportunities, will limit such expansion.

§ 11.9. (c)(4) Opportunity Index

Other states provide more points for high opportunity areas than for Qualified Census Tract (QCT) revitalization areas. States which provide more selection points for opportunity areas include North Carolina, Illinois, Massachusetts, and Mississippi.

The one point differential proposed between maximum points available for Opportunity Index locations (7 points) and Revitalization Plan locations (6 points) in this QAP, is allowed under 26 U.S.C. § 42(m). *ICP v TDHCA*, 2012 WL 3201401, *7 -*8, (N.D. Tex. 2012).

When reviewing the QAP of other states, ICP and ICHDC note many other states also give higher points for opportunity areas. The differences reveal that other jurisdictions, not subject to judicial remedies and oversight, have weighed the issues and decided to encourage LIHTC units in higher opportunity areas by awarding more points for these areas than are given to applications for units in QCTs that contribute to concerted community revitalization plans.[1]

North Carolina (2012 9% allocation $21,244,082)

The North Carolina QAP explicitly prohibited locations for tax credit developments in areas

[1] Some states provide only minimum selection points for QCT revitalization locations. For example, the California QAP gives two selection points for location in a QCT and the development of which would contribute to a concerted community revitalization plan. California gives three selection points for solar hot water for all tenants who have individual water meters.

of minority and low-income concentration. North Carolina allowed for possible exceptions for projects in economically distressed areas with community revitalization plans supported by public funds.

The selection criteria for rehabilitation of projects that are part of a community revitalization plan provide that such projects in severely distressed areas have a reduced likelihood of being awarded tax credits. There were no selection points given for locating projects in a QCT. The relevant portions of the North Carolina QAP state:

Projects cannot be in areas of minority and low-income concentration (measured by comparing the percentage of minority and low-income households in the site's census tract with the community overall). The Agency may make an exception for projects in economically distressed areas which have community revitalization plans with public funds committed to support the effort (see 2012 Low-Income Housing Tax Credit Allocation Plan for the State of North Carolina, Section VI, Part A, Number 5).

Applications will have priority to the extent that the rehabilitation improvements are a part of a community revitalization plan or will benefit the surrounding community. However, projects in severely distressed areas will have a reduced likelihood of being awarded tax credits (see 2012 Low-Income Housing Tax Credit Allocation Plan for the State of North Carolina, Section IV, Part H, Number 3[e]).

Illinois (2012 9% allocation $28,312,365)

Illinois provided four points for a project that is part of a Local Revitalization Plan that included housing goals (see 2012 Low-Income Housing Tax Credit Allocation Plan for the State of Illinois, Section VII, Part E, Number 3). However, if the project is non-elderly and is to be located in one of the Affordable Housing Planning and Appeals Act (AHPAA) cities, it received eight points (see 2012 Low-Income Housing Tax Credit Allocation Plan for the State of Illinois, Section VII, Part E, Number 8). The Illinois AHPAA required cities with less than 10% affordable housing units to adopt and implement an affordable housing plan to provide affordable units equal to 10% of the total units in the city. The municipalities subject to AHPAA are predominantly White, non-Hispanic locations.

Massachusetts (2012 9% allocation $14,492,579)

The Massachusetts QAPs from 2008 through 2012 provided for higher points for an opportunity area than it did for location in a QCT/revitalization area. If the project was in a QCT and the development of that project contributed to a concerted community revitalization plan in conformance with the Section 42 preferences then the QAP provided for six points. The other two Section 42(m)(B)(ii) preferences also received six points. However, the Massachusetts QAPs award 14 points if the development is in a Location in an Opportunity Area. Until this summer, an Opportunity Area was defined as a location in a municipality, which has less than 10% subsidized housing and a census tract within that municipality where the poverty rate is below 15%. Massachusetts then amended the provision to provide the 14 points for a more general definition of an "area of opportunity."

Mississippi (2012 9% allocation $6,552,726)

Mississippi provided two points for proposed projects in a QCT -provided the project contributed to a concerted revitalization plan- and five points for a development site located in a zip code, which has not had any tax credit developments funded for the last five years. These locations are also eligible for the 130% basis boost. Some counties with a need for affordable housing are also eligible for up to five additional points (see State of Mississippi Home Corporation Housing Tax Credit Program 2012 Qualified Allocation Plan, Section 7, Part I. Numbers 1 & 2).

Comment (60)
Veronica Chapa-Jones, City of Houston

CITY OF HOUSTON

Housing and Community Development Department

Annise D. Parker

Mayor

Neal Rackleff
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Mr. Cameron Dorsey
Director, Multifamily Programs
Texas Department of Housing & Community Affairs
PO Box 13941
Austin, Texas 78701

RE: City of Houston Public Comment for the TDHCA 2013 Qualified Allocation Plan

Dear Mr. Dorsey,

Thank you for the opportunity to provide public comment on the TDHCA 2013 Qualified Allocation Plan (QAP). The recommendations outlined in this letter establish the City of Houston's Housing and Community Development Department's (HCDD) official public comment for the QAP.

As you may know, HCDD has been one of the State's strongest tax credit development partners over the last several years, leveraging approximately $41,500,000 of the City's HOME Investment Partnership (HOME) program funds since 2009. Currently, the Department is concluding the administration of approximately $60,000,000 in Ike Disaster Recovery Round 1 funds and is preparing to leverage approximately $55,000,000 in Ike Disaster Recovery Round 2 funds toward single family and multifamily rental in targeted areas around the City of Houston. Next year, the Department anticipates utilizing millions of dollars in combined HOME and Community Development Block Grant Funds toward investment in other geographic areas in the city, in addition to the investment in Disaster Recovery areas.

In order to enhance the operations and opportunities for partnership, the City would like to offer the following recommendations:

Recommendation #1: Allow for points from city instrumentalities, where at least 60 percent of the governing board is city council members or is appointed by the Mayor.

Page 16
§11.9. Competitive HTC Selection Criteria
(d) Criteria promoting community support and engagement
(3) Commitment of Development Funding by Unit of General Local Government

(§2306.6710(b)(1)(E))
An Application may receive up to thirteen (13) points for a commitment of funding from the city or county in which the Development is proposed to be located. Development funding from instrumentalities of a city or county will not qualify for points under this scoring item unless such instrumentalities are first awarding such funds to the city or county for their administration or at least 60 percent of the governing board of the instrumentality is city council members or is appointed by the Mayor from the city in which the Development will be located (for Developments located in a city) or county commissioners from the county in which the Development will be located (for Developments not located in a city). A government instrumentality may not be a Related Party to the Applicant. Development funding must be provided in the form of a construction and/or permanent loan with an interest rate no higher than the Applicable Federal Rate (AFR) and term of at least 5 years, a grant, an in-kind contribution, a contribution which will support the Development, such as vouchers, or combination thereof.

[Justification: In the City of Houston, the Mayor appoints the Board Members of some government instrumentalities, such as the Houston Housing Finance Corporation.]

Recomendation #2: Clarifications regarding Site & Neighborhood and Fair Housing Requirements for Ike CDBG Disaster Recovery Program.

Page 18
§11.9. Competitive HTC Selection Criteria
(d) Criteria promoting community support and engagement
(6) Community Revitalization Plan.
(B) For Developments located in Urban Areas outside of Region 3.

(i) An Application may qualify for up to six (6) points for meeting the criteria under subparagraph (A) of this paragraph (with the exception of being located in Region 3); or

(ii) An Application will qualify for six (6) points if the city or county has an existing plan for Community Development Block Grant -Disaster Relief Program (CDBG-DR) funds that includes and ~~the~~ meets the requirements of subclauses (I) -(V) of this clause. In order to qualify for points, the development Site must be located in the target area defined by the plan~~,~~ and the Application must have a commitment of CDBG-DR funds~~ and receive a HUD Site and Neighborhood Clearance with HUD review or approval of such clearance~~:

[Justification: Site and Neighborhood Clearance is only conducted by HUD where the participating jurisdiction's Site and Neighborhood Clearance process is under review, otherwise a participating jurisdiction is required to maintain records that would comply with Site and Neighborhood Standards as prescribed by 24 CFR 983.57.]

(I) the plan defines specific target areas for redevelopment of housing that do not encompass the entire jurisdiction;

(II) the plan affirmatively addresses Fair Housing demonstrated through an approved Fair Housing Activity Statement-Texas (FHAST);

(III) the plan is subject to administration in a manner consistent with the findings of an Analysis of Impediments approved or accepted by HUD within the last three (3) calendar years or an approved Fair Housing Activity Statement –Texas (FHAST), approved by the Texas General Land Office;
[Justification: CDBG-DR subrecipients were required to submit a Fair Housing Activity Statement-Texas in order to apply for Disaster Recovery Funds. This is the primary fair housing document to demonstrate commitment and action steps to affirmatively further fair housing.]

We look forward to successful continued partnership toward the development of quality, affordable housing for Houstonians. If you have additional questions, please contact Ms. Eta Paransky, Director of Multifamily Programs, by phone at 713-868-8449 or via email at eta.paransky@houstontx.gov.

Sincerely,

Veronica Chapa-Jones
Deputy Director

Comment (61)
Lora Myrick, Betco Development

BETCO DEVELOPMENT

Development and Consulting for Affordable Housing in Texas Since 2007

Lora Myrick
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October 20, 2012

Cameron Dorsey, Director of Multifamily
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, TX 78711

Re: 2013 Draft Qualified Allocation Plan

Dear Mr. Dorsey:

We wish to thank you the Department and Department staff for the opportunity to provide comments to the 2012-2013 Qualified Allocation Plan (QAP) and submit the following comments for consideration.

11.4(c)(2) Increase in Eligible Basis

We appreciate that the QAP has included developments in "Rural" areas as being eligible to receive the 130% boost. However, we would like to see included in this category, developments with existing USDA funding that will remain in place be eligible for the increase in eligible basis.

11.9(B)(2) Sponsor Characteristics

As many prior commenters have stated, we also are not in favor of the "Texas" experience requirement. This action seems to limit competition in an arena where good, strong competition will get the people of Texas a better product if not the best product. It is unclear to us how housing will be created in greater numbers or at a higher quality by limiting outside competition. Applicants, both in state and out of state, should be graded on the type of transaction being proposed, the number of such transactions in the applicant's portfolio and the successful development of such transactions, both in quality of the developments and in the operations of the development. There was a time where the Department conducted compliance review requests from other states where these applicants had properties. Perhaps the Department should reconsider the reinstitution of this inquiry as a requirement to do business in Texas.

An alternative could be the additional points are granted to out-of-state developers that show capacity and expertise to develop in Texas if they employ local or Texas Based management companies rather than bringing their own from out of state. This will allow for good solid developers to compete and build quality housing for Texans and creates job opportunities for Texans that will stay in Texas.

In response to the points awarded for the inclusion of Historically Underutilized Businesses (HUBs) in the ownership structure, we do not understand the reasoning to additionally incentivize applicants for the use of HUBs when there is already a threshold requirement to use HUBs in the development. This seems to a waste of valuable resources because

applicants have to add fees for these additional owner entities. It also causes additional undue burden to the ownership structure by forcing an unnecessary entity into the structure which can be problematic should there be future financial or workout issues with the lenders. There have been historical compliance issues related to HUBs in the ownership structures. ARCIT recommends the deletion of this scoring item. However, should the Board decide to keep this item in the scoring criteria, we request the inclusion of non-profits and allow applicants to choose between the use of a HUB and a non-profit partner.

11.9(c)(4) Opportunity Index

A study recently released by the Department, The Bowen Study, emphasized the need for upgrading the existing affordable housing stock and made the point that this is critically important in rural Texas. More than two-thirds of the At-Risk developments located in rural areas. This category was designed to preserve existing affordable housing stock. The intent of the Opportunity Index is to locate affordable housing in high opportunity areas with more jobs, better schools, etc. Due to the fact that At-Risk developments already exist, there is not an "opportunity" to "re-locate" them near more jobs, better schools, etc. Therefore, the opportunity index points put most at risk rural properties at a disadvantage in scoring in this set-aside. With this in mind, we respectfully request excluding applications applying in the At-Risk set-aside from the Opportunity Index scoring criteria.

11.9(d)(1)(C) Quantifiable Community Participation Points

The support or opposition from a Neighborhood Organization in a previous application cycle should have no bearing on the current application cycle. In the majority of organizations, the boundaries are not the same unless the application in question is proposing a development on the same exact site. Most neighborhood organization boundaries do not include vacant land unless they are requested to include that land by a developer or they are attempting to oppose a specific development. Therefore, we respectfully request the deletion of any points that refer to a previous cycle.

11.9(d)(3) UGLG

We are in favor of a graduated scale of funding based on population and further believe that it is a good change and will resolve some of the inequities between urban and rural. However, the language is confusing and we request there be an example in the QAP showing a calculation of the amount. In addition, we request the Department expand the entities allowed to provide funding. These should include "any" entity created and still under the authority of the city or county, which may include, Housing Finance Corporations, Economic Development Corporations, etc.

11.9(d)(6) Community Revitalization Plan

Rural communities that have created redevelopment plans should be able to use those plans in the same way as urban communities do revitalization. Both serve the needs of community in revitalization. Therefore, we request the Department expand the criteria so that rural areas may receive the full points for having either a redevelopment or revitalization plan. We request the Department expand the definition of infrastructure to include other community-wide amenities that would improve the quality of life for residents (i.e. parks).

11.9(e)(2) Cost of Development per Square Foot

There are many variables in a real estate transaction as it stands. Adding a very unpredictable criterion to the already complex set of variables, high stakes and expensive process is unjustifiable. The original intent of the legislation was to limit the amount of credit requested and to get the most efficient use of credits allocated. The median concept does not accomplish the legislative intent. Additionally, the new language will require too many adjustments or considerations to accommodate the differences in construction through the diverse state of Texas (i.e. single family, multifamily,

townhome, garden style, rural, urban, panhandle, coastalbend, Dallas/Houston metro, construction materials (100% brick, 100% hardiplank), etc…).

We would like to request the reinstatement of the language that was in the 2011 QAP with a cost increase of at least $3000 a unit as we believe it best serves the legislative intent and the language of the statutory requirement. It recognizes that there are very different types of housing in different communities that cannot be averaged and it does not create a significant unknown as applicants make decisions about what which developments to pursue.

11.10 Challenges

Although we do not want to encourage frivolous challenges, we do want to maintain the integrity of the challenge process. We need to keep in mind that the intent of the challenge process was to keep things open, honest and allowed us to "self-police" the process. The proposed fee inhibits this very important part of the process and creates a barrier in which potentially substantive omissions can find protection that never should have been allowed to stand, much less move forward in the process. Therefore, we do not support the challenge fee.

If you have any questions regarding these, comments please feel free to contact me any time.

Sincerely,

Lora Myrick

Lora Myrick
Vice President
BETCO Consulting, LLC

Comment (62)
Lon Burnam, State Representative District 90

From:	Lon Burnam
To:	tim.irvine@tdhca.state.tx.us; jpoxer@comcast.net; lowell.keig@troilolawfirm.com; tgann@lufkinrealestate.com; juan.munoz@ttu.edu; leslie.bingham@valleybaptist.net; mmcwatters@mail.smu.edu;
cc:	Teresa.morales@tdhca.state.tx.us; Rafael Anchia; Elizabeth Zornes;
Subject:	Action in The Inclusive Communities Project, Inc v. TDHCA
Date:	Monday, October 22, 2012 4:45:47 PM

Executive Director Irvine and TDHCA Board members,

Please note my support for the position of Rep. Rafael Anchia regarding TDHCA's response to the upcoming ruling on its motion in The Inclusive Communities Project, Inc. v. Texas Department of Housing and Community Affairs. Specifically, I urge that:

1. If the Judge denies TDHCA's Motion to Alter the Judgment, or to have a new trial, TDHCA should appeal the decision and order,
2. TDHCA should file a motion requesting a stay of the Judge's order until a court of final resort determines the case,
3. TDHCA should have only 1 QAP for all of Texas, and
4. TDHCA should revise sections of its Proposed 2013 QAP, so that projects in QCTs (low-income neighborhoods) that are part of a comprehensive revitalization supported by the City have a competitive opportunity to receive an award.

As a representative for Fort Worth in the Texas Legislature, I believe it is vital that our community revitalization efforts in North Texas focus on those communities that need it most and that we not squander precious resources on affluent suburbs who could much more easily finance their own projects. I join Rep. Anchia in urging you to follow that spirit in your response to the judge's ruling.

Sincerely,
Rep. Lon Burnam
District 90

Comment (63)
John Dugan, City of San Antonio

CITY OF SAN ANTONIO

Office of Grants Monitoring and Administration
1400 S. Flores, Unit 3
San Antonio, Texas 78204

October 22, 2012

Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
P.O. BOX 13941
Austin, TX 78711-3941

RE: Comments on the Draft 2013 QAP for the State Housing Tax Credit Program

Dear Mr. Irvine:

This letter serves as the City of San Antonio's official comments regarding the draft 2013 Qualified Allocation Plan for the State of Texas Housing Tax Credit Program. To develop the following comments, the City of San Antonio coordinated through the City's Center City Development Office, Department of Planning and Community Development, and the Office of Intergovernmental Relations, as well as, multiple affordable housing entities and local stakeholders, several of which have already submitted comments on their own.

The comments on the draft QAP below are representative of the City of San Antonio's interest in preserving the local community's input in the community revitalization process while recognizing that each community maintains unique affordable housing challenges.

Comment #1 - Commitment of Development Funding by UGLG

"Development funding from instrumentalities of a city or county will not qualify for points under this scoring item." The City of San Antonio is concerned with the removal of city instrumentalities to qualify for 13 points. Implementation of this provision would provide a significant disadvantage to local Public Housing Authorities as potential recipients of Housing Tax Credits. The City recommends the exception for Public Housing Authorities to be allowed to qualify for points under this section.

Comment #2 - Criteria promoting community support and engagement

The City of San Antonio is concerned with the restrictions, scoring, and timing associated with the availability of applicants to utilize types of community revitalization plans in Section (d)(6)(A)(i) when applicable to urban areas outside of Region 3.

1. The restrictions in identifying a specific plan that meets each of the required criteria could be problematic for communities statewide. Larger communities including the City of San Antonio may have several plans within its boundaries that focus on specific needs such as transportation plan, affordable housing, and redevelopment, etc... which may not focus on each of the TDHCA required criteria individually but may when the plans overlap.

   The City of San Antonio recommends language in this section to allow for TDHCA to consider multiple plans in order to achieve the cited criteria.

2. Currently, the scoring criterion focuses on the potential economic benefit from a plan, rather than how effectively the development would achieve specific plan goals.

CITY OF SAN ANTONIO
Office of Grants Monitoring and Administration
1400 S. Flores, Unit 3
San Antonio, Texas 78204

The City of San Antonio recommends providing additional points in this section and revising the methodology to achievement points based on either how effectively the development will achieve the cited plan criteria or the number of criteria achieved. This will allow a greater scoring potential to applicants who can achieve the criteria cited in Section (d)(6)(A)(i) while allowing input from multiple plans. For instance, the applicant could relay how the development would show a measurable impact to crime reduction in accordance with a specific plan goal.

3. To be eligible for points, the timing of the plan under consideration mandates completion by January 8, 2013, in line with the Pre-Application Final Delivery Date pursuant to §11.2. If the recommendations in 1 and 2 above are not implemented, the City has a concern on the ability for community plans to effectively have a role in the HTC application process, unless the timeframe is extended to March 31st, to at least allow for the completion and adoption of community plans which are currently underway.

The City of San Antonio values the incredible work by TDHCA staff to ensuring that the Housing Tax Credit Program remains a vital source for affordable housing while protecting the objectives in affirmatively furthering fair housing marketing efforts.

Sincerely,

John M. Dugan
Director

Cc: Sheryl Sculley, City Manager
City of San Antonio

Cc: David Ellison, Assistant City Manager
City Manager's Office, City of San Antonio

Cc: Lourdes Castro Ramírez, President and CEO
San Antonio Housing Authority

Cc: Lori Houston, Director
Center City Development Office, City of San Antonio

Cc: Carlos Contreras, Director
Office of Intergovernmental Relations, City of San Antonio

Comment (64)
Michael Bodaken, National Housing Trust

NATIONAL HOUSING TRUST

October 22, 2012

Mr. Misael Arroyo
Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941

Memo: Texas Draft 2013 Qualified Allocation Plan

Dear Mr. Arroyo:

The National Housing Trust is a national nonprofit organization formed to preserve and revitalize affordable homes to better the quality of life for the families and elderly who live there. NHT engages in housing preservation through real estate development, lending and public policy. Over the past decade, NHT and our affiliate, NHT-Enterprise Preservation Corporation, have preserved more than 25,000 affordable apartments in all types of communities, leveraging more than $1 billion in financing.

We appreciate the opportunity to comment on Texas' Qualified Allocation Plan. The Trust fully acknowledges and appreciates the entire set of preservation policies and programs established by the Texas Department of Housing and Community Affairs. The comments below refer directly and specifically to TDHCA's draft QAP as it relates to the tax credit program and are in no way meant to imply a lack of appreciation for your other successful preservation programs and policies or the current challenges in the tax credit market.

In summary, we urge TDHCA to:

- Maintain the ***15% set-aside for "at risk" developments and continue to prioritize proposals involving preservation and rehabilitation*** of existing multifamily rental housing in the final 2013 QAP.
- ***Balance the allocation of tax credits for new construction and the preservation of existing housing,*** particularly where existing housing is principally occupied by low income minority households.
- ***Maintain the green building incentives in the final QAP,*** and consider working with state utilities to create energy efficiency programs for multifamily properties.

National Preservation Initiative

1101 30th Street, N.W., Suite 400 ■ Washington, D.C. 20007 ■ 202-333-8931 ■ FAX: 202-833-1031

Low Income Housing Tax Credits and Preservation in Texas

Our nation faces a serious shortage of housing for low- and moderate-income families. Over the last decade, more than 15% of our affordable housing nationwide has been lost to market-rate conversion, deterioration, and demolition**.** By prioritizing preservation, Texas' Qualified Allocation Plan can provide the incentives necessary to prevent the loss of this indispensable affordable housing. Property owners, nonprofit organizations, developers, and local governments depend on state housing finance agencies to provide the financial and technical assistance necessary to preserve affordable housing for future generations.

At-risk properties in Texas

Project-based Section 8 properties with contracts expiring before the end of fiscal year 2017:

- 26,443 assisted units in 375 properties
- 47% of which are owned by for-profit owners

Preserving and rehabilitating existing housing has proven to be a cost-effective method to provide rental housing to low-income families and seniors. Nationwide, rehabilitation projects require almost 40% less tax credit equity per unit than new construction developments. In addition, preservation prolongs federal investment in affordable housing properties. As such, states around the nation have recognized that preservation is a common sense response to America's affordable housing shortage, and have prioritized preservation and rehabilitation in their QAPs. **Forty-six state agencies prioritize competitive 9% tax credits for preservation by creating set-asides or awarding points to proposals that involve the preservation and rehabilitation of existing affordable housing.**

Preservation is a cost-effective policy

In 2010, the per-unit cost of preservation projects in Texas was 20% less than that of new construction projects.

The Trust strongly supports TDHCA's efforts to encourage preservation by setting aside 15% of Texas' competitive tax credits for "at risk" developments. Texas' past preservation efforts have been highly successful. **From 2007 – 2011, at least 183 properties with 17,854 apartments were preserved in Texas with 9% and 4% Low Income Housing Tax Credits.** Texas is a leader in the region in prioritizing preservation. **We urge TDHCA to maintain its 15% set-aside for "at risk" developments in the final 2013 QAP.**

Low Income Housing Tax Credits and Fair Housing

The Trust recognizes TDHCA's efforts to expand affordable housing to areas of opportunity through the Opportunity Index, but doing so must not be at the expense of existing low-income communities. **With that in mind, the Trust urges TDHCA to balance the allocation of tax credits for new construction and the preservation of existing housing, particularly where existing housing is principally occupied by low income minority households.** Fair housing principles should combat residential segregation by prohibiting the denial of housing opportunities on the basis of race. Striking a balance between addressing priority housing and redevelopment needs and providing improved opportunities can produce a tension between the twin goals of the Act – avoiding discrimination while promoting integration. By striking a balance between incentivizing new construction in communities of opportunity and investing in existing neighborhoods where low income residents already live, TDHCA will preserve existing affordable housing occupied by low-income households and avoid discrimination against those households by catalyzing investment and development in those neighborhoods.

Preservation is Environmentally Friendly

State and local agencies are increasingly encouraging, and in some cases requiring, affordable housing developers to adopt green building practices. Using green building strategies, preservation projects can deliver significant health, environmental, and financial benefits to lower-income families and communities. Green technologies promote energy and water conservation and provide long-term savings through reduced utility and maintenance costs, all while providing residents with a healthier living environment and reducing carbon emissions.

We enthusiastically support the green building incentives included in TDHCA's threshold and selection scoring criteria, and commend TDHCA for including consideration for green building practices, healthy building materials and energy efficient design features in Texas' QAP.

The Trust also encourages THHCA to partner with Texas' utilities to make energy-efficiency programs more accessible to affordable, multifamily developments. A majority of states implement utility-funded energy efficiency programs, often paid for through charges included in customer utility rates. These programs are a significant and growing source of resources for residential energy retrofits that remain largely untapped by the multifamily sector. Utility energy efficiency program budgets have significantly increased since 2006 and could reach **$12 billion** nationwide by 2020. Reaching under-served markets, such as affordable multifamily housing, will be necessary if utilities are to achieve higher spending and energy saving goals. In several states, utilities are partnering with state housing agencies and affordable housing owners to develop successful multi-family energy efficiency retrofit programs for multifamily properties. **Energy efficiency upgrades in affordable rental housing are a cost-effective approach to lower operating expenses, maintain affordability for low-income households, reduce carbon emissions, and create healthier, more comfortable living environments for low-income families.**

Conclusion

It is fiscally prudent for states to balance tax credit allocations between new construction and preservation/rehabilitation. In addition to helping to build sustainable communities, preservation is significantly more cost-efficient and environmentally friendly than new construction. The National Housing Trust urges the Texas Department of Housing and Community Affairs to continue its support for sustainable communities and the preservation of Texas' existing affordable housing maintaining the set-aside for "at-risk" properties in your final 2013 QAP. I also urge you to continue to encourage the use of green building techniques and materials for rehabilitation and preservation.

Thank you for the opportunity to comment on this important issue in the State of Texas.

Sincerely,

Michael Bodaken
President

Unleashing Utility Resources to Energy Retrofit Affordable Multifamily Housing

UTILITY-FUNDED ENERGY EFFICIENCY PROGRAMS: AN UNTAPPED RESOURCE FOR AFFORDABLE HOUSING

Key Takeaways:

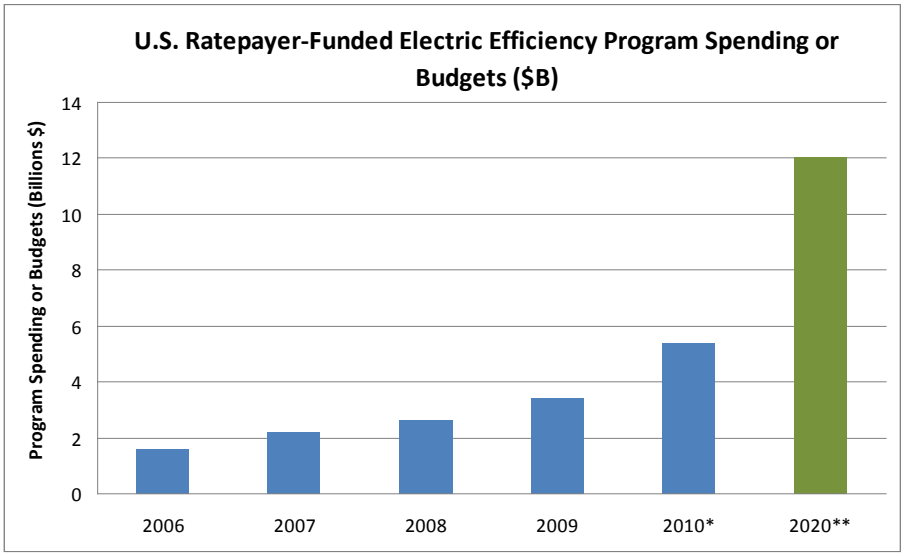
- Utility-funded energy efficiency programs are a significant source of resources for building retrofits that remain largely untapped by the multifamily sector.
- Total nationwide annual spending on utility energy efficiency programs could reach as much as $12 billion by 2020.
- Reaching under-served markets, such as affordable multifamily housing, will be necessary if utilities are to achieve higher spending and energy savings goals.
- In several states, utilities are partnering with housing agencies and affordable housing owners to help shape and administer successful multifamily retrofit programs.

Energy efficiency upgrades in affordable rental housing are a cost-effective approach to lower operating expenses, maintain affordability for low-income households, reduce carbon emissions, and create healthier, more comfortable living environments for low-income families.

A majority of states implement utility-funded energy efficiency programs, often paid for through charges included in customer utility rates. These programs are a significant and growing source of resources for residential energy retrofits that remain largely untapped by the multifamily sector. Utility energy efficiency program budgets have significantly increased since 2006 and could reach $12 billion nationwide by 2020.

If multifamily energy retrofits are to occur at scale, utilities will need to develop energy efficiency programs that address the unique nature of the multifamily sector. While nationwide data is unavailable, most utility-funded programs typically focus first on single-family and small rental properties rather than multifamily properties (5 units or more).[1]

In several states, utilities are partnering with state housing agencies and affordable housing owners to develop successful multifamily energy efficiency retrofit programs.



Total U.S. program spending for years 2006-2009. (Source: ACEEE)
*Total U.S. program budgets for year 2010. (Source: Institute for Electric Efficiency)
**Projected total U.S. program budgets in 2020 according to the Lawrence Berkley Nat'l Labratory (Source: Institute for Electric Efficiency)

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202-333-8931 | www.nhtinc.org

Iowa

In Iowa, a partnership between the Iowa Utilities Board, the Iowa Finance Authority, and investor-owned utilities ensure that low-income renter households have an opportunity to benefit from energy efficiency improvements. Utilities provide enhanced rebates for energy efficiency improvements in affordable multifamily housing, paying up to 40 percent of the cost of the measures.

New Jersey

New Jersey's largest utility, PSE&G, and the New Jersey Housing and Mortgage Finance Agency (NJHMFA) have collaborated to develop an innovative multifamily housing energy retrofit program. PSE&G's Residential Multifamily Housing Program provides upfront interest-free financing and grant incentives to cover the cost of eligible energy efficiency improvements.

PSE&G worked closely with NJHMFA to develop strategies to address the unique needs of affordable multifamily housing. Highlights of the program include the following:

- Incentives eliminate or significantly reduce the owner's contribution to the construction costs. Owners have the option of repaying the zero interest loans through energy savings and on their utility bill.
- Participating owners who may be unfamiliar with how to procure energy efficiency services receive ongoing guidance and technical assistance for soliciting contractor bids.
- To gain access to potential customers, PSE&G relied on NJHMFA's help to reach multifamily owners. The program has been fully prescribed to date.

Massachusetts

In 2009, the owners and operators of affordable multifamily housing in Massachusetts convinced the state's utility companies and other key stakeholders that the existing utility energy efficiency programs did not work for affordable multifamily buildings. At the time, owners of multifamily properties often had to apply completely separately to a utility's residential and commercial programs, as a building could have a mix of master meters (requiring participation in the commercial utility program) and individual tenant meters (requiring participation in the residential utility program). Further, an electric utility's program might address lighting and appliances, but do nothing to address inefficient heating plant or the building envelope. The utilities agreed to consider revising their programs so that multifamily owners could achieve true one-stop shopping and obtain services that would address the full range of efficiency needs in these buildings. The new Low-Income Multifamily Retrofit Energy Program was launched in 2010. The program's electric utility-funded budget for 2011 is $14 million, and the gas budget is $8.5 million.

Oregon

In Oregon, the state's housing finance agency- Oregon Housing and Community Services (OHCS)- administers an affordable housing program that is partially funded through proceeds from the state's ratepayer-funded energy efficiency budget. The Housing Development Grant Program (HDGP) provides grants to construct new housing or acquire and rehabilitate existing affordable housing. Between 2009-2011, HDGP funding was used to save and improve nearly 600 HUD subsidized affordable apartments that were at risk of being lost from the state's affordable housing supply.

NHT is grateful for the support of the Doris Duke Charitable Foundation, the Energy Foundation, and the Kresge Foundation.

References

[1] National Consumer Law Center, "Up the Chimney: How HUD's Inaction Costs Taxpayers Millions and Drives Up Utility Bills for Low-Income Families."

Comment (65)
Janine Sisak, JSA Development Company

From: Janine Sisak
To: Cameron Dorsey; Teresa Morales <teresa.morales@tdhca.state.tx.us> (teresa.morales@tdhca.state.tx.us);
Subject: Comments to QAP Definition of Supportive Housing
Date: Wednesday, October 03, 2012 5:12:52 PM

Cameron:

Additional comment located in October 9 Board meeting transcript.

As we discussed, I'd like to comment on the definition of Supportive Housing, and specifically recommend adding the following language to the second sentence. The new language is in italics.

"Supportive housing developments generally require established funding sources outside of project cash flow and are proposed and expected to be debt free or have no foreclosable or noncash flow debt, *unless the development is a Tax Credit Bond Development which has a commitment for a project based rental assistance contract that assures a contract rent for a majority of the units, in which case the development is treated as Supportive Housing under all chapters of the Uniform Multifamily Rules, except Subchapter*

D – Underwriting and Loan Policies. ”

P.S. Still waiting for Gateway team to decide whether to go ahead with agenda item next Tuesday. We should have final answer tomorrow.

Thanks

Janine Sisak

Senior Vice President/General Counsel

Diana McIver & Associates, Inc.

4101 Parkstone Heights Drive, Suite 310

Austin, Texas 78746

Phone: 512-328-3232 ext. 166

Fax: 512-328-4584

Comment (66)
Texas Association of Affordable Housing Providers

TAAHP
TEXAS AFFILIATION OF AFFORDABLE HOUSING PROVIDERS | 221 E. 9th street, ste. 408 | Austin, TX 78701
tel 512.476.9901 fax 512.476.9903 taahp.org texashousingconference.org

October 19, 2012

Board of Directors
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Dear Chairman Oxer & Members of the Board:

On behalf of the Texas Affiliation of Affordable Housing Providers (TAAHP), we would like to submit several recommendations for modifications to the 2013 Multifamily Program Rules - Qualified Allocation Plan (QAP) that are being suggested by our membership. TAAHP has more than 275 members including affordable housing professionals active in the development, ownership and management of affordable housing in the State of Texas.

It is TAAHP's policy to submit only recommendations that represent consensus opinions from the membership. Please note that there are several important provisions of the QAP that are not addressed in these consensus comments because the diverse TAAHP Membership has different views on the best ways to address those issues. TAAHP Members will be raising those issues for which there is no consensus individually. TAAHP's recommendations were developed at a meeting with the TAAHP Membership on October 15, 2012 in response to the draft approved by the TDHCA Governing Board on September 6, 2012.

The TAAHP QAP Committee would like to thank the TDHCA Staff for taking the time to review and discuss the consensus comments previously submitted and for incorporating some of the suggested changes in the draft. The comments in this letter represent additional comments, comments that are still under consideration, or comments that have not yet been incorporated into the draft.

Chapter 10, Subchapter A. General Information and Definitions:

RECOMMENDATION #1
§10.003 (a)(106) Site Work.
TAAHP recommends that the definition and development cost schedule be carved out of Site Work and put into a new category defined as "Site Amenity Costs" all non-Site Work items such as pools, fencing, landscaping, sports courts and playground area.

Chapter 10, Subchapter B. Site and Development Restrictions and Requirements:

RECOMMENDATION #2
§10.101(a)(2) Mandatory Site Characteristics.
TAAHP recommends that public transportation be added as an option. Additionally, TAAHP recommends changing the distances for mandatory site characteristics to two (2) miles for urban and three (3) miles for rural.

TAAHP
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RECOMMENDATION #3
§10.101(a)(3) Undesirable Site Features.
TAAHP recommends that a waiver process be developed for all undesirable site features. Please note that when the undesirable site features were moved from a negative point category to threshold, the TDHCA Board stated that waivers could be sought. In the alternative, if the Department prefers not to provide a waiver process for this section, it should be made clear that waivers may be requested with respect to items: (B) [railroad tracks], (C) [industrial uses], (E) [high voltage transmission lines, cell towers], and (F) [airport accident or clear zones].

TAAHP also recommends that an exception be carved out for railroads using HUD mitigation standards.

RECOMMENDATION #4
§10.101(a)(4) Undesirable Area Features.
TAAHP recommends that the area features be more clearly defined and quantified.

TAAHP also recommends that the rules provide for an expedited review and appeals process for undesirable area features, such as:

> *The Executive Director shall either grant or deny a waiver or pre-clearance within five (5) business days of receipt by the Department of disclosure of undesirable area features under this clause (4). If the Department does not respond within such five (5) business day period, the application will not be terminated due to issues under this clause (4). Any denial of a waiver or pre-clearance may be immediately appealed to the Board at the next Board meeting regardless of any appeal filing deadlines set forth in Section 10.902 of this chapter (relating to the appeals process).*

Additionally, TAAHP recommends that any area features disclosed under this section and/or any waivers or pre-clearance granted with respect to this section be excluded as grounds for challenges within the challenge process.

RECOMMENDATION #5
§10.101(6)(B) Unit Amenities.
TAAHP recommends adding options for unit amenities to allow for 7 points becoming more achievable. Additionally, TAAHP recommends desk and computer nook be added to the unit amenities list. *Please note that TAAHP members may be providing additional amenities separately and through the public comment process.*

Chapter 10, Subchapter C. Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver Rules:

RECOMMENDATION # 6
§10.205(5) Civil Engineer Feasibility Study.
TAAHP recommends that the feasibility report be deleted or, at a minimum, that the amount of detailed information required from the Civil Engineer be reduced.

TAAHP
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Chapter 11. State of Texas 2013 Qualified Allocation Plan Housing Tax Credit Program:

RECOMMENDATION #7
§11.2 Program Calendar for Competitive Housing Tax Credits.
TAAHP recommends moving the submission date of the community revitalization plan from pre-application final delivery date (01/08/2013) to full application final delivery date (03/01/2013).

RECOMMENDATION #8
§11.4(b) Maximum Request Limit (Competitive HTC Only).
TAAHP supports having the maximum request limit amount equal to 150% of the credit amount available in the sub-region as set forth in the draft QAP approved for public comment by the TDCHA Board at the September 6, 2012 Board meeting.

RECOMMENDATION #9
§11.4(c)(2) Increase in Eligible Basis (30 percent Boost).
TAAHP recommends adding the following category to be eligible for the 30 percent boost:

> *(E) any non-Qualified Elderly Development not located in a QCT that receives funds from the local jurisdiction of at least $2,000 per unit.*

RECOMMENDATION #10
§11.7(a) Tie Breaker Factors.
TAAHP recommends deleting the first tie breaker that is based on the Opportunity Index, however; if TDHCA cannot do so with respect to region 3, then TAAHP recommends deleting the first tie breaker that is based on the opportunity index for all regions other than region 3.

RECOMMENDATION #11
§11.8(b)(1)(D) Pre-Application.
TAAHP recommends removing the Community Revitalization Plan, Cost per Square Foot and Local Government Funding categories from the scoring items included in this section.

RECOMMENDATION #12
§11.9(c)(4) Opportunity Index.
TAAHP recommends using the poverty rate for families or individuals (whichever yields the most positive result) for calculating the opportunity index criteria.

RECOMMENDATION #13
§11.9(c)(6)(B) Underserved Area.
TAAHP recommends increasing Qualified Elderly Developments to two (2) points. Additionally, TAAHP recommends comparing development types to each other and revising the language "never received a competitive tax credit allocation" to "within the last five years has not received a tax credit allocation."

RECOMMENDATION #14
§11.9(d)(2)(A) Community Input Other than Quantifiable Community Participation.
TAAHP recommends removing letters of opposition counting against letters of support.

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RECOMMENDATION #15

§11.9(d)(3) Commitment of Development Funding by Unit of General Local Government.

TAAHP recommends changing the date by which the awards occur to no later than Commitment. In many cases a unit of local government will receive more applications for funds than are available and therefore are not in a position to make an award until after the TDHCA Board has determined which applications will receive an award of Tax Credits. If a unit of local government needs to wait until after the late July TDHCA Board meeting in order to know which of its applications are viable, making a decision with regard to awards by August 1 (within a few days of the late July TDHC A Board meeting) is problematic.

RECOMMENDATION #16

§11.9(e)(2)(B) Cost of Development per Square Foot.

TAAHP recommends that the 2011 QAP language with a cost boost of at least $3,000 a unit be reinstated because it best honors the legislative intent and the language of the statutory requirement, it recognizes that we do create different types of housing in different communities that cannot be "averaged," and it does not create a 10 point "unknown" as we make decisions about what developments to pursue. ***Please note that there is emphatic and broad support for this recommendation among the TAAHP Membership.***

TAAHP is very concerned about the new proposed language for several reasons.

First, it does not honor the legislative intent of the statutory language which was established solely for purposes of limiting tax credit requests. This is why the concept of a flat dollar cost per square foot cap was included in the 2004 QAP.

Second, the properties developed in Texas are very diverse in terms of costs, both based on the type of construction (single story cottages, multi-story elevator buildings, multi-story buildings with structured parking, single family, and even developments with two types of construction) and on the location of the development (urban versus rural, hurricane prone areas versus inland, etc.) Based on this diversity, calculating a "mean" as the benchmark is not at all reflective of "true costs." Despite the dollar cost per square foot cap contained in the last 8 QAPs, TDHCA has seen a variety of costs based on the various construction types, and that is why over the years, several different dollar caps have been developed for different situations.

Third, the uncertainty that this proposed language creates for developers is problematic. This is a 10 points category which as proposed is completely outside of the control of the developer and therefore prevents informed decision making about which developments to pursue. When developers are spending at minimum $50,000 to prepare an application, this level of uncertainty is untenable.

Finally and most importantly, this proposed change will likely result in homogenously designed housing with the potential for inferior construction quality. Developers will be discouraged from implementing innovative designs that might cost even slightly more than "average." Examples of such innovative design that would be discouraged would include achieving a LEED certification, incorporating a mixed-building or mixed-use concept, or simply meeting a higher architectural standard set by local municipality. Along the same vein, incorporating higher quality construction products that improve long term durability, added security features, and additional non-required amenity features will be discouraged as well, which will simply reduce the quality and longevity of housing funded with tax credits.

TAAHP
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RECOMMENDATION #17
§11.9(e)(7)(A) Point Deductions.
TAAHP recommends deleting penalty (A).

RECOMMENDATION #18
§11.10 Challenges.
TAAHP supports a $2500 fee for challenges and more time for Applicant to respond to challenges.

On behalf of the TAAHP membership, we appreciate your consideration of these comments. Should any additional information or clarification be needed, please do not hesitate to call.

Sincerely,

Debra Guerrero
Co-Chair, TAAHP QAP Committee

David Koogler
Co-Chair, TAAHP QAP Committee

Cc: TDHCA Staff
TAAHP Membership

Comment (67)
Arnold Garcia, Dilley Housing Authority

(67)

DILLEY HOUSING AUTHORITY

October 22, 2012

ATTN: Ms. Teresa Morales
Texas Department of Housing and Community Affairs
VIA Fax No. 512-475-0764

Re: Rule Comments on TDHCA Housing Tax Credit Program Qualified Allocation Plan

Dear Ms. Morales:

The following are my comments for consideration by TDHCA to the Housing Tax Credit Program QAP published in the September 21, 2012, Texas Register:

Section 11.4(b) Maximum Request Limit (Competitive HTC Only): TDHCA should not allow an applicant to request more than the credit amount available in a sub-region. This QAP provision to allow an applicant to request up to 150% of the credit amount available in a sub-region is not consistent with the provisions of Texas Government Code Chapter 2306 which requires TDHCA to use a formula to make regional allocations and has no provisions that allow TDHCA to allow an applicant to request more than the credit amount available in a sub-region. Additionally, the QAP prohibits awards to an applicant if there are not sufficient funds within the sub-region to fully award the application that then places the application in the rural or statewide collapse.

Section 11.5(3)(D) At-Risk Set-Aside: There are at-risk developments that have existing rental assistance with rents lower than the tax credits rents and may not be financially feasible unless they are allowed to eliminate a portion of that benefit. For example, the existing rental assistance may be within the tax credits rents for units at 30% AMGI and the development should be required to retain the rental assistance for those units but be allowed to eliminate the existing rental assistance on the other units who will retain their affordability within the HTC income and rent restrictions. This provisions should provide " . . . unless regulatory or financial barriers necessitate elimination of a portion of that benefit for the Development."

Section 11.9(b)(2) Sponsor Characteristics: Housing Authorities have extensive experience in providing affordable housing as developers, owners, and managers of Public Housing and Contract Administrators of HUD rental assistance contracts under Section 8 of the National Housing Act (Voucher Program). Many Texas Housing Authorities have as much as 75 years administering the Public Housing Program and 45 years administering the Section 8 Program. TDHCA needs to recognize this experience by awarding participation by Housing Authorities the maximum points under Sponsor Characteristics.

400 Ann St. Dilley, Texas 78017
Phone: (830) 965-1321 Fax: (830) 965-1548
Email: dilleyhousing@yahoo.com

Section 11.9(b)(2)(A) Sponsor Characteristics: Should include provisions awarding 1 point for a Housing Authority that has at least 51 percent ownership interest in the General Partner, materially participates in the Development and operation of the Development throughout the compliance period, and will receive at least 80 percent of the cash flow from operations and at least 25 percent of the developer fee.

Section 11.9(b)(2)(B) Sponsor Characteristics: Should include provisions awarding 3 points for a Housing Authority that that is rated by HUD as a High Performer or 2 points if rated by HUD as a Standard Performer and has at least 51 percent ownership interest in the General Partner, materially participates in the Development and operation of the Development throughout the compliance period, and will receive at least 80 percent of the cash flow from operations and at least 25 percent of the developer fee.

Section 11.9(d)(3) Commitment of Development Funding by Unit Of General Local Government: TDHCA proposes to restrict the awards points for funding from only a City or County. In prior years these points were allowed for funding by a "Unit of General Local Government" such as a Housing Authority. There is no basis for TDHCA to now exclude consideration for funding by any Unit of Local Government limit the award of points to only funding by a City or County.
Additionally, TDHCA proposes to penalize participation by a government instrumentality such as a Public Facility Corporation PFC) created under Chapter 303 of the Texas Local Government Code that was adopted by the Texas Legislature so that local governments such a City, County, Housing Authority or other Units of Local Government can carry out activities with their instrumentalities such as a PFC. There are many HTC developments in Texas sponsored by Units of Local Government using their instrumentality PFCs/ TDHCA needs to remove from the QAP all proposed restrictions on instrumentalities.

Section 11.9(e)(4)(A)(i) Leveraging of Private, State, and Federal Resources: Needs to include leveraging of funding from the Public Housing Program Capital Fund, Project Based Vouchers, and Section 8 Vouchers to assist families with their relocation.

Respectfully,

Arnold J. Garcia
Executive Director
Dilley Housing Authority

Comment (68)
Tony Sisk, Churchill Residential

From: Cameron Dorsey
To: Teresa Morales;
Subject: FW: request for change in threshold rules
Date: Wednesday, September 26, 2012 12:22:02 PM
Attachments: image001.png

Looks like public comment.

From: Tony Sisk [mailto:tsisk@cri.bz]
Sent: Wednesday, September 26, 2012 9:43 AM
To: Cameron.Dorsey@tdhca.state.tx.us
Cc: Jean Latsha (jean.latsha@tdhca.state.tx.us); Brad Forslund
Subject: request for change in threshold rules

Cameron/Jean- We have a couple of suburban family Dallas sites that are a little more than 1 mile away from a total of 6 services. In these growing suburban areas, it takes time to get all of these services in place, but they are coming as rooftops continue to build up. Could you please change the 1 mile rule for Urban to 2 miles, and make it equal to rural. People buy houses in these outlying master plan communities, and don't mind driving 1.5 or 2 miles to services.

Tony

Tony Sisk
Principal
Churchill Residential, Inc.
5605 N. MacArthur Blvd. #580
Irving, TX 75038
972-550-7800 x 224
972-679-8395 Cell
972-550-7900 Fax

Comment (69)
Dan Branch
State Representative District 108

STATE OF TEXAS
HOUSE OF REPRESENTATIVES

DANIEL H. BRANCH
MEMBER

October 23, 2012

Mr. Tim Irvine, Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

Dear Mr. Irvine:

Thank you for your continued service at the Texas Department of Housing and Ciommunity Affairs. I am writing in regards to the TDHCA 2013 Qualified Allocation Plan (QAP).

As co-chair of the Dallas Area Legislative Delegation, I consider it a great honor to represent the citizens of our region and advocate on behalf of my colleagues in the Texas House of Representatives. With this in mind, I am keenly aware that the opportunity for many of our citizens to obtain affordable housing is critical to the success of our region and state.

Having recently been informed that the proposed QAP will have the effect of halting any affordable housing projects in low-income neighborhoods, I ask that you give careful and diligent consideration to the 2013 QAP so that all worthy applicants, including revitalization developments, will have the opportunity to be competitive in the tax credit process. Furthermore, I ask that you please consider the merits and efficiencies of a single QAP for all Texas.

I have advised my staff to closely monitor the proceedings, and look forward to updates throughout the process.

Many thanks again for your consideration, and if I can be of further assistance, please contact me.

Best wishes.

Sincerely,

Dan Branch

DALLAS, HIGHLAND PARK, UNIVERSITY PARK - DISTRICT 108
POST OFFICE BOX 2910 AUSTIN, TEXAS 78768-2910 (512) 463-0367 DAN.BRANCH@HOUSE.STATE.TX.US

Comment (70)
R.L. Bobby Bowling, IV, Tropicana Building Corporation

TROPICANA BUILDING CORPORATION

4655 COHEN AVE • 915-821-3550 • EL PASO, TEXAS 79924

October 22, 2012

Cameron Dorsey
TDHCA
VIA e-mail

RE: COMMENTS ON PROPOSED 2013 QAP AND PROPOSED 2013 UNDERWRITNG RULES

Dear Cameron,

We offer the following comment on the Draft 2013 QAP. We break our comments into 2 categories, comments that offer substantive changes and comments addressing what are merely clerical changes that we think need to be made in language.

Substantive Changes:

1. **11.4(b) Maximum Request Limit:** We request that the per-deal cap be lowered to $1.2 million or 150% of the amount set aside in the sub-region. We have signed on to another letter submitted by a group of experienced Texas developers that details our reasoning for this change, but briefly, a smaller cap will allow for a better distribution of state assets, allowing more deals to be done. With higher tax credit pricing in the market place, a $1.2 million award of credits will support deals large enough to realize economies of scale on the management cost side.

2. **11.9(b)(2) Sponsor Characteristics:** We support the language in the draft QAP for this item, as it will allow TDHCA to award "good players" for keeping properties in outstanding shape. According to Patricia Murphy, the threshold score of 85 on the UPCS proposed in the draft QAP would include the top 40% of properties in the TDHCA portfolio. We believe this is an adequate cut-off point. However, also according to Patricia, a score of 92 would include the top 20% of properties in the TDHCA portfolio—a threshold which we would also support. ***It is important to note that this item does not "require Texas experience" as has been incorrectly identified by out-of-state witnesses in testimony at TDHCA public hearings and board meetings.*** Rather, the point item seeks to identify and reward owners of existing properties who are spending hundreds of thousands of dollars each year to keep their properties in Texas in near-new condition and able to stand up to the most rigorous state compliance program in the country. The point item allows for alternatives for first-time developers to get points and also encourages first-time developers to partner with these "good players"—which is a win-win-win opportunity for the

state of Texas and TDHCA charged with compliance duties by the Federal Government, the new developers (who probably have no idea how difficult compliance requirements in Texas are relative to owning market apartments or tax credit apartments in other states), and most importantly—the low-income tenants being served by the program in Texas. There are many "one and done" players in this industry, and this point-item will also serve to weed-out those with that intention—before they are awarded, instead of after the fact as is the case with the current policy of expelling "bad players" from the program after they own a property and ignore compliance requirements. Most federal, state, and local bidding opportunities DO INCLUDE an item such as this which seeks to reward the "good players" in the program.

3. **11.9(d)(3) Commitment of Funding by a Unit of General Local Government:** We strongly support the language in the draft QAP regarding this item, as without it, an unfair advantage would be realized by local Public Housing Authorities (PHAs) with the higher thresholds for contributions and points also being proposed in the 2013 QAP. Any item that would allow for an unfair advantage to be realized by a public entity over a private entity goes against the original intent of the Section 42 program—a program Congress always intended to be used by private developers—and is innately unfair. We believe Cameron Dorsey stated it best at the October 9th TDHCA Board Meeting when he stated, "...staff can't really come up with a really great policy reason why we would say a PHA deserves to be able to get more points inherently under this item than another development type. We just didn't see a reason to distinguish between types of owners." We agree entirely with this statement, as decades of evidence have shown that the private sector is much more efficient in every aspect of delivering products to the market place than a governmental entity, and if anything, the reverse should occur (tax-paying, private entities should get a point advantage over governmental entities). Also, as Mr. Dorsey stated in further testimony at the October 9th Board Meeting, there are other areas of the QAP and other aspects of the program where PHAs still have a decided advantage over private sector applicants—the ability to exercise their tax-exempt status on both sales and property taxes, as well as re-distribute Section 8 vouchers to themselves on their own tax credit properties are built-in advantages that are quite enough without any expressed QAP point advantages.

Clerical Changes:

1. **11.9(d)(6)(C)(i) For Developments Located in a Rural Area:** This section seeks to clarify that an applicant cannot first pay an entity to do certain things that would gain them points under the QAP, which we agree with. However, the language is too broad as written and may unintentionally disallow any

developer who has paid taxes or fees to a local governmental entity. We would propose changing the language of the second sentence in this paragraph to state:

> *The Applicant or Related Party cannot contribute funds for or finance the project or infrastructure, except through the normal and customary payment of property taxes, franchise taxes, sales taxes, impact fees and/or any other taxes or fees traditionally used to pay for or finance such infrastructure by cities, counties, state or federal governments or their related subsidiaries.*

We also submit the following comment on the proposed 2013 Draft Real Estate Analysis Rules and Guidelines:

1. **10.302(i)(6)(B)(i) and 10.302(i)(6)(B)(iii) Exceptions:** These 2 sections of the rules allow for the TDHCA underwriting feasibility rules to be ignored in their entirety if a PHA dedicates its own Section 8 Project-Based vouchers to at least 50% its development or characterizes at least 50% of its development as "public housing." The supposition in this language (dating back several years) is that the Federal Government will "bail-out" a deal that becomes infeasible—a supposition that we believe is in error and at the very least bad public policy. We believe that this section should be stricken from the rules as it holds private developers to a much stricter standard than for PHAs. The tax credit program has been the most successful affordable housing program ever created by the federal government and in Texas mainly due to the fact that **PRIVATE SECTOR DEVELOPERS** have been the major players in the program, especially in Texas. If it is the Department's wish to allow public sector PHA's to compete with private developers, then at least a level playing field should be established and **ALL DEVELOPERS SHOULD HAVE TO FOLLOW THE SAME UNDERWRITING RULES.** Further, in this economic and fiscal climate, the Federal Government is likely to lessen support of or eliminate entirely both the Section 8 program and the Public Housing program, leaving TDHCA to deal with infeasible projects over the long-term if this rule is not changed.

This concludes our comments for the 2013 draft rules regarding the LIHTC program. Thank you in advance for considering our comments.

Sincerely,

R. L. "Bobby" Bowling IV
President

Comment (71)
Anthony Jackson

From: Tim Irvine
To: Cameron Dorsey; Jean Latsha; Teresa Morales; Barbara Deane; Michael Lyttle;
Subject: FW:
Date: Monday, October 29, 2012 7:11:00 AM

More Frazier-related input

Tim

From: anthony jackson [mailto:antjacks52@yahoo.com]
Sent: Sunday, October 28, 2012 6:44 PM
To: tim.irvine@tdhca.state.tx.us
Subject:

Dear Mr. Irvine

I am a former resident of the Frazier neighborhood in Dallas, Texas. I have become aware of the issues related to the ICP v. TDHCA lawsuit, and the effect the lawsuit is having on affordable housing in low income areas.

As you know, the Frazier area is part of a revitalization effort that has been in progress for quite some time, and with no conventional financing available, the Low Income Housing Tax Credits (LIHTC) are key for the revitalization to continue.

I understand the LIHTC were originally designed for areas of revitalization, in fact, according to your own Motion filed in the ICP v. TDHCA lawsuit, "Section 42 shows a clear congressional preference for assisting those with the lowest incomes, serving low-income tenants for long periods of time, and placing projects in QCTs …Congress clearly intended that LIHTC should be used to help low-income tenants for long periods of time and to revitalize low income areas."

Therefore, I urge you to do the following:

· If the Judge denies the Motion, TDHCA should appeal the decision and Order
· File a motion requesting a stay of the judge's Order until a court of

final resort determines the case

· Revise sections of the Proposed 2013 QAP, so that projects in QCTs (low-income neighborhoods) that are part of a comprehensive revitalization supported by the city have a competitive opportunity to receive an award

Thank you,

Sincerely
Anthony Jackson

7b

MULTIFAMILY FINANCE DIVISION

BOARD ACTION REQUEST
NOVEMBER 13, 2012

Presentation, Discussion and Possible Adoption of orders adopting the repealing of 10 TAC Chapter 49, 2011 Housing Tax Credit Qualified Allocation Plan, and 10 TAC Chapter 50, 2012, Housing Tax Credit Qualified Allocation Plan and an order adopting new 10 TAC Chapter 11, Housing Tax Credit Program Qualified Allocation Plan, and directing its publication in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (the Department) is authorized to make Housing Tax Credit allocations for the State of Texas, and;

WHEREAS, the Department, as required by §42(m)(1) of the Code, developed this Qualified Allocation Plan to establish the procedures and requirements relating to an allocation of Housing Tax Credits, and;

WHEREAS, pursuant to Chapter 2306 the Board shall adopt and submit to the Governor a proposed Qualified Allocation Plan no later than November 15;

NOW, therefore, it is hereby,

RESOLVED, that the final order adopting the repeal of 10 TAC, Chapter 49, 2011 Housing Tax Credit Qualified Allocation Plan and Chapter 50, 2012 Housing Tax Credit Qualified Allocation Plan and final order adopting the new rule 10 TAC, Chapter 11, Housing Tax Credit Program Qualified Allocation Plan is hereby ordered and approved, together with the preamble presented to this meeting, for publication in the *Texas Register.*

FURTHER RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the draft Qualified Allocation Plan, together with the preamble in the form presented to this meeting, to be delivered to the Governor, prior to November 15th for his review and approval and to cause the Qualified Allocation Plan, as approved by the Governor, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The Board approved the proposed Qualified Allocation Plan, 10 TAC, Chapter 11, at the September 6, 2012, Board meeting to be published in the *Texas Register* for public comment. Additionally, staff provided the Board with a report item at the October 9, 2012, meeting which included comments that had been received to date in addition to any comments made at the

meeting to allow. Such report item would allow, if needed, portions of the QAP to be re-proposed in order to provide for the possibility of final adoption with any material changes from what was currently proposed. Based on comments made at that meeting from both the general public and the Board, re-publishing the QAP was not necessary.

In keeping with the requirements of the Administrative Procedures Act, staff has reviewed all comments received and provided a reasoned response to these comments. Staff has listed the areas below that received the most comment.

1. §11.4(b) Maximum Request Limit
2. §11.5(3) At-Risk Set-Aside
3. §11.9(b)(2) Sponsor Characteristics
4. §11.9(c)(4) Opportunity Index
5. §11.9(d)(3) Commitment of Funding by Unit of General Local Government
6. §11.9(d)(6) Community Revitalization Plan
7. §11.9(e)(2) Cost of Development Per Square Foot
8. §11.9(e)(4) Leveraging of Private, State and Federal Resources
9. §11.9(e)(6) Development Size
10. §11.9(f) Point Deductions

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Attachment A: Preamble, Reasoned Response, and New Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC, Chapter 11, §§11.1 – 11.10 concerning the Housing Tax Credit Program Qualified Allocation Plan. Sections 11.2 – 11.4 and 11.5 and 11.8 – 11.10 are adopted with changes to text as published in the September 21, 2012 issue of the *Texas Register* (37 TexReg 7411). Sections 11.1 and 11.6 – 11.7 are adopted without change and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the rule will result in a more consistent approach to governing multifamily activity and to the awarding of multifamily funding or assistance through the Department while minimizing repetition among the programs. The comments and responses include both administrative clarifications and corrections to the Housing Tax Credit Qualification Allocation Plan based on the comments are received. After each comment title, numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the Draft Housing Tax Credit Qualified Allocation Plan as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS

Public comments were accepted through October 22, 2012 with comments received from (1) Michael Ash, Commonwealth Development, (2) Ginger McGuire, (3) Brett Johnson, Overland Property Group, (4) Bobken Simonians, Houston Housing Authority, (5) Craig Litner, Pedcor, (6) Diana McIver, DMA Development Company, (7) Mark Mayfield, (8) Matt Hull, Texas Association of Community Development Corporations, (9) Sarah Andre, (10) Lynn Blakeley, Blakeley Commercial Real Estate, (11) Claire Palmer, (12) Craig Taylor, (13) Cynthia Bast, Locke Lord, (14) Dennis Hoover, Hamilton Valley Management, (15) Ken Smith, Revitalize South Dallas Coalition, (16) Linda Brown, Casa Linda Development Corporation, (17) Bernadette Nutall, Dallas ISD, (18) Rafael Anchia, State Representative District 103, (19) Benjamin Farmer, Rural Rental Housing Association, (20) Sarah Anderson, S. Anderson Consulting, (21) Scott McGuire, McGuire Development, (22) Sean Brady, Rea Ventures Group, LLC, (23) Walter Moreau, Foundation Communities, (24) R.L. Bobby Bowling IV, et. al, (25) Michael Daniel, Daniel & Beshara, P.C., (26) MaryAnn Russ, Dallas Housing Authority, (27) Richard Knight, Frazier Revitalization, Inc., (28) Rodolfo "Rudy" Ramirez, Edinburg Housing Authority, et. al., (29) Stan Waterhouse, Housing Authority of the City of El Paso, (30) Nancy Sheppard, San Antonio Housing Authority, et al., (31) Ryan Hettig, Hettig/Kahn Holding, Inc., (32) Michael Hartman, Tejas Housing Group, (33) Tim Lang, Tejas Housing Group, (34) Deborah Sherrill, Corpus Christi Housing Authority, (35) Lisa Stephens, Sagebrook Development, (36) Hal Fairbanks, HRI Properties, (37) Morgan Little, Texas Coalition of Veterans Organizations, (38) Wayne Pollard,Tarrant County Housing Authority, (39) Mary Vela, Alamo Housing Authority, (40) Alice Menendez, HK Capital Management, (41) Ron Kowal, Housing Authority of the City of Austin and the Austin Affordable Housing Corporation, (42) David Liette, Miller Valentine Group, (43) David Mark Koogler, Mark-Dana Corporation, (44) Donna Rickenbacker, Marque Real Estate Consultants, (45) Eric Johnson, State Representative District 100, (46) Bill Fisher, Sonoma Advisors, LLC, (47) Stuart Shaw, Bonner Carrington, (48) Apolonio (Nono) Flores, Flores Residential, L.C., (49) Jim Slaughter, Mill City Renaissance, (50) Laura Llanes, Housing Authority of the City of Laredo, (52) Barry Palmer, Coats Rose, (53)

Ruben Sepulveda, Weslaco Housing Authority, (54) J. Fernandez Lopez, Pharr Housing Authority, (55) Jose A. Saenz, McAllen Housing Authority, (56) Henry Flores, Madhouse Development, (57) Laolu Davies-Yemitan, Five Woods, LLC, (58) Alyssa Carpenter, (59) Demetria McCain, Inclusive Communities Project & Ann Lott, Inclusive Communities HDC, (60) Veronica Chapa-Jones, City of Houston, (61) Lora Myrick, Betco Development, (62) Lon Burnam, State Representative District 90, (63) John Dugan, City of San Antonio, (64) Michael Bodaken, National Housing Trust, (65) Janine Sisak, JSA Development Company, (66) Texas Association of Affordable Housing Providers, and (67) Arnold Garcia, Dilley Housing Authority, (69) Dan Branch, State Representative District 108, (70) R.L. Bobby Bowling IV, Tropicana Building Corporation, (71) Anthony Jackson, (72) Prestwick Development.

1. §11.2 – Program Calendar (52), (66)

COMMENT SUMMARY: Commenter (52) stated the Pre-application Neighborhood Organization Request Date is not required pursuant to Chapter 2306 and suggested such deadline was too early for developers to have been able to select sites, especially given the adoption of the QAP by the Board roughly a month prior to commencement of the application cycle. Moreover, commenter (52) suggested the 10% Test Documentation Delivery Date is not required under federal law until one year after the carryover allocation is executed by the Department and proposed November 1 as the deadline for the 10% Test. Commenter (66) recommended moving the submission date of the community revitalization plan from pre-application to the time of full application.

STAFF RESPONSE:

While the Neighborhood Organization Request Date is in the month following Board adoption of the rules, the templates provided for use by applicants allow applicants that do not know precise information regarding the site to make the request encompass the entire city. Staff believes the current date provides an appropriate balance between the need to give cities sufficient time to respond and providing applicants with sufficient flexibility given the realities of the development process.

The requirement to meet the 10% test prior to end of July helps ensure that credits associated with transactions not proceeding with development in a timely manner are captured and re-awarded to new applications in the current year funding cycle. Additionally, extensions for not meeting the deadline are available and provided where good cause can be demonstrated.

Staff believes the current submission date of pre-application for the Community Revitalization Plans is consistent with the intent to capture plans encompassing pre-existing and ongoing revitalization efforts and will provide Applicants with information on which to base decisions regarding submission of a full application earlier in the process.

Staff recommends no change based on these comments; however, staff has made modifications to the program calendar to indicate that waiver and pre-clearance requests will be accepted at the time of pre-application. This is consistent with the rule but was not originally part of the calendar and is suggested as a helpful reminder to applicants.

2. §11.4(a) – Credit Amount (24), (70)

COMMENT SUMMARY: Commenters (24), (70) requested the Department limit the maximum credit amount that can be allocated to a development to $1.2 million and stated that

such limitation will lead to a better geographic dispersion of developments and will ensure that more developments across the state are awarded.

STAFF RESPONSE:
Staff has retained the award maximum of $1,500,000 for all applications except those submitted under the At-Risk Set-Aside. This is a $500,000 reduction from the 2012 cycle. Staff believes that the $1,500,000 is appropriate and that a further reduction to $1,200,000 may be too dramatic in light of the federal expiration of the fixed 9% applicable percentage. This change will have a dramatic impact on the eligible credit per transaction and the monthly applicable percentages over the past 12 months have been much lower than those available to applicants several years ago when the award maximum was $1,200,000. Without certainty of the full effect that a further reduction in the award maximum might have, staff recommends retaining the current $1,500,000, which can be reassessed annually, as needed. Staff recommends no change based on these comments.

3. §11.4(b) – Maximum Request Limit (19), (23), (28), (34), (38), (39), (46), (47), (48), (50), (53), (54), (55), (67), (70)
COMMENT SUMMARY: Commenter (23) supported the $1.5 million maximum request limit and requested, along with commenters (19), (66), (70) that the credit amount request not increase beyond 150% of what is available in the sub-region.

Commenters (28), (34), (38), (39), (46), (48), (50), (53), (54), (55), (67) disagreed with allowing an applicant the ability to request more than the credit amount available in the sub-region and stated that such provision is not consistent with the provisions of Chapter 2306.

Commenter (47) recommended the maximum be revised to $2,000,000 per application which will result in sustainable communities over longer periods of time since larger communities are more effective to manage.

STAFF RESPONSE:
Staff appreciates the support for the current award maximum limitations.

Staff believes that allowing the award maximum to exceed the amount available in the region is consistent with Chapter 2306. Staff has included a point item for applications requesting less than $500,000 in order to incentivize those applicants structuring transactions that fit within the amounts available in smaller rural sub-regions. However, staff believes it is important not to restrict the size of all applications due to the operating efficiencies that are often available with transactions that are larger in size.

There was considerable public comment from the development community during roundtables held prior to approval of the draft requesting to lower the limit from $2 million to $1.5 million, and staff responded. Staff also observed that in the 2012 application cycle there were very few applications that requested $2 million in credits and believes that the $1.5 million limit is appropriate to allow for larger developments considering the current average pricing for credits and current applicable percentages. Staff recommends no change based on these comments.

4. §11.4(c)(2) – Increase in Eligible Basis (19), (31), (46), (61), (66)
COMMENT SUMMARY: Commenters (31), (46), (66) requested a reinstatement of 2012 QAP language that allows developments that receive local jurisdictional funds, CDBG funds or

HOME funds, up to at least $2,000 per unit to receive the 30% boost in eligible basis. Commenter (31) believed that the absence of such provision would result in developments in revitalization areas that are not in QCTs that would need the boost; however, they would be prevented from obtaining it.

Commenters (19), (61) noted that Section 514 and 515 properties that may now be located in exurban areas as a result of geographical growth of the nearby large city should be eligible for the 30% boost and recommended the following revision:

> "(A) the Development is located in a Rural Area, or the Development retains existing USDA funding.

STAFF RESPONSE:
Staff seeks to target areas where development costs are disproportionately higher than would be expected. Staff believes this aligns with the purpose behind the changes to the boost provisions under the Housing and Economic Recovery Act of 2008. Developments located in community revitalization areas should have access to funds associated with those community revitalization plans, so there is likelihood that at least some of the need for the boost will be offset. USDA transactions have opportunities to qualify for the boost if they are located in rural areas, high opportunity areas or the other areas provided for in §11.4(c)(2).

Staff recommends the following clarifying language:

(1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 30 percent Housing Tax Credit Units per total households in the tract as established by the U.S. Census Bureau for the most recent Decennial Census. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 30 percent Housing Tax Credit Units per total households in the tract are not eligible to qualify for a 30 percent increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5)(C) of the Code. For Tax-Exempt Bond Developments, as a general rule, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. Applicants must submit a copy of the census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT;

(2) The Development meets one of the criteria described in subparagraphs (A) - (D) of this paragraph (pursuant to the authority granted by H.R. 3221):

(A) the Development is located in a Rural Area;

(B) the Development is proposing entirely Supportive Housing and is expected to be debt free or have no foreclosable or non-cash flow debt;

(C) the Development meets the criteria for the Opportunity Index as defined in §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria); or

(D) ~~the Board may allow a boost for~~the Development is a non-Qualified Elderly Development not located in a QCT that is in an ~~target~~ area covered by ~~under~~ a community revitalization plan. A Development will be considered to be in an area covered by a community revitalization plan if it is eligible for points under §11.9(d)(6) of this chapter.

5. §11.5(3) – Competitive HTC Set-Asides (28), (34), (38), (39), (41), (48), (50), (53), (54), (55), (56), (57), (64), (67)

COMMENT SUMMARY: Commenter (34) requested that public housing authorities be allowed to compete in the at-risk set-aside. Commenters (28), (34), (38), (39), (48), (50), (53), (54), (55), (67) suggested that at-risk developments be allowed to eliminate existing rental assistance on a portion of the units in a development that retain their affordability within the HTC income and rent restrictions in order to make them financial feasible. To address this, commenters (28), (34), (38), (39), (48), (50), (53), (54), (55), (67) suggested this section contain the following provision "…unless regulatory or financial barriers necessitate elimination of a portion of that benefit for the Development."

Commenters (41), (56) suggested the language in the published draft that allows for a portion of the housing subsidy to be retained and reflects that no less than 25% of the proposed units be public housing units fails to include units subsidized with a project-based rental assistance contract. Current HUD programs and initiatives, such as the Rental Assistance Demonstration and the Choice Neighborhood Initiative, encourage the conversion of existing public housing units to units covered by a long-term, project-based rental assistance contract. The conversion of the assistance from public housing to project-based rental assistance enables housing authorities and owners to access private debt and equity to address immediate and long-term capital needs. Commenters (41), (56) suggested the following revision:

> "….For Developments retaining public housing operating subsidies to qualify under the At-Risk Set-Aside, only a portion of the subsidy must be retained for the proposed Development, but no less than 25% of the proposed Units must be public housing units or units assisted by a project-based rental subsidy agreement with a term of at least 15 years."

Commenter (64) expressed support for maintaining the 15% At-Risk Set-Aside and encouraged the continuation of prioritizing the preservation and rehabilitation of existing multifamily housing and further commented that nationwide, rehabilitation developments require almost 40% less tax credit equity per unit than new construction developments.

STAFF RESPONSE:

Public housing authorities are eligible to compete in the At-Risk Set-Aside. The set-aside does not restrict ownership structure but is associated with the development itself and existing federal subsidies. If the development, whether owned by a PHA or not, qualifies as At-Risk, then it can compete in the set-aside.

Applications proposing the elimination of subsidies for financial reasons are eligible to be submitted under the regional competitions. However, staff believes that it is prudent to preserve the At-Risk Set-Aside for those developments that are in fact at risk of losing subsidies that can be retained through the substantive rehabilitation or reconstruction under the tax credit program, as was the intent of this statutory set-aside. Additionally, "financial barriers" is simply too broad and subjective in nature. New in the 2012 QAP, staff included specific language addressing the eligibility of Applications proposing the partial retention of public housing operating subsidy due to the very unique break-even operating requirements that generally require some non-public housing units. Staff does not believe that the same rationale is present for Section 8 project-based

vouchers and therefore does not recommend expansion of the language as commenters (41) and (56) suggested. Staff recommends no change based on these comments.

6. §11.7(2) – Tie Breaker Factors (2), (6), (30), (47), (66)
COMMENT SUMMARY: Commenter (2) requested clarification on whether the second tie breaker factor listed under this section, applications proposed to be located the greatest distance from the nearest housing tax credit assisted developments, includes only 9% HTC developments or 4% HTC developments as well. Commenter (6) expressed support for the first tie breaker contained in the published draft that is based on the opportunity index under §11.9(c)(4).

Commenter (30), (66) recommended the first tie breaker based on the opportunity index should be removed; however, if it remains then it should be applied to Region 3 only and use the distance from the nearest HTC development for all others. Moreover, commenter (30) suggested that since many tax credit developments are undertaken in phases, the tie breaker should apply to the completion of a development phase.

Commenter (47) stated the first tie breaker relating to opportunity index favors general population developments and suggested the applications should be ranked by median household income and award based on the highest income. Such tie breaker, according to commenter (47), will eliminate the need for the second tie breaker and gives all applications an equal opportunity to compete.

STAFF RESPONSE:
In response to commenter (2) the language currently includes both 4% and 9% housing tax credit developments. Staff appreciates the comment supporting the first tie breaker provided by commenter (6).

In response to commenter (30), (66), the first tie breaker is required to comply with the court ordered Remedial Plan within Urban Region 3. Staff also believes the application of this tie breaker to the entire state is appropriate and maintains consistency for applicants in all regions of the state. Staff sees no clear policy reason for creating different tie breakers for different regions of the state.

In response to commenter (47), the scoring opportunity differences between developments with age restrictions and those without age restrictions was included in the Remedial Plan to address disproportionate obstacles in developing multifamily housing without age restrictions. Staff also believes the application of these scoring differences to the entire state is appropriate and maintains consistency for applicants in all regions of the state. Staff recommends no change based on these comments.

7. §11.8(b) – Pre-Application Threshold Criteria (30), (32), (44), (47), (66)
COMMENT SUMMARY: Commenter (32) requested clarification on whether the actual community revitalization plan or all documents associated with the ability to claim points under §11.9(d)(6) are required to be submitted with the pre-application. Specifically, commenter (32) stated that in rural areas there will not be an actual plan, but rather other documents that would be submitted in an effort to be eligible for the community revitalization plan points. Similarly, commenter (47) suggested the requirement for submission of the community revitalization plan

at pre-application be removed and submitted at full application instead to give municipalities time to comply with the requirements for a revitalization zone.

Commenter (30) suggested that developments located in the extraterritorial jurisdiction (ETJ) of a city should only be required to send public notifications to the county officials and requested the requirement to send them to city officials be removed.

Commenter (44) recommended the funding request at pre-application be allowed to be an approximate request since the applicant will not have the benefit of all third party reports by pre-application in order to make a final tax credit determination. Similarly, commenter (44) recommended the total number of units be an approximation as well because the applicant may not know at the time of pre-application the exact number of units planned for development.

Commenter (66) recommended removing the community revitalization plan, cost per square foot and local government funding categories from the self-score required at the time of pre-application.

STAFF RESPONSE:
In response to commenter (32), staff has clarified that only those plans used for points under §11.9(d)(6)(A) and (B)(i) are required to be submitted at the time of pre-application. Applicants in rural areas seeking points under §11.9(d)(6)(C) can submit documentation with the full application. All documents necessary to verify eligibility for points will be required for each scoring item. Examples may be provided in the multifamily programs procedures manual. The requirement to submit some community revitalization plans at pre-application is to provide staff with sufficient time to substantively evaluate each of the plans proposed to be used for points. The purpose of this item is to incentivize development where municipalities have existing revitalization efforts; therefore, moving the plan explicitly to allow more time is not consistent with the underlying goal of this scoring item.

In response to commenter (30), cities and counties share certain authority over extra territorial jurisdictions and staff believes it is appropriate to notify both city and county officials.

In response to commenter (44), the rules as drafted allow for an approximation of the funding request and up to a 10% variation between pre-application and full application in the number of units in order to meet the criterion for pre-application points. In previous years, this was a trigger for re-notification of elected officials and neighborhood organizations. Staff appreciates that financing aspects of a transaction are fluid, so the funding request can change substantially without risk of losing pre-application incentive points. However, staff believes that the approximate size of the development is important in order for other applicants to accurately assess the competition.

In response to commenter (66), the rules allow for staff to specify which scoring items will require a self-score at pre-application. Staff intends to exclude the community revitalization plan, development cost per square foot, and development funding from a unit of general local government due to significant changes in these scoring items from the prior year.

Staff recommends the following revision:

"(b) Pre-Application Threshold Criteria. Pursuant to Texas Government Code, §2306.6704(c) pre-applications will be rejected unless they meet the threshold criteria described in paragraphs (1) and (2) of this subsection:

(1) Submission of the competitive HTC pre-application in the form prescribed by the Department which identifies at a minimum:

(A) Site Control meeting the requirements of §10.204(9) of this title (relating to Required Documentation for Application Submission);

(B) Funding request;

(C) Target Population;

(D) Requested set-asides (At-Risk, USDA, Nonprofit, and/or Rural);

(E) Total Number of Units proposed;

(F) Census tract number in which the Development Site is located;

(G) Expected score for each of the scoring items identified in the pre-application materials;

(H) All issues requiring waivers necessary for the filing of an eligible Application; and

(I) Any community revitalization plan the Applicant anticipates using for points under §11.9(d)(6)(A) and (B)(i) of this chapter (relating to Competitive HTC Selection Criteria)."

8. §11.9 – Selection Criteria – General Comment (19), (21)

COMMENT SUMMARY: Commenters (19), (21) cited results of the Bowen National Research study, commissioned by the Department, which indicated younger people and families appear to be leaving rural areas while the senior population is growing rapidly in the rural areas. Commenters (19), (21) argued this makes the case for eliminating the point disparity between Elderly and General population developments in rural areas of the state and, specifically, commenter (21) referenced §11.9(c)(4) – Opportunity Index and §11.9(c)(6) – Underserved Area where there is currently a point disparity.

STAFF RESPONSE:

In response to commenters (19), (21), general population developments can be constructed to meet the needs of elderly households and family households within the current constraints of the QAP. However, staff cautions all applicants regarding marketing efforts or other representations that lead classes of persons protected under the Fair Housing Act to believe that a general population development is available exclusively to or is targeted to elderly households may violate fair housing laws.

Moreover, staff also removed the unit mix requirements in the published draft to allow applicants to be more responsive to the specific demographic characteristics of the market in which a development is proposed. Staff recommends no change based on these comments.

9. §11.9(b)(2) – Selection Criteria – Sponsor Characteristics (1), (2), (3), (5), (6), (7), (8), (9), (12), (16), (19), (20), (21), (22), (23), (28), (32), (34), (35), (36), (38), (39), (42), (43), (44), (46), (47), (48), (50), (53), (54), (55), (56), (57), (61), (65), (67), (70), (72)

COMMENT SUMMARY: Commenters (1), (5), (9), (12), (19), (20), (21), (22), (35), (36), (42), (43), (44), (61), (72) disagreed with the Texas-specific experience in this section. Commenter (1) does not believe such requirement would create any additional or better affordable housing, it will not serve any additional geographic markets or certain target populations. Commenter (1) suggested that as an alternative such requirement be a threshold item should a developer lack the required experience or relate the experience to tax credit developments of a similar nature. Commenter (61) suggested that in lieu of the Texas-specific experience the Department consider reinstituting the national previous participation review to determine past performance. Commenter (2) stated that the requirement of at least three existing tax credit developments restricts a lot of Texas rural developers that do not have IRS Forms 8609. While they have completed a number of developments, the requirement to have obtained 8609s would prevent these developers from getting additional allocations. Similarly, commenter (3) suggested that just because an out-of-state developer does not have three 8609s it shouldn't indicate they are a bad developer or can't follow the rules and further suggests, along with commenters (20) and (35) the focus should be on penalizing bad developers rather than assuming others simply can't follow the rules. Commenter (3) stated there doesn't seem to be any reason for the Department to create barriers to entry to the program if a developer has the experience to participate.

Commenter (12) stated the language as drafted is in violation of the Commerce Clause of the U.S. Constitution as it specifically limits interstate commerce. The housing tax credit program is a federal program administered under the same IRS regulations regardless of the state in which developments are located. Commenter (12) offered the following suggested revision:

> "A Person with at least 50% ownership in the General Partner also owns at least 50% interest in the General Partners of at least ~~three (3)~~five (5) existing tax credit developments ~~in Texas~~, none of which are in Material Noncompliance."

Commenter (72) expressed similar concerns and noted that the language as drafted puts forth an anti-competition, anti-free market agenda that is in direct contrast to the pro-business environment of which Texas has long been known. Moreover, while no one will argue that developer experience is one the most important underwriting criteria, the location of that experience should be immaterial to the QAP and commenter (72) requested the Texas-specific language be removed.

Commenter (42) suggested if the intent of this scoring item is to incentivize high-quality developers with a proven track record of success, then it's recommended the item be modified to increase the 8609 requirement to 50 properties and remove the requirement for these properties to be located in Texas. The recommended change would ensure that only highly experience development groups would qualify for the points.

Commenter (19) stated the language in the published draft freezes the applicant pool at near current participant levels and doesn't provide a way for potential applicants to work out of the freeze. The difficulty faced by out of state developers to score competitively also eliminates some very responsible Texas owners of Section 514 and 515 properties, as well as experienced and responsible out-of-state owners, with very few alternative funding sources available for new construction in rural areas or for the rehabilitation of the aging rural portfolio. Commenter (19), opposed to this scoring item as drafted, recommended that since the HUB participation is already

a threshold requirement, this scoring item be revised to reflect HUB inclusion for 1 point and that the 100% aggregate calculation for an additional point be eliminated.

Commenter (22) suggested this scoring item be revised to assign points based on levels of development experience (regardless of state) or participation of nonprofit developers be encouraged through the use of points to ensure the state's required 10% nonprofit set-aside is achieved. Commenter (22), (57) further stated the HUB participation incentive frequently proves a burden on general partnerships and introduces unnecessary risk and cost to the viability of the transaction. Mission-driven nonprofits would alternatively bring more capable members to the team while still encouraging disadvantaged developers that cannot accrue assets as a nonprofit entity.

Commenter (23) suggested this item be revised to reflect at least two developments that have received a final construction inspection clearance from the Department and a final compliance score below 10 and urged staff not to utilize the UPCS score since such scoring system penalizes a developer for various items that are beyond their full control and does not allow for appeal or amendment of an initial score. Commenter (8) also suggested using the final construction inspection as a more relevant measure of compliance. Commenter (56) stated the UPCS standard adds an unacceptable level of uncertainty because of inconsistencies in the inspection scoring. While commenter (56) agrees the benchmark should be 3 properties and the real standard should be that those properties are not in Material Noncompliance; however, if the UPCS provision remains commenter (56) recommends a minimum score of 70 be considered acceptable.

Commenter (35) disagreed with the language as drafted and suggested the participation level in §11.9(b)(2)(B)(iii) be revised to 75% instead of 100% and further suggested the HUB participation be allowed to be achieved with multiple HUB entities (*e.g.* three or four) instead of limiting it to one HUB entity. Commenter (35) believed the intent behind the HUB participation is to provide experience and foster capacity building; therefore, the limitation of only allowing one HUB with 100% participation is not as meaningful and limits capacity building.

Commenter (32) requested clarification on whether nonprofits would be eligible for points under this scoring item if competing in the nonprofit set-aside. As currently written, §11.9(b)(2)(A)(1) and §11.9(b)(2)(B)(1) require at least 50% ownership interest in the general partner and in order to be eligible under the nonprofit set-aside the nonprofit has to have greater than 50% ownership interest in the general partner which would mean that someone who is competing in the set-aside would not be able to achieve these points. Commenter (47) requested clarification on whether an applicant can receive 3 points for having 5 existing tax credit developments or at least 3 existing tax credit developments as it relates to §11.9(b)(2)(B)(i) and (ii). Commenter (56) stated §11.9(b)(2)(B)(i) and (ii) should be mutually exclusive, if not a developer that has 5 developments that meet the current criteria will qualify under those two criteria for a total of 3 points which was probably not the Department's intent.

Commenter (23) suggested that if a nonprofit organization is at least 51% (or 100%) of the general partner and serves 100% as the developer then the application should be eligible for one point (by definition this type of sponsor cannot also get the HUB point). Commenter (23) expressed concerns over this scoring item in that adding a for-profit HUB to the ownership, developer fee or cash flow, will result in higher rents and less funds for social services. The cash flow for supporting housing developments is dedicated to supportive services. Commenter (8),

(23) cautions against requiring a HUB at 100% at the expense of lower rents and services and offered the following recommendation:

1. Allow either the HUB point or a nonprofit that has at least 100% of the GP/Developer Fee/Cash Flow which would allow for-profits to partner with nonprofits on mission-driven developments;
2. Allow a sole nonprofit development to get the same HUB point if a certain percentage of the construction and professional services are contracted with HUB's;
3. Allow either the HUB point or nonprofit point so long as the nonprofit is 100% of the general partner and cash flow is dedicated for supportive services and/or replacement reserves.

Commenter (36), (44) suggested this scoring item should be limited to participation in the program by inexperienced parties through HUB participation. Moreover, commenter (36), (44) recommended that if the intent is to truly promote and support HUB participation then the HUB should not be a related party to the applicant. Commenter (42) suggested if the intent is to incentivize experienced development groups to partner with HUB's then maximum points should be achievable for out-of-state development companies that elect to partner with inexperienced HUB's. Allowing only in-state developers to maximize these points, according to commenter (42), discourages competition and in no way creates a better affordable housing program or better housing options for low-income tenants. Commenter (61) suggested the additional HUB points be granted to out-of-state developers that show capacity and expertise to develop in Texas if they employ local or Texas-based management companies rather than bringing their own from out-of-state. Commenter (61) stated should the Department retain this provision then nonprofits should be included and the applicant be allowed to choose between the use of a HUB and a nonprofit partner.

Commenter (46) expressed support for the HUB ownership provision in this scoring item and commenter (46), (56), (70) expressed support for the Texas-specific experience. Moreover, commenter (7) expressed support and indicated that from the perspective of a housing authority the public-private partnerships are what motivate developers to build affordable housing in rural communities. Commenter (70) further elaborated that this scoring item does not require Texas experience, but seeks to identify and reward owners of existing properties to be able to comply with the rigorous compliance requirements of this state. Moreover, commenter (70) indicated encouraging first-time developers to partner with the good players in the system allows for a "win-win" opportunity for the State of Texas and for the Department.

Commenter (6), (65) expressed support for the draft language provided under option (B) of this scoring item because it is not unduly prescriptive, it allows a HUB to be in the transaction and still compete in the nonprofit set-aside and it makes the HUB a supplement to experience. Commenter (6) suggested that should the Board expand the experience to include out-of-state experience then such experience should be twice that of Texas experience to ensure the ability to adhere to the Department's compliance rules. Moreover, commenter (6) suggested this requirement be revised to reflect that no one of the three categories listed (i.e. ownership interest, cash flow and developer fee) can be less than either 5% or 10% to prevent an application that involves a HUB reflect the HUB receiving a half a percent of ownership and a half a percent of the developer fee and 99% cash flow that may not be seen for 5-7 years.

Commenter (16) suggested the following revision which would allow HUBs an opportunity to enter the program and further encourage HUB owned developments by incentivizing a HUB to continue to build on previous limited experience:

> "(A) An Application may qualify to receive up to one (1) point provided the ownership structure meets the requirement described in clause (i) or two (2) points provided the ownership structure meets the ownership structure in clause (ii); ~~one of the requirements described in clauses (i) – (iii) of this subparagraph~~:
>
> (i) A HUB as certified by the Texas Comptroller of Public Accounts that is unable to qualify for a TDHCA Experience Certificate and has an ownership interest and receives no less than ten percent (10%) of the developer fee and twenty percent (20%) of the cash flow; or
>
> ~~(i)~~(ii) A HUB as certified by the Texas Comptroller of Public Accounts and owns 100% of the general partnership interest and has received 8609's on one (1), but not more than two (2) housing tax credit developments through 8609's."

Commenter (28), (34), (38), (39), (48), (50), (53), (54), (55), (67) stated that housing authorities have extensive experience in providing affordable housing as developers, owners and managers of public housing and as a result suggested the Department recognize this experience by awarding participation by housing authorities maximum points under this scoring item. Commenter (28), (34), (38), (39), (48), (50), (53), (54), (55), (67) suggested option (A) of this scoring item be revised to include provisions awarding 1 point for a housing authority that has at least 51% ownership interest in the general partner, materially participates in the development and operation of the development throughout the compliance period, and will receive at least 80% of the cash flow from operations and at least 25% of the developer fee. Commenter (28), (34), (38), (39), (48), (50), (53), (54), (55), (67) also provided a suggested revision to option (B) that included a provision to award 3 points for a housing authority that is rated by HUD as a high performer or 2 points if rated by HUD as a standard performer and has at least 51% ownership interest in the general partner, materially participates in the development and operation of the development throughout the compliance period and will receive at least 80% of the cash flow from operations and at least 25% of the developer fee.

Commenter (57) offered as an alternative to the published draft language, a 90% combination of 51% ownership and the remainder 39% be stipulated with a minimum 10% of developer fee received and the rest comprised of either developer fee or cash flow. Commenter (57) further stated that requiring developers to share more of their profits with a HUB, who takes on little to no risk, may result in unintended consequences of seeking a HUB partner because it just isn't worth it. Commenter (57) suggested that should this item remain at a 100% threshold then it should stipulate that HUB ownership should not exceed 60%, so that deals aren't loaded with a HUB with 80% ownership interest (or similar percentage).

STAFF RESPONSE:
While staff believes the language regarding Texas experience is fully compliant with all applicable laws, staff has modified this scoring item to exclude any requirements related to

solely Texas experience. This change is in response to a significant amount of the comment received.

Staff agrees that incentivizing non-profit ownership along with HUB partnerships is consistent with the policy objectives and would provide additional assurance that the 10% Nonprofit Set-Aside requirement is met. Staff has revised the language in response to commenters (22), (23), (57).

Staff has responded to commenter (35) revising the requirement that the nonprofit or HUB's participation in ownership, developer fee, and cash flow sum to 100%. The revised language now requires a sum of 80%. Staff believes that the point provides no penalty for participation of multiple HUBs and sees no clear rationale to further revise the item to incentivize multiple HUB participation, it being the intent that HUB engagement be at a substantive level promoting the building of true development capacity for HUBs.

In response to commenters (36), (44), staff is recommending a change to the language that would prohibit HUBs that are related to other members in the ownership structure from eligibility for the point. However, staff believes that partnering with an experienced HUB as opposed to only inexperienced HUBs brings value to the transaction while furthering the policy behind the scoring item.

In response to commenter (57), staff believes the suggestion to require 51% ownership by the HUB may be overly prescriptive. The scoring item as recommended allows for flexibility in the structuring of development terms and agreements among participants. Additionally, incentivizing HUB or nonprofit participation is in line with procurement goals for the State of Texas and Chapter 2306. The proposed revised language incentivizes the inclusion of a HUB or Qualified Nonprofit Organization in the ownership structure provided certain ownership requirements are met.

Staff recommends the following revision to this scoring item:

"(2) Sponsor Characteristics. §42(m)(1)(C)(iv) (1 point)~~(2)~~. ~~An Application may qualify to receive points under subparagraph (A) or (B) of this paragraph.~~

~~(A) An Application may qualify to receive up to one (1) point provided the ownership structure meets one of the requirements described in clauses (i) – (iii) of this subparagraph:~~

~~(i) A Person with at least 50 percent ownership interest in the General Partner also owns at least 50 percent interest in the General Partners of at least three (3) existing tax credit developments in Texas, none of which are in Material Noncompliance. The IRS Form(s) 8609 must have been issued for each of the properties used for points under this paragraph and each must have a Uniform Physical Condition Standard (UPCS) score of at least 85 based on their most recent inspection.~~

~~(ii) The ownership structure of the Development Owner includes a joint venture between an experienced Developer and an inexperienced owner. In order to qualify for this point, the inexperienced party must be unable to obtain an Experience Certificate under §10.204(5) of this title (relating to Required Documentation for Application Submission). In addition, the experienced Owner~~

~~must own at least 30 percent interest in the General Partner and also own at least 50 percent interest in the General Partner of at least three (3) existing tax credit developments in Texas, none of which are in Material Non-Compliance. The IRS Form(s) 8609 must have been issued for each of the properties used for points under this subparagraph and each must have a UPCS score of at least 85 based on their most recent inspection.~~

~~(iii) A HUB as certified by the Texas Comptroller of Public Accounts has at least 51 percent ownership interest in the General Partner, materially participates in the Development and operation of the Development throughout the Compliance Period, and will receive at least 20 percent of the cash flow from operations and at least 10 percent of the developer fee.~~

~~(B~~A) An Application may qualify to receive ~~up to three~~ one (~~3~~1) point~~s~~ provided the ownership structure contains ~~meets some combination of the requirements described in clauses (i) – (iii) of this subparagraph.~~:

~~(i) A Person with at least 50 percent ownership interest in the General Partner also owns at least 50 percent interest in the General Partners of at least three (3) existing tax credit developments in Texas, none of which are in Material Noncompliance. The IRS Form(s) 8609 must have been issued for each of the properties used for points under this paragraph, and each must have a Uniform Physical Condition Standard (UPCS) score of at least 85 based on their most recent inspection. (2 points)~~

~~(ii) A Person with at least 50 percent ownership interest in the General Partner also owns at least 50 percent interest in the General Partner of at least two (2) existing tax credit developments in Texas, none of which are in Material Non-Compliance. Both properties must be placed in service as of Full Application Delivery Date, and the IRS Form(s) 8609 must have been issued for at least one of the properties used for points under this subparagraph and must have a UPCS score of at least 85 based on their most recent inspection. (1 point)~~

~~(iii) A~~ a HUB, as certified by the Texas Comptroller of Public Accounts, or Qualified Nonprofit Organization, provided the Application is under the Nonprofit Set-Aside, has some combination of ownership interest, cash flow from operations, and developer fee which taken together equal at least ~~100~~ 80 percent and no less than 5 percent for any category. For example, ~~the~~ a HUB or Qualified Nonprofit Organization may have 20 percent ownership interest, 30 percent of the developer fee, and ~~50~~ 30 percent of cash flow from operations. The HUB or Qualified Nonprofit Organization must also materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience ~~relative~~ directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. The HUB or Qualified Nonprofit Organization cannot be a Related Party to any other member of the Applicant or Developer unless the other member is a wholly-owned subsidiary of the HUB or Qualified Nonprofit Organization. ~~(1 point)~~

10. §11.9(c)(2) – Selection Criteria – Rent Levels of the Tenants (19), (44)
COMMENT SUMMARY: Commenter (19) commented that qualified elderly developments in rural areas should receive 11 points, or 8 or 9 points respectively, along with supportive housing in rural areas, for this scoring item.

Commenter (44) recommended revisions to this scoring item that would make it consistent with §11.9(c)(1) – Income Levels of Tenants; otherwise urban developments would be required to provide the same deep rent skewing as the MSAs of our largest Texas cities. Commenter (44) recommended the following:

> "…(A) At least 20 percent of all low-income Units at 30 percent or less of AMGI for Supportive Housing Developments qualifying under the Nonprofit Set-Aside only (11 points);
>
> (B) At least 10 percent of all low income Units at 30 percent or less of AMGI or, for a Development located in a Rural Area or in the non-MSAs of Dallas, Fort Worth, Houston, San Antonio or Austin, 7.5 percent of all low income Units at 30 percent or less of AMGI (9 points); or
>
> (C) At least 5 percent of all low-income Units at 30 percent or less of AMGI (7 points)."

STAFF RESPONSE:
In response to commenter (19), staff believes the language should remain as proposed with the understanding that supportive housing developments target the lowest income households and should be recognized for doing so. Supportive housing transactions are generally backed by nonprofit organizations with a significant history of fundraising and a demonstrated ability to support ongoing operations through such activities. Staff does not believe it would be prudent to make other development type distinctions within this scoring criterion.

In response to commenter (44), staff believes the rules under §11.9(c)(1) and (c)(2) must be viewed together. When combining the two point items, three basic scoring tiers are evident. To achieve the maximum points under both of these criteria, the deepest rent and income targeting is required for the largest cities, while smaller Urban Areas follow with a lower tier, and Rural Areas with the lowest tier. Staff believes that these existing three tiers of differentiation are appropriate. Staff recommends no change based on these comments.

11. §11.9(c)(3) – Selection Criteria - Tenant Services

While no public comment was received on this scoring item, staff has clarified this item to reflect the minimum number of points selected at application must remain the same.

12. §11.9(c)(4) – Selection Criteria - Opportunity Index (12), (13), (14), (19), (23), (28), (30), (46), (47), (59), (60), (64), (66)
COMMENT SUMMARY: Commenter (14), (19), (28) requested the poverty level index be revised from 35% to 37% for Region 11 which would increase the number eligible census tracts to 53%, or roughly 18 census tracts. Such change would, according to commenter (28), improve the implementation of the Department's policy to encourage affordable housing in the most desirable locations in each region. Commenter (28) suggested no change for Region 13 and

stated that region 11, having metro areas with the highest poverty rate in the country, has a much higher incidence of poverty than region 13 and that currently 71% of the census tracts would qualify under the 35% poverty rate. Through their analysis on these regions in particular, commenter (14), (28) suggested that some of the other regions (*e.g.* regions 2, 8 and 10) differ significantly from the others with regards to poverty rates and suggested that in fairness to all, similar adjustments to these regions be made. Commenter (14), (19) suggested the poverty index be deleted for Rural Areas and all regions that have 50% or more of its census tracts over the poverty level or the Department should allow an increase to the poverty levels in Regions 2, 8, 10 and 11 to allow at least 50% of the tracts in the regions to qualify. The increases include the following:

Region	Metro Areas	Current Poverty Rate	% of Census Tracts that Qualify	Proposed Poverty Rate	% of Census Tracts that Qualify
2	Abilene-Wichita Falls	15%	44%	18%	52%
8	Bryan-Temple-Waco	15%	36%	20%	51%
10	Corpus Christi-Victoria	15%	42%	17%	52%
11	McAllen-Brownsville-Laredo	35%	47%	37%	52%

Commenter (23) requested clarification on whether supportive housing developments are considered to serve the general population in the context of this scoring item. Commenter (23) suggested that since supportive housing is not specifically designed for the elderly; therefore, it should be considered general population.

Commenter (12) suggested this scoring item references Texans most in need, but then focuses on the general population and offered the following recommended change:

> "(A) Development, regardless of population served; ~~targets the general population~~; income in the census tract is in the top quartile of median household income for the county or MSA as applicable and the elementary school is exemplary or recognized (7 points);
>
> (B) Development, regardless of population served ~~targets the general population~~; income in the census tract is in the top two quartiles of median household income for the county or MSA as applicable and the elementary school is exemplary or recognized (5 points);
>
> ~~(C) Any Development, regardless of population served is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable and the elementary school is exemplary or recognized (5 points);~~

(CD) Any Development, regardless of population served is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable (3 points); or

(DE) Any Development, regardless of population served is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable (1 point)."

Commenter (13) stated when a rural community is in an MSA, it is inappropriate to compare that community's household income to the household income of the MSA and further suggested the county's household income would provide a better comparison because it is more inclusive of a variety of income levels, both rural and urban. Commenter (13) offered the following proposed change:

"Developments located in Rural Areas are exempt from meeting the elementary school and poverty rate factors under each of subparagraphs (A) – (E) of this paragraph, and will utilize the county's household income for comparison purposes, but the elementary schools in which tenants may attend can have a rating below acceptable in order to qualify for points."

Commenter (66) recommended using the poverty rate for families or individuals (whichever yields the most positive result) for calculating the opportunity index criteria.

Commenter (19) stated this scoring item indicates that rural is exempt from the poverty rate factors and only has to have acceptable elementary schools, but it does not state how the application receives points, if any and requested clarification. Commenter (19), (60) also recommended those applications submitted under the at-risk set-aside be excluded from this scoring criteria since the intent behind the set-aside is to upgrade existing affordable housing stock and assure that it remain affordable. There is simply no opportunity to relocate an existing property. Scoring priorities reflected in the QAP could result in decisions made to rehabilitate a property based on eligible QAP points rather than actual need and deterioration of the existing property.

Commenter (30) recommended this scoring item should only be applied to Region 3 and not be implemented statewide. Commenter (64) recognized the Department's efforts to expand affordable housing to areas of opportunity; however, suggested the Department balance the allocation of tax credits for new construction and the preservation of existing housing, particularly where existing housing is principally occupied by low income minority households.

Commenter (46) suggested a typo may exist in the published draft and recommended the following:

"…Developments located in Rural Areas are exempt from meeting the elementary school and poverty rate factors under each of subparagraphs (A) – (E) of this paragraph, but the elementary schools in which tenants may attend cannot have a rating below acceptable in order to qualify for points."

Commenter (47) recommended this scoring item include additional categories for points and offered that elderly or supportive housing developments in the top two quartiles of median

household income that have an exemplary or recognized elementary school can be eligible for 4 points. Commenter (47) indicated the points awarded for the second quartile for non-general population developments are not equitable.

Commenter (59) observed the one point differential proposed between maximum points available for this scoring item and locations under a community revitalization plan is allowed under Section 42 of the Code; however, other states have decided to encourage tax credit developments in higher opportunity areas. These states have created a greater point spread for these areas than are given to those in QCT's that contribute to a concerted revitalization plan.

STAFF RESPONSE:
Several comments were received that relate to changes to the poverty percentage that is applicable to the various Urban sub-regions (poverty rates don't apply in Rural Areas). Most of the commenters provide as their rationale the differences between regions of the state and/or a focus on the percentage of census tracts that "qualify" based on the poverty factor. However, funds are regionally allocated specifically to address these types of regional differences. In the regional competitions, applications from one region do not compete against applications submitted from another region and this eliminates the issue of disparity between regions. Additionally, the commenters are focused on one factor of a multi-factor scoring item. The true impact that changes in the poverty factor will have on a regional or statewide basis are not known since an application cannot score solely because they meet one criterion. Therefore, analysis of only one criterion and subsequent changes to that one criterion on the basis of equity are not warranted without a complete analysis of all criteria necessary to meet the scoring item as a whole. Staff believes the item as drafted is fair and achieves the underlying policy goals intended through the inclusion of the Opportunity Index as a scoring criterion.

In response to commenter (12), general population developments can be constructed to meet the needs of elderly households and family households within the current constraints of the QAP. Moreover, in the published draft staff also removed the unit mix requirements to allow applicants to be more responsive to the specific demographic characteristics of the market in which a development is proposed. In addition, this scoring item is based on the Remedial Plan, and staff felt it appropriate to apply the Opportunity Index statewide.

In response to commenter (13), staff disagrees that all rural communities that are part of an MSA would necessarily identify more with the county median incomes as opposed to the incomes of the MSA. Again, this method was developed through the Remedial Plan and staff believes it appropriate to apply the same standard to the entire state. Additionally, the definition of what is rural and what is not rural is complex and incorporates determinations by the United States Department of Agriculture's Rural Development Office (USDA-RD). USDA-RD does not always make such determinations based on whole census tracts but much more difficult to replicate roadways and other manmade features. Therefore, staff would find it exceedingly challenging to specifically separate those "Rural" census tracts from "non-Rural" census tracts.

In response to commenter (66), the data for poverty among individuals is more accurate than the data for poverty among families. Poverty rates for "households" are not available in the American Community Survey and the term "family" is exclusive of many common household types. Therefore, use of a family based poverty rate could exclude many households. Staff believes the poverty rate based on all individuals is a more appropriate and complete measure.

In response to commenters (19), (46), staff has proposed revised language below that would clarify the scoring for rural developments as well as any requirements associated with the elementary school.

In response to commenters (19), (60), because at-risk applications do not compete with the general pool applications and because the Department is required to allocate a certain amount of funding to at-risk developments, the fact that it is difficult to find them in high opportunity areas should not affect the ability to identify and receive awards for eligible at-risk developments. If no developers identify at-risk developments in high opportunity areas, all applicants participating in the At-Risk Set-Aside will not be eligible for the points and the issue is moot. However, the Department will continue to incentivize developments in high opportunity areas so that in the case where there is an at-risk development in a high opportunity area, that application will be rewarded with additional points.

In response to commenter (30), staff believes it is appropriate to apply the opportunity index statewide. In addition, in response to commenter (64), there is currently no scoring item in the QAP that specifically and exclusively benefits new construction over rehabilitation. Regarding existing housing that is primarily occupied by low-income tenants and that needs rehabilitation, staff believes that these types of developments may be encouraged through local community revitalization plans or under the At-Risk Set-Aside.

In response to commenter (47), staff has clarified that supportive housing developments will score along with general population developments. Staff also reiterates that general population developments can be constructed to meet the needs of both elderly households and families (as well as many other diverse household variations), and staff does not believe a separate scoring level for elderly developments is necessary.

In response to commenter (59), staff is recommending some changes to the Community Revitalization Plan scoring item and the scoring differential is affected.

Staff has proposed the following changes to the Opportunity Index to clarify how supportive housing is classified and to clarify how developments in Rural Areas will be scored:

> "(4) Opportunity Index.
>
> (A) For Developments located in an Urban Area, ~~I~~if the proposed Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (or 35 percent for Developments in Regions 11 and 13), an Application may qualify to receive up to seven (7) points upon meeting the additional requirements in ~~subparagraphs~~ clauses (~~A~~i) – (~~E~~v) of this subparagraph. The Department will base poverty rate on data from the most recent 5-year American Community Survey as available on November 15. ~~Developments located in Rural Areas are exempt from meeting the elementary school and poverty rate factors under each of subparagraphs (A) – (E) of this paragraph, but the elementary schools in which tenants may attend can have a rating below acceptable in order to qualify for points. An elementary school attendance zone for the Development Site does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, districts with district-wide enrollment and only one~~

~~elementary school are acceptable. The applicable school rating will be the 2011 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions.~~

(~~A~~i) Development targets the general population or Supportive Housing; income in the census tract is in the top quartile of median household income for the county or MSA as applicable and the Site is in the attendance zone of an elementary school that is rated exemplary or recognized (7 points);

(~~B~~ii) Development targets the general population or Supportive Housing; income in the census tract is in the top two quartiles of median household income for the county or MSA as applicable and the Site is in the attendance zone of an elementary school that is rated exemplary or recognized (5 points);

(~~C~~iii) Any Development, regardless of population served, is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable and the Site is in the attendance zone of an elementary school that is rated exemplary or recognized (5 points);

(~~D~~iv) Any Development, regardless of population served, is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable (3 points); or

(~~E~~v) Any Development, regardless of population served, is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable (1 point).

(B) For Developments located in a Rural Area, an Application may qualify to receive up to seven (7) points upon meeting the requirements in clauses (i) – (v) of this subparagraph.

(i) Development targets the general population or Supportive Housing; income in the census tract is in the top quartile of median household income for the county or MSA as applicable and the Site is in the attendance zone of an elementary school that is rated at least acceptable (7 points);

(ii) Development targets the general population or Supportive Housing; income in the census tract is in the top two quartiles of median household income for the county or MSA as applicable and the Site is in the attendance zone of an elementary school that is rated at least acceptable (5 points);

(iii) Any Development, regardless of population served, is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable and the Site is in the attendance zone of an elementary school that is rated at least acceptable (5 points);

(iv) Any Development, regardless of population served, is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable (3 points); or

(v) Any Development, regardless of population served, is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable (1 point).

(C) An elementary school attendance zone for the Development Site does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment ~~and only one elementary school are acceptable~~ an Applicant may use the lowest rating of all elementary schools. The applicable school rating will be the 2011 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions."

13. §11.9(c)(5) – Selection Criteria – Educational Excellence (15), (17), (27), (30)

COMMENT SUMMARY: Commenter (15), (17), (27) suggested this scoring item would only result in denying crucial, affordable housing to certain communities which is contradictory to the spirit and intent of the tax credit program. Commenter (27) suggested an alternative approach should be to encourage the development of quality affordable housing in historically neglected, but now recovering low-income neighborhoods. Commenter (17) further stated that schools in the middle and upper class communities are more likely to be exemplary and recognized and, although it's not impossible for schools in low-income, ethnic minority neighborhoods to consistently reach this level it will take more time and resources. Commenter (15), (17) stated without affordable housing some school districts face a decrease in population and must close or consolidate schools. Commenter (27) indicated that simply placing low-income families in predominately white and high-income areas does not necessarily translate into greater opportunity nor is leaving their home neighborhoods, friends, schools and churches appealing to many low-income residents. Commenter (17), (27) recommended in lieu of the current language for this scoring item, the Department look at the trends of a school district versus the static figure of a previous academic rating, *e.g.* is the performance of the schools in the affected area trending upward over a 3 to 5 year period and is the performance of the school district improving over a similar time frame as certified to by the school district superintendent.

Commenter (30) recommended this scoring item should only be applied to the Region 3 and not be implemented statewide.

STAFF RESPONSE:

The Educational Excellence scoring item is required for Urban Region 3 under the Remedial Plan. However, staff believes application of this scoring item statewide is in line with the underlying policy imperative of the Department to facilitate the development of additional housing where access to high quality education is available. Since the Department's expertise

does not lie in accessing educational quality and opportunity, and the legislature has charged the Texas Education Agency with developing academic ratings, staff believes that relying on the Texas Education Agency's ratings is appropriate.

Staff recommends the following clarifying language:

> "…Educational Excellence. An Application may qualify to receive up to three (3) points for a Development Site located within the attendance zone of a public school with an academic rating of recognized or exemplary (or comparable rating) by the Texas Education Agency, as described in subparagraphs (A) and (B) of this paragraph. An attendance zone does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment ~~and only one elementary, middle or high school (as applicable) are acceptable~~an Applicant may use the lowest rating of all elementary, middle, or high schools, respectively. The applicable school rating will be the 2011 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings."

14. §11.9(c)(6)(B) – Selection Criteria – Underserved Area (6), (33), (46), (47), (66)
COMMENT SUMMARY: Commenter (33) suggested clarification for the economically distressed areas under this scoring item. Specifically, they contend that the Texas Water Development Board has two distinct and different definitions for what constitutes an economically distressed area. Commenter (33) stated that one definition was based on the median income for an area and another had to do with the availability and the financial ability for an area to provide water and sewer service. Moreover, commenter (33) indicated there were two different areas regarding qualification outside the definition; that there are some areas that are available to receive assistance through this program and then there are areas that have actually received assistance through this program. Commenter (33) requested clarification on whether both would be acceptable in order to claim the points or if it was one over the other. Commenter (33) stated the time period associated with economically distressed areas needs to be clarified, *e.g.* if the Department will allow points if it was within five years or a variation thereof, or if it needs to currently be an economically distressed area.

Commenter (6) recommended that elderly developments located in a rural area census tract that has no other tax credit developments be allowed 2 points. If there is another tax credit development then the application would receive 1 point.

Commenter (46) suggested there needs to be a proximity associated with applications trying to achieve points under the colonia option in this scoring item. Specifically, commenter (46) recommended a distance of a 1 mile radius from a colonia designated area.

Commenter (47), (66) suggested this scoring item be revised to reflect the following:

> "…An Application may qualify to receive up to two (2) points for proposed Developments located in one of the areas in subparagraphs (A) – (D) of this paragraph. ~~Points will be awarded based on the Development's Target Population as identified in subparagraph (E) or (F) of this paragraph.~~
>
> (C) A municipality, or if outside of the boundaries of any municipality, a county that has not~~never~~ received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation in the past 5 years; or
>
> (D) For Rural Areas only, a census tract that has not~~never~~ received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation in the past 5 years serving the same Target Population.
>
> ~~(E) General or Supportive Housing Developments (2 points); or~~
>
> ~~(F) Qualified Elderly Developments (1 point).~~"

STAFF RESPONSE:
Economically Distressed Areas are designated by the Texas Water Development Board (TWDB) and state statute provides the TWDB sole authority in this regard. The Department will rely on a letter or other correspondence from the TWDB to determine if a site is located in an Economically Distressed Area. Staff is not aware of other forms of verification for location in an EDA, although other acceptable forms may exist. Staff would be happy to review any such document and provide feedback.

In general, the structure and content of this scoring item is necessary to meet several statutory and Remedial Plan requirements. For example, expanding the point for location in a Colonia is not consistent with the Remedial Plan requirement to limit the non-high opportunity area scoring criteria. Likewise, the scoring differential for target population is consistent with the Remedial Plan as is the requirement to maintain the "never received a competitive tax credit allocation" language in subparagraphs C and D. However, due to the limitations of Department data, staff is recommending the following minor changes to this scoring item:

> "(6) Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive ~~up to~~ two (2) points for general or Supportive Housing Developments or one (1) point for Qualified Elderly Developments, if the proposed Development~~s~~ is located in one of the areas described in subparagraphs (A) – (D) of this paragraph. ~~Points will be awarded based on the Development's Target Population as identified in subparagraph (E) or (F) of this paragraph.~~
>
> (A) A Colonia;
>
> (B) An Economically Distressed Area;

(C) A ~~municipality~~Place, or if outside of the boundaries of any ~~municipality~~Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development; or

(D) For Rural Areas only, a census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population."

~~(E) General or Supportive Housing Developments (2 points); or~~

~~(F) Qualified Elderly Developments (1 point)."~~

15. §11.9(c)(7) – Selection Criteria – Tenant Populations with Special Housing Needs (2), (19), (36), (37)

COMMENT SUMMARY: Commenter (2), (19) requested the list of persons with special needs be revised to include wounded warriors, as defined by the Wounded Warriors Act of 2008. Commenter (37) recommended this scoring item be revised to include veterans by which a percentage of the units would be held for a period of time prior to being offered to other eligible tenants. Commenter (2) requested that applicants have the opportunity to obtain Department approval at the time of cost certification of other categories unanticipated at the time of application.

Commenter (36) stated this scoring item should include special needs groups for which Federal law specifically authorizes occupancy restrictions or preferences and recommends the following revision:

> "…For purposes of this scoring item, Persons with Special Needs is defined as persons with alcohol and/or drug addictions, Colonia residents, Persons with Disabilities, victims of domestic violence, persons with HIV/AIDS, homeless populations, groups covered by the clarification of the General Public Use Requirement in §3004(g) of the Housing and Economic Recovery Act of 2008 and migrant farm workers…."

Additionally, commenter (36) suggested significantly increasing the minimum set-aside percentage required under this scoring item from 5% to at least 20% or higher since the Americans with Disabilities Act already requires at least 5% of the units to accommodate persons with disabilities.

STAFF RESPONSE:

In response to commenters (2), (19), (37), staff has modified this criterion to include language for veterans and wounded warriors as noted below.

Staff does not recommend language to expand the criterion to cover additional populations or groups that may now be encompassed by the general use provisions as amended by the Housing and Economic Recovery Act of 2008. The Internal Revenue Service and Treasury have not provided specific guidance with respect to the changes in the general use provision and many questions regarding the application of the general use provision remain unanswered. An

expansion of this scoring item to incorporate such language will provide additional unnecessary uncertainty.

In response to commenter (36), increasing the percentage of units set-aside is not recommended as it may place developments in jeopardy of failing to initially lease up enough units in order to convert to a permanent mortgage as certain occupancy levels are usually requirements for conversion and equity contributions. The 5% requirement to meet ADA is a construction requirement and the subject rule is an occupancy requirement. The two were created for different purposes. However, the Department is currently a partner in a commissioned study to research service-enriched housing efforts for persons with disabilities in several other states. Staff will review the conclusions of this study and may find it prudent to recommend changes in a subsequent year.

Staff recommends the following language:

> "(7) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive up to two (2) points for Developments in which at least 5 percent of the Units are set aside for Persons with Special Needs. For purposes of this scoring item, Persons with Special Needs is defined as persons with alcohol and/or drug addictions, Colonia residents, Persons with Disabilities, victims of domestic violence, persons with HIV/AIDS, homeless populations, veterans, wounded warriors (as defined by the Caring for Wounded Warriors Act of 2008), and migrant farm workers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require a minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant. After the twelve-month period, the Development Owner will no longer be required to hold Units vacant for households with special needs, but will be required to continue to affirmatively market Units to household with special needs."

16. §11.9(d)(1) – Selection Criteria – Quantifiable Community Participation (12), (19), (42), (46), (47), (61)

COMMENT SUMMARY: Commenter (12) suggested this scoring item is unfair to other developers and developments as it sets out a standard that cannot be met by the majority of developments. Commenter (12) asserted this scoring item is a point "set-aside" and creates a limited competitive advantage for a select few and requested the two point provision for having a new support letter after previous year(s) non-support letters should be removed. Commenter (19) agreed with commenter (12) regarding the removal of the extra point and further added that there are super neighborhood associations whose boundaries cover large portions of some municipalities and who both support and oppose multiple applications. Commenter (19), (61) added that these groups or any neighborhood association's opposition of a development in a prior year has nothing to do with their perceptions of the merits of an application in the current round and therefore should not have a positive or negative effect on the application. Commenter (42) stated this does not create a level playing field and does not work to achieve the objective of creating high quality housing in areas with the greatest need. Commenter (47) expressed concurrence with prior comments on the removal of the additional 2 points and suggested that such bonus scoring should be limited to Region 3 in order to meet the remedial plan requirements.

Commenter (46) indicated the combination of no neighborhood organization comments with the 4 points allowed under §11.9(d)(2) – Community Input other than QCP where there is not an organization equaling the standard points for QCP from an established neighborhood organization violates Chapter 2306 and constitutes a work-around of the requirement.

Commenter (46) suggested the technical assistance allowed be revised to include a referral of the neighborhood association to a pro bono legal source by a developer who can help ensure they comply with the QAP requirements and their comments are scored and meaningful.

STAFF RESPONSE:

In response to commenters (12), (19) and (61), staff agrees that the additional point incentive for changes in a neighborhoods position from a prior year may give an advantage to only a few applications submitted in a given year. Staff intends the scoring items to provide points to only those applicants furthering a particular underlying policy objective and believes that the scoring item as drafted accomplishes this objective. Staff believes there is value in communicating with neighborhood organizations effectively and engaging in long term efforts to overcome issues that may initially contribute to objections to affordable housing. This additional point incentive is designed to reward such efforts. In response to commenter (42), while creating housing in areas with the greatest need is one of many policy objectives satisfied by this QAP, this particular scoring item addresses another objective, particularly community support and engagement.

In response to commenter (46), staff disagrees that the combination of the two scoring item violates Chapter 2306. The combination of the two scoring items serves to distinguish between the two types of organizations and ensures that Neighborhood Organizations ultimately have more power to influence the final score of an application, which is consistent with statute.

Staff does not interpret the rule to prohibit a simple referral to an attorney for legal advice and assistance.

Staff does agree that better guidance, certainty, and finality in the process will be helpful for both Neighborhood Organizations and challengers. Staff is inserting into §11.2 related to Program Calendar, a deadline to challenge opposition letters submitted by Neighborhood Organizations of May 1, 2013.

Staff recommends the following revision for clarification:

> "…Quantifiable Community Participation. (§2306.6710(b)(1)(B); §2306.6725(a)(2)) An Application may qualify for up to sixteen (16) points for written statements from a Neighborhood Organization. In order for the statement to qualify for review, ~~T~~the Neighborhood Organization must have been in existence prior to the Pre-Application Final Delivery Date, and its ~~be on record with the Department or county in which the Development Site is located and whose~~ boundaries must contain the Development Site~~, and which has been in existence no later than the Pre-Application Final Delivery Date.~~ In addition, the Neighborhood Organization must be on record with the state (or the Department) or county in which the Neighborhood Organization is located. Neighborhood Organizations may request to be on record for the current application cycle with the Department by submitting

documentation (such as evidence of board meetings, bylaws, etc.) by the Quantifiable Community Participation (QCP) Delivery Date. The written statement must meet the requirements in subparagraph (A) of this paragraph…"

...(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in clauses (i) – (vi) of this subparagraph. Points will not be cumulated. Where more than one written statement is received for an Application, the averaged weight of all statements received in accordance with this subparagraph will be assessed and awarded….

(v) ten (10) points for areas where no Neighborhood Organization is in existence, equating to neutrality; or

(vi) zero (0) points for statements of opposition meeting the requirements of this subsection.

(D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local governmental entity having jurisdiction or oversight over the funding or determination. If any such statement ~~comment~~ is challenged, the challenger must declare the basis for the challenge.."

17. §11.9(d)(2) – Selection Criteria – Community Input other than Quantifiable Community Participation (6), (44), (66)

COMMENT SUMMARY: Commenter (6) suggested that applications for which a neighborhood organization submits a letter that does not qualify under §11.9(d)(1) - Quantifiable Community Participation and receives 10 points under §11.9(d)(1)(C)(iv) be allowed to qualify for points under this scoring item. Commenter (6) further stated that such recommendation is consistent with the treatment under the 2011 QAP for applications that received ineligible QCP letters.

Commenter (44), (66) recommended letters received in opposition should not count against letters of support from a community or civic organization. Commenter (66) further explained that such provision imposes an additional barrier to working in NIMBY areas, many of which are in high opportunity areas, and such mechanism would impede high opportunity development in conflict with the remedial plan.

STAFF RESPONSE:

In response to commenters (44), (66), scoring only those letters that express support is not consistent with assessing the level of community support for an application.

Staff agrees with commenter (6) and has made the following change:

"(2) Community Input other than Quantifiable Community Participation. If ~~there is no Neighborhood Organization on record~~an Application receives points under §§11.9(d)(1)(C)(iv) or (v) of this chapter, then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any

circumstances. All letters must be submitted within the Application. At no time will the Application receive a score lower than zero (0) for this item."

18. §11.9(d)(3) – Selection Criteria – Commitment of Development Funding by Unit of General Local Government (6), (10), (11), (12), (15), (19), (20), (22), (27), (29), (43), (44), (46), (47), (52), (56), (60), (61), (66), (70)

COMMENT SUMMARY: Commenters (26), (28), (29), (30), (34), (38), (39), (48), (50), (52), (53), (54), (55), (59), (63), (67) suggested this scoring item be revised to recognize that financial contributions and/or project based vouchers by a housing authority should be equivalent to a contribution by a city or a county. Commenter (30) further suggested Replacement Housing Factor Funds, Public Housing Operating subsidy and Section 8 vouchers qualify as potential sources of funding. Commenter (29), (59) explained that pursuant to §392 of the Texas Local Government Code a housing authority is a unit of local government and the functions of a housing authority are essential governmental functions, not propriety functions. Commenter (29) further stated that an opinion issued by the Texas Attorney General concluded that a municipal housing authority is a division of the city that created it. Commenter (59) indicated that a recent court ruling (*e.g. Housing Authority of City of Dallas v Killingsworth*) upheld that housing authorities are political subdivisions of the state. Commenter (52), (59) stated that while Chapter 2306 does not define local political subdivision, it does define local government as an entity created under Chapter 394 of the Local Government Code of which housing authorities are organized and further suggested that due to the ambiguity in interpreting this statutory provision the Department should follow the precedent of more than 10 years and continue to allow housing authorities to qualify. Commenter (59) pointed out that prior year QAP's used the phrase Unit of General Local Government or a Governmental Instrumentality without narrowing the scope to include only cities, counties or entities governed by a majority of elected officials.

Commenter (34) stated this scoring item is unfair to housing authorities because they become a related party to the transaction as a result of creating their own entity in order to self-develop. The related party issue would render such application ineligible because vouchers would come from the local housing authority which would be a related party to the applicant.

Commenter (22) stated economic development funds in rural areas are largely concentrated in economic development corporations (EDC) that operate throughout the county. Commenter (22), along with commenter (61), this scoring item be broadened to include funding sources from any quasi-governmental entity operating under the authorization of the city or county in which a development is located. This would encourage more rural communities to partner in the development of affordable housing in their community. Commenter (43) indicated they are not sure that an EDC can first award funds to the city and it appears that EDC's may not have at least 60% of their governing board be city council members. Commenter (19) provided similar comments, specifically, that local funding entities in rural areas should include any entity under the authority of the city or county. Commenter (11), (43), (60) provided similar suggestions that would allow some EDC's and some public housing authorities to qualify for points under this scoring item as reflected in the following revision:

"An Application may receive up to thirteen (13) points for a commitment of Development funding from the city or county in which the Development is proposed to be located. Development funding from instrumentalities of a city or county will not qualify for points under this scoring item unless such

instrumentalities are first awarding such funds to the city or county for their administration, ~~or~~ at least 60 percent of the governing board of the instrumentality is city council members from the city in which the Development will be located (for Developments located in a city) or county commissioners from the county in which the Development will be located (for Developments not located in a city), or the city council, mayor and/or county commissioners appoint the governing board. A government instrumentality may not be a Related Party to the Applicant."

Commenter (28), (34), (38), (39), (48), (50), (53), (54), (55), (61), (67) suggested the Department remove the restrictions on instrumentalities and noted that government instrumentalities such as a public facility corporation (PFC) was created under Chapter 303 of the Texas Local Government Code and allows local governments to carry out activities with their instrumentalities, such as the PFC.

Commenter (56), (61) stated this scoring item should be broad enough to include multi-jurisdictional entities and cited housing finance corporations as an example since such entities are often formed by a contingent of counties to gain efficiency of scale and maximize the value of the opportunities being presented to their constituents.

Commenter (10), (43), (44), (46), (47), (52), (59) suggested non-participating jurisdictions be allowed to apply for the Department's HOME funds in order to be eligible for these points or, as recommended by commenter (47), if non-participating jurisdictions cannot count then HOME funds from any jurisdiction should not be allowed to achieve points. Commenter (59) stated the Department's HOME funds provide a viable financing mechanism for housing tax credit developments in high opportunity areas and should remain eligible under this scoring item. Commenter (10), (44) noted smaller communities are already burdened with the cost of extending their infrastructure and cannot necessarily compete with larger entitlement cities in order to secure these points. Commenter (29) provided similar comments and suggested that public housing is currently being built utilizing a myriad of funding sources, including tax credits, and further stated that cities view housing authorities as an integral funding source and that such funds are clearly designed to work in conjunction with the city's needs. Commenter (44) recommended the following revisions:

"…Development funding from instrumentalities of a city or county will not qualify for points under this scoring item unless such instrumentalities are first awarding such funds to the city or county for their administration or at least 60 percent of the governing board of the instrumentality is city council members from the city in which the Development will be located (for Developments located in a city) or county commissioners from the county in which the Development will be located (for Developments not located in a city). A government instrumentality may not be a Related Party to the Applicant. Development funding must be provided in the form of a construction and/or permanent loan with an interest rate no higher than the Applicable Federal Rate (AFR) and term of at least 5 years, a grant, an in-kind contribution, a contribution which will support the Development, such as vouchers, or combination thereof. Funds cannot have been provided to the Unit of General Local Government by the Applicant or a Related Party. ~~HOME Investment Partnership Program or Community Development Block Grant funds administered by the State of Texas~~

~~cannot be utilized for points under this scoring item.~~…. ~~-~~A firm commitment of funds is required by Commitment or the points will be lost (except for Applicants electing the point under subparagraph (C~~B~~) of this paragraph).

(A) Applications will qualify for points based on the amount of funds at the levels described in clauses (i) – (v) of this subparagraph. For the purpose of this calculation, the Department will use the population of the Place from which the Development's Rural or Urban Area designation is derived. For developments located outside a census designated place, the Department will use the population of the nearest place.

(i) ~~twelve~~ten (10~~2~~) points for a commitment by a Unit of General Local Government of the lesser of the population of the Place multiplied by a factor of 0.06~~15~~ in funding per Low Income Unit and $15,000 in funding per Low Income Unit;

(ii) ~~eleven~~nine (9~~11~~) points for a commitment by a Unit of General Local Government of the lesser of the population of the Place multiplied by a factor of 0.04~~10~~ in funding per Low Income Unit and $10,000 in funding per Low Income Unit;

(iii) ~~ten~~eight (8~~10~~) points for a commitment by a Unit of General Local Government of the lesser of population of the Place multiplied by a factor of 0.02~~5~~ in funding per Low Income Unit and $5,000 in funding per Low Income Unit;

(iv) ~~nine~~seven (7~~9~~) points for a commitment by a Unit of General Local Government of the lesser of the population of the Place multiplied by a factor of 0.004~~025~~ in funding per Low Income Unit and $1,000 in funding per Low Income Unit; or

(v) ~~eight~~six (6~~8~~) points for a commitment by a Unit of General Local Government of the lesser of the population of the Place multiplied by a factor of 0.002~~01~~ in funding per Low Income Unit and $500 in funding per Low Income Unit.

(B) Two (2) points may be added to the points in subparagraph (A) of this paragraph if at least 10% of the total Development funding is derived from non)HOME Investment Partnership Program or Community Development Block Grant funds.

(C~~B~~) One (1) point may be added to the points in subparagraph (A) of this paragraph if the Applicant provides a firm commitment for funds in the form of a resolution from the Unit of General Local Government in the Application.

Commenter (12) asserted not all developments are under the aegis of a local government and stated that Native American lands and potential developments on Federal or State lands do not really fit under this item. Commenter (12) suggested the funding requirement should be expanded to include the entity which exercises ultimate authority and control over the development and offered the following recommended change:

"….An Application may receive up to thirteen (13) points for a commitment of Development funding from the city or county in which the Development is proposed to be located, unless the Development is located on State or Federal property, in which case the Development may receive points for a

commitment of State or Federal funding, grants, contributions of land/ground leases or in-kind services to the Development."

Commenter (20) stated the expectation that a smaller city can bring to the table the same amount of money as a larger city doesn't seem fair and recommended the top threshold of $15,000 for this item be changed to a population of 500,000 or one million. Commenter (20) further recommended there be more spread between the point thresholds to allow for more scoring differential and create possibly three categories instead of the current five. Such recommendation from commenter (20) included $500, $7,500 and $15,000 categories. Commenter (27) provided similar comment and recommended the following levels:

$20,000 per unit could receive 15 points,
$15,000 per unit could receive 12 points,
$10,000 could receive 10 points and
$5,000 per unit could receive 8 points.

Commenter (43) suggested the factor be determined based on a population of 250,000 (*e.g.* a factor of 0.06 in funding per low income unit and $15,000 in funding per low income unit, etc for each of the point categories.)

Commenter (52) proposed lowering the funding amounts to a level that is within reach of local governments and that is consistent with the level of gap financing tax credit developments need at current equity pricing.

Commenter (6) stated that the applicable federal rate terminology has been used for several years in the QAP and, at present, represents a rate of 0.93%. Based on the published draft loans intended to qualify for this item would not qualify based on the terminology used. Commenter (6) recommended the interest rate for loans under this section be required to be no higher than 3% and requested the Department define the data source used to determine the population of a Place. Commenter (46) offered the AFR is impractical and suggested the interest rate be allowed to float or be fixed and the benchmark be prime minus 1% as an acceptable below market interest rate.

Commenter (15), (27) suggested this item be revised where the development would receive these points only if there was a major financing infusion from the local government and further stated that in doing so, revitalization developments that are receiving large amounts of local funding would be preferred, compared to those developments not receiving similar levels of support.

Commenter (19) requested clarification on whether a construction loan under this scoring item can be paid off earlier than 5 years and further suggested that such a loan will be higher than the current AFR. Commenter (19) recommended revising this item to allow for the ability to prepay anytime before the 5-year term. Commenter (46) suggested there is no difference in projections from either 3 or 5 year loans and a term of 3 years is more workable in the practical timeline of a tax credit development. Commenter (46) further suggested the Department consider in future years awarding points related to the length of time the funding is in place.

Commenter (19) stated the graduate scale of funding based on population is a good change and will resolve some of the inequities between urban and rural; however, the published draft

language is confusing and commenter (19), (61) requested an example in the QAP that demonstrates a calculation of the amount given the population with a multiplier.

Commenter (43), (66) suggested the award of funds under this item be required to occur no later than at the time of Commitment, rather than August 1. Commenter (52) proposed changing the deadline for the final commitment to November 1 instead of August 1 since large cities will not be able to meet the August 1 deadline.

Commenter (70) expressed support for the published draft language and stated without such language an unfair advantage would be realized by local public housing authorities with the higher thresholds for contributions and points also being proposed in the draft language. Commenter (70) further stated that any scoring item that would allow for an unfair advantage to be realized by a public entity over a private entity goes against the original intent of the Section 42 program and is innately unfair.

STAFF RESPONSE:
Several commenters recommended changes that would include a broader range of government instrumentalities. Staff is recommending changes to this scoring item to include more government instrumentalities provided the governing board is appointed by local elected officials. However, staff recommends no change in the requirement that the funds be provided by an entity that is not related to the Applicant.

In response to commenter (34), the language as recommended does not prevent public housing authorities from contributing vouchers or other assistance to affordable housing development, nor does it prevent them from owning tax credit developments. The item as drafted simply prevents any owner from receiving points for funding under their control. The purpose of this scoring item is not and should not be to provide a distinct and exclusive advantage to certain instrumentalities that engage in funding housing development that they develop and own.

In response to commenters (11), (19), (22), (43), (60) and (61), staff agrees that government instrumentalities that act under the authority of the local government should qualify for points and has adjusted the language accordingly as noted below. However, staff disagrees with several other commenters' suggestions that funding from other government instrumentalities that can act without the consent of the local government should qualify for points.

In response to commenter (12) regarding the inclusion of the use of federal or state land, staff agrees that it does not fit under this scoring criterion because it is not a local source. However, a land donation may help an applicant reach maximum scoring under leveraging of private, state, and federal resources.

The addition of Department HOME funds awarded directly to the Applicant as a funding source eligible for points under this scoring item is not recommended. Staff believes that the addition of state HOME funds awarded directly to an Applicant would not be consistent with the statutory requirement that the funds come from a local political subdivision. However, the scoring item is structured to account for the size of a municipality in order to allow smaller jurisdictions to more effectively compete with larger jurisdictions. Additionally, staff is recommending, as noted below, that a resolution of support qualify for 7 points, which is less than the lowest top ten scoring item and consistent with statute.

Several commenters provided suggestions to change the scoring levels and/or the population-based factor used to determine the funding levels applicable to smaller jurisdictions. Staff believes that the item as drafted provides for an appropriate balance between the size of a jurisdiction, funding amounts, and the overall position of the scoring item in relation to the other scoring items. Changes in point values to provide more weight to higher levels of funding could skew the point item such that it becomes one of the sole determinants in whether an application scores competitively. This is counter to the objective of achieving balance among the scoring items such that an applicant can achieve a competitive score through multiple avenues. In addition, these population factors and thresholds for points acknowledge the fact that larger cities are often participating jurisdictions receiving HOME funds directly from HUD.

In response to commenter (6), staff recommends changing the interest rate maximum from the Applicable Federal Rate to a flat 3%. This change accomplishes the goal of financing being below market while providing more clarity to applicants and funding entities. Staff recommends no change to the 5 year term requirement but prepayment of loan funds is not disallowed as drafted. As drafted a firm commitment may be approved after August 1, 2013 provided the tax credit commitment is due after August 1, 2013.

In response to commenters (19), (61), staff will provide an example of how the scoring is calculated in the multifamily programs procedures manual.

Staff appreciates the support from Commenter (70).

Staff recommends the following changes to this scoring item:

> "(3) Commitment of Development Funding by Unit of General Local Government. (§2306.6710(b)(1)(E)) An Application may receive up to thirteen (13) points for a commitment of Development funding from the city or county in which the Development is proposed to be located. Development funding from instrumentalities of a city or county will not qualify for points under this scoring item unless such instrumentalities ~~are~~ first award~~ing such~~ the funds to the city or county for their administration, ~~or~~ at least 60 percent of the governing board of the instrumentality is city council members from the city in which the Development will be located (for Developments located in a city) or county commissioners from the county in which the Development will be located (for Developments not located in a city), or 100 percent of the governing board of the instrumentality is appointed by the elected officials of the city in which the Development is located (if the Development is located within a city) or county in which the Development is located (for Developments not located within a city). ~~A~~ The government instrumentality providing Development funding under this scoring item may not be a Related Party to the Applicant. Development funding must be provided in the form of a construction and/or permanent loan with an interest rate no higher than ~~the Applicable Federal Rate (AFR)~~3 percent per annum and term of at least 5 years, a grant, an in-kind contribution, a contribution which will support the Development, such as vouchers, or combination thereof. Funds cannot have been provided to the Unit of General Local Government by the Applicant or a Related Party. HOME Investment Partnership Program or Community Development Block Grant funds administered by the State of Texas

cannot be utilized for points under this scoring item except where the city, county, or instrumentality is an actual applicant for and subrecipent of such funds for use in providing financial support to the proposed Development The Applicant must provide evidence in the Application that an application or request for the development funds has been submitted in the form of an acknowledgement from the applicable city or county. The acknowledgement must also state that a decision with regard to the awards of such funding will occur no later than August 1. A firm commitment of funds is required by Commitment or the points will be lost (except for Applicants electing the point under subparagraph (B) of this paragraph).

(A) Applications will qualify for points based on the amount of funds at the levels described in clauses (i) – (v) of this subparagraph. For the purpose of this calculation, the Department will use the population of the Place from which the Development's Rural or Urban Area designation is derived. For ~~d~~Developments located outside a census designated place, the Department will use the population of the nearest ~~place~~Place.

(i) twelve (12) points for a commitment by a Unit of General Local Government of the lesser of the population of the Place multiplied by a factor of 0.15 in funding per Low Income Unit ~~and~~ or $15,000 in funding per Low Income Unit;

(ii) eleven (11) points for a commitment by a Unit of General Local Government of the lesser of the population of the Place multiplied by a factor of 0.10 in funding per Low Income Unit ~~and~~ or $10,000 in funding per Low Income Unit;

(iii) ten (10) points for a commitment by a Unit of General Local Government of the lesser of population of the Place multiplied by a factor of 0.05 in funding per Low Income Unit ~~and~~ or $5,000 in funding per Low Income Unit;

(iv) nine (9) points for a commitment by a Unit of General Local Government of the lesser of the population of the Place multiplied by a factor of 0.025 in funding per Low Income Unit ~~and~~ or $1,000 in funding per Low Income Unit; or

(v) eight (8) points for a commitment by a Unit of General Local Government of the lesser of the population of the Place multiplied by a factor of 0.01 in funding per Low Income Unit ~~and~~ or $500 in funding per Low Income Unit.

(vi) seven (7) points for a resolution of support from the Governing Body of the city (if located in a city) or county (if not located within a city) in which the Development is located stating that the city or county would provide development funding but has no development funding available due to budgetary or fiscal constraints and, despite reasonable efforts, has been unable to identify and secure any such funding. The resolution must be submitted with the Application and dated prior to March 1, 2013. A general letter of support does not qualify.

(B) One (1) point may be added to the points in clauses (i) – (v) of subparagraph (A) ~~of this paragraph~~ if the Applicant provides a firm commitment for funds in the form of a resolution from the Unit of General Local Government in the Application."

19. §11.9(d)(5) – Selection Criteria – Declared Disaster Area

While no public comment was received on this item in particular, staff is recommending the following language in order to clarify that pre-emptive disaster declarations will not qualify for points.

"(5) Declared Disaster Area. (§2306.6710(b)(1)) An Application may qualify to receive up to eight (8) points for this scoring item. An Application will receive seven (7) points if at the time the complete Application is submitted or at any time within the two-year period preceding the date of submission, the proposed Development Site is located in an area declared to be a disaster area under of the Texas Government Code, §418.014 (this excludes disaster declarations that are pre-emptive in nature). An Application will receive eight (8) points if the disaster declaration, within the two-year period preceding the date of submission, is localized, in other words, if the disaster declaration does not apply to the entire state."

20. §11.9(d)(6) – Selection Criteria – Community Revitalization Plan (6), (11), (12), (15), (16), (17), (18), (19), (22), (27), (30), (40), (42), (43), (44), (45), (46), (49), (52), (56), (60), (61), (62), (63), (69), (70), (71)

COMMENT SUMMARY: Commenter (22), (43), (61) suggested this item be revised so rural areas achieve parity with developments in urban areas for revitalization efforts. Commenter (11), (61) suggested rural developments be eligible to receive points by submitting a community revitalization plan. Commenter (19), (22) indicated there are rural communities that have created a redevelopment plan and should therefore receive full points for either having a redevelopment plan or the extension of utilities. Similarly, commenter (6) suggested that many cities have community revitalization plans that meet the spirit of this scoring item; however, they do not follow a format that identifies specific financial projections as required under §11.9(d)(6)(A)(i)(VI). Commenter (6) recommended applicants be allowed to submit a letter from an authorized city official identifying the economic impact of the community revitalization plan.

Commenter (19), (22), (61) requested the definition of infrastructure be expanded to include parks, streetscapes and other community-wide amenities that would improve the quality of life for residents and commenter (6) recommended that infrastructure work be approved prior to the submission of the full application although the work can still be completed within 12 months. Commenter (6) further suggested the following revisions:

"(C) For Developments located in a Rural Area….

(I) Paved roadways or expansion of paved roadways by at least one lane;

(II) Water ~~and/or wastewater service~~;

(III) Wastewater service;

(IV~~II~~) Construction of a new police or fire station within one (1) mile of the Development Site that has a service area that includes the Development Site; and

(~~I~~V) Construction of a new hospital or expansion of an existing hospital's capacity by at least 25 percent within five (5) miles of the Development Site and ambulance service to and from the hospital is available at the Development Site. Capacity is defined as total number of beds, total number of rooms or total square footage of the hospital.

Commenter (43) suggested the following changes to the list of infrastructure projects:

(I) Paved roadways or expansion of paved roadways by at least one lane;

(II) Water and/or wastewater service;

(III) Construction of a new police or fire station ~~within one (1) mile of the Development Site~~ that has a service area that includes the Development Site; and

(IV) Construction of a new hospital or expansion of an existing hospital's capacity by at least 25 percent within five (5) miles of the Development Site and ambulance service to and from the hospital is available at the Development Site. Such hospitals shall include emergency care centers.

Commenter (43) provided similar comments to that of commenter (6) regarding the timeframe for infrastructure but suggested the timeframe be revised from 12 months to 24 months. Commenter (16) indicated that in rural communities capital projects are less frequent and more likely to be further away from the development site and suggested the following change:

"…(i)…The project or infrastructure must have been completed no more than ~~twelve (12)~~thirty-six (36) months prior to the beginning of the Application Acceptance Period or be approved and projected to be completed within twenty-four (24) ~~twelve (12)~~ months from the beginning of the Application Acceptance Period…."

Commenter (12) suggested this item limits the provision of infrastructure or added services for rural developments to city, county or state governments; however, the primary jurisdictional authority on some potential sites may be Federal and recommended the following revision to §11.9(d)(6)(C):

"(C) For Developments located in a Rural Area.

(i) An Application may qualify for up to six (6) points if the city, county, ~~or~~ state or Federal government has approved expansion of any of the basic infrastructure or projects to the Development Site described in subclauses (I) – (IV) of this clause, or improvements to areas within a quarter mile of the Development Site, unless a different distance is otherwise identified."

Commenter (70) indicated the language pertaining to (C)(i) – Developments in a Rural Area is too broad and may unintentionally disallow any developer who has paid taxes or fees to a local governmental entity. Commenter (70) suggested the following revision to this section:

"(C) For Developments located in a Rural Area.

(i) An Application may qualify for up to six (6) points if the city, county, state, or federal government has approved expansion of any of the basic infrastructure or projects to the Development Site described in subclauses (I) – (IV) of this clause, or improvements to areas within a quarter mile of the Development Site, unless a different distance is otherwise identified. The Applicant or Related Party cannot contribute funds for or finance the project or infrastructure, except through the normal and customary payment of property taxes, franchise taxes, sales taxes, impact fees and/or any other taxes or fees traditionally used to pay for or finance such infrastructure by cities, counties, state or federal governments or their related subsidiaries.~~,~~"

Commenter (15), (18), (27), (45), (49), (62) suggested developments located in a QCT that are part of a comprehensive revitalization plan supported by the city should be eligible to receive these points. Commenter (27) further recommended that while the Remedial Plan allows 7 points for this item, since QCT revitalization is at the heart and soul of the enabling legislation, this scoring item is inadequate and proposed that such application qualify to receive up to 10 points. Commenter (15), (27) recommended since nonprofits are at the heart of community revitalization, giving a preference for revitalization developments for those applications competing in the nonprofit set-aside might ensure revitalization efforts made by nonprofits.

Commenter (42) stated this scoring item does not take into consideration the population of a city in which the revitalization plan is located and cited larger cities, with sufficient budgets the ability to receive maximum points while leaving out smaller cities with budgetary constraints. Therefore, according to commenter (42), developers will target revitalization areas in large cities that will primarily include QCTs which will not meet the objectives citied in the Remedial Plan since housing will not be placed in areas of high opportunity. Similarly, commenter (44) suggested this item base points on where a development is located instead of a budget amount which is problematic when considering the size of the city, the revitalization efforts and type of funding to be used in a particular area. Moreover, commenter (44), similar to commenter (6), recommended the item provide flexibility to allow the city to certify to an area that may not be defined as a community revitalization plan but has boundaries where the city is or plans to spend significant resources to accomplish a defined purpose. Commenter (44) provided the following recommended changes:

"(A) For Developments located in an Urban Area of Region 3.

(-a-) adverse environmental conditions…,
(-b-) presence of blighted structures;
(-c-) presence of inadequate transportation;
(-d-) lack of accessibility to and/or presence of inadequate health care facilities, law enforcement and fire fighting facilities, social and recreational facilities,…
(-e-) the presence of significant crime;
(-f-) the presence, condition, and performance of public education;~~ or~~
(-g-) the presence of local business providing employment opportunities; or~~,~~
(-h-) any other factors that the municipality or county as targeted and committed resources to address within a defined area.

(V) The adopted plan, taken as a whole, must be a plan that can reasonably be expected to revitalize the community and address in a substantive and meaningful way the material factors identified. ~~The adopted plan must specifically address how the providing of affordable rental housing fits into the overall plan and is a necessary component thereof.~~

(ii) Points will be awarded based on:

(I) ~~Applications will receive~~ six (6) points will be awarded if the proposed Development covered by the community revitalization plan ~~has~~is located in a ~~total budget or projected economic value of $6,000,000 or greater~~Qualified Census Tract;

(II-) ~~Applications will receive~~ four (4) points will be awarded in the proposed Development covered by the ~~if the~~ community revitalization plan is not located in a Qualified Census Tract~~has a total budget or projected economic value of at least $4,000,000~~; or

~~(III) Applications will receive two (2) points if the community revitalization plan has a total budget or projected economic value of at least $2,000,000.~~

(B) For Developments located in Urban Areas outside of Region 3.

(i) An Application may qualify for up to six (6) points for meeting the criteria under subparagraph (A) of this paragraph (with the exception of being located in Region 3); or

(ii) An Application will qualify for six (6) points if the city or county has an existing plan for Community Development Block Grant - Disaster Relief Program (CDBG-DR) or Community Development Block Grant or HOME Investment Partnership Entitlement (CDBG or HOME Entitlement) funds that includes the meets the requirements of subclauses (I) - (V) of this clause. In order to qualify for points, the development Site must be located in ~~the target~~a targeted area defined by the plan, and the Application must have a commitment of the applicable~~CDBG-DR~~ funds from the municipality or county: ~~and receive a HUD Site and Neighborhood Clearance with HUD review or approval of such clearance:~~

(I) the plan defines specific target areas for redevelopment ~~of~~ that includes housing that do not encompass the entire jurisdiction;

(II) the plan affirmatively addresses Fair Housing;

~~(III) the plan is subject to administration in a manner consistent with the findings of an Analysis of Impediments approved or accepted by HUD within the last three (3) calendar years;~~

(III~~III~~IV) the plan is in place prior to the Pre-Application Final Delivery Date; and

(IV~~V~~) the plan (in its entirety) and a letter from a local government official with specific knowledge and oversight of implementing the plan are included in the pre-application.

Commenter (30), (63) suggested in lieu of revitalization plans, the QAP include an allowance for multiple overlapping planning efforts (i.e. transit oriented development plan, inner city reinvestment/infill policy, tax increment reinvestment zones) to be recognized as a community

revitalization plan, provided at least one of those efforts has been adopted by city council; developments that are within a broader federal program initiative, such as CHOICE Neighborhoods, HOPE VI or Sustainable Communities efforts; removing points earned for size of budget since small initiatives can be transformative if carefully planned and leveraged; replace with points earned for scope of plan (*e.g.* elements of scope can include environmental remediation, transportation, education, safety, work force development, housing and health). Developments that address 3 elements can be eligible for 2 points, 5 elements could receive 4 points and 7 elements could receive 6 points. Commenter (30), (63) indicated that if the aforementioned recommendations are not implemented then the timeframe should be extended to March 31 to at least allow for the completion and adoption of community plans which are currently underway.

Commenter (56) suggested this item is overly restrictive and suggested that Tax Increment Financing (TIF) districts or other similar variations of this type be eligible for consideration. According to commenter (56) TIF is often designed to channel funding toward improvements in distressed, underdeveloped or underutilized parts of a jurisdiction where development might otherwise not occur.

Commenter (40) stated limiting this item to sites targeted for CDBG-DR funding unnecessarily penalizes viable, beneficial rehabilitation developments which are outside of these target areas and recommends the Department broaden this scoring item to include other types of revitalization plans which are recognized by the city or relevant authority. Commenter (46) suggested the inclusion of community revitalization plans outside of Region 3 is not consistent with the remediation order and such approach should only be considered once approval from the Court is received. While CDBG-DR funding in a plan is worthy, the Department cannot dictate what they achieve in their plans and points should be awarded so long as the community is putting resources compliant with the HUD and GLO contract requirements. Commenter (46) suggested an applicant must have these funds at the time of Commitment or the points as well as pre-application participation points will be lost. Commenter (46) further expressed the CDBG-DR funds are long delayed and more flexibility should be granted in order to leverage them in these transactions. Commenter (46) suggested the following revision:

"(B) For Developments located in Urban Areas outside of Region 3.

(i) An Application may qualify for up to six (6) points for meeting the criteria under subparagraph (A) of this paragraph (with the exception of being located in Region 3); or

(ii) An Application will qualify for six (6) points if the city or county has an existing plan for Community Development Block Grant - Disaster Relief Program (CDBG-DR) funds that includes the meets the requirements of subclauses (I) - (V) of this clause. In order to qualify for points, the development Site must be located in the target area defined by the plan, and the Application must have a commitment of CDBG-DR funds and receive a HUD Site and Neighborhood Clearance with HUD review or approval of such clearance:

~~(I) the plan defines specific target areas for redevelopment of housing that do not encompass the entire jurisdiction;~~

(I~~I~~) the plan affirmatively addresses Fair Housing;

(II~~I~~) the plan is subject to administration in a manner consistent with the findings of an Analysis of Impediments approved or accepted by HUD within the last three (3) calendar years; and

(III~~V~~) the plan is in place prior to the Pre-Application Final Delivery Date."~~; and~~

~~(V) the plan (in its entirety) and a letter from a local government official with specific knowledge and oversight of implementing the plan are included in the pre-application.~~

Commenter (46) indicated the community revitalization plans in this item should not be allowed since the Judge in the final order regarding the Remedial Plan specifically omitted it. Commenter (46) further stated that for developments located in Region 3 it will cause tax credit developments to be placed in areas that created the fair housing issues in the lawsuit, in lieu of them going to a more appropriate and impactful development in an opportunity area.

Commenter (52) stated the HUD Site and Neighborhood clearance is not possible at the tax credit application stage and HUD processing time precludes this clearance so early in the development process. Commenter (60) stated the Site and Neighborhood Clearance is only conducted by HUD where the participating jurisdiction's Site and Neighborhood Clearance process is under review, otherwise a participating jurisdiction is required to maintain records that would comply with those standards prescribed by 24 CFR 983.57. Additionally, commenter (60) stated CDBG-DR sub-recipients were required to submit a Fair Housing Activity Statement-Texas in order to apply for Disaster Recover Funds which is the primary fair housing document to demonstrate commitment and action steps to affirmatively further fair housing. As a result of these comments, commenter (60) recommended the following revisions:

"…(ii) An Application will qualify for six (6) points if the city or county has an existing plan for Community Development Block Grant - Disaster Relief Program (CDBG-DR) funds that includes the meets the requirements of subclauses (I) - (V) of this clause. In order to qualify for points, the development Site must be located in the target area defined by the plan, and the Application must have a commitment of CDBG-DR~~ funds and receive a HUD Site and Neighborhood Clearance with HUD review or approval of such clearance~~:

(I) the plan defines specific target areas for redevelopment of housing that do not encompass the entire jurisdiction;

(II) the plan affirmatively addresses Fair Housing demonstrated through an approved Fair Housing Activity Statement-Texas (FHAST);

(III) the plan is subject to administration in a manner consistent with the findings of an Analysis of Impediments approved or accepted by HUD within the last three (3) calendar years or an approved Fair Housing Activity Statement-Texas (FHAST), approved by the Texas General Land Office;

(IV) the plan is in place prior to the Pre-Application Final Delivery Date; and

(V) the plan (in its entirety) and a letter from a local government official with specific knowledge and oversight of implementing the plan are included in the pre-application."

STAFF RESPONSE:
Staff has made several recommended changes based on public comment. The recommended language included below clarifies several portions of the scoring item and addresses certain areas where the prior language did not align with actual practices of affected cities.

In response to commenters (6), (11), (19), (22), (43) and (61), staff provided an alternative to producing community revitalization plans in rural areas in response to suggestions from the development community. Staff believes that maintaining the current rural option for scoring is more in line with the realities of rural Texas and that allowing rural developments to access points for other revitalization plans is not appropriate for the diversity of communities in rural Texas.

Although staff is recommending some changes suggested by commenters (19), (22) and (61) regarding infrastructure improvements, staff does not believe it is appropriate to expand the item further to include parks, streetscapes, and community-wide amenities. Staff believes that the item as written more directly addresses the efforts of cities that are more closely related to economic development activities. Staff also does not recommend expanding the timeline for completion of the projects to 24 months, as it is more likely that the project would not be completed and the scoring item is designed to incentivize development in locations where existing plans are already fully underway. Staff agrees with commenters (12) and (70) and is recommending language that allows federally approved infrastructure expansion to qualify for points and provides clarification regarding payments made by the development owner to the city or county.

In response to commenters (15), (18), (27), (45), (49) and (62), for clarification, developments located in QCTs can qualify for points under this scoring criteria. There is no preference for developments located in or outside QCTs. The item as drafted meets all of the statutory and Remedial Plan requirements. Increasing points is not allowable and adding a location specific requirement (such as location in a QCT) is also not allowable. In addition, considering that nonprofits can compete in the Nonprofit Set-Aside and also could potentially have an advantage under selection criteria for sponsor characteristics, staff does not feel it is consistent with the underlying policy objective of this scoring item to provide an advantage to nonprofits.

Changes to include HOME funds in addition to CDBG-DR are not recommended since the item is drafted to include only funds dedicated to hurricane recovery efforts, a unique revitalization effort that warrants specific consideration. Tax Increment Financing and other sources are not disallowed as being part of revitalization funding efforts but do not alone meet the criteria for points.

Suggested language to eliminate the funding levels and make certain point levels location specific are not considered to be consistent with the Remedial Plan requirements or the Department's efforts to maintain consistency in the requirements among regions.

In response to commenters (30) and (63), staff also does not recommend extending the deadline to submit community revitalization plans. Staff believes the current submission date of pre-

application for the community revitalization plans is consistent with the intent to capture plans encompassing pre-existing and ongoing revitalization efforts.

In addition, staff does not recommend any changes to the scope that would qualify a community revitalization plan for points considering there is a provision in the QAP that allows for plans that do not meet all of these requirements to obtain pre-clearance and ultimately qualify for points.

Staff agrees with commenters (52) and (60) regarding CDBG-DR funds and the requirements of the sub-recipients and is recommending the appropriate changes.

Staff proposes the following revisions to this scoring item:

"(6) Community Revitalization Plan.

(A) For Developments located in an Urban Area of Region 3.

(i) An Application may qualify to receive up to six (6) points if the proposed Development is located in an area ~~covered~~ targeted for revitalization by a community revitalization plan and ~~that~~ meets the criteria described in subclauses (I) – (VII) of this clause:

(I) The community revitalization plan must have been adopted by the municipality or county in which the Development is proposed to be located.

(II) The adopting municipality or county must have performed, in a process providing for public input, an assessment of the factors in need of being addressed as a part of such community revitalization plan. Factors to be considered may include:

(-a-) adverse environmental conditions, natural or manmade, that are material in nature and are inconsistent with the general quality of life in typical average income neighborhoods. By way of example, such conditions might include significant and recurring flooding, presence of hazardous waste sites or ongoing localized emissions not under appropriate remediation, nearby heavy industrial uses, or uses presenting significant safety or noise concerns such as major thoroughfares, nearby active railways (other than commuter trains), or landing strips; significant and widespread (e.g., not localized to a small number of businesses or other buildings) rodent or vermin infestation acknowledged to present health risks requiring a concerted effort; or fire hazards;

(-b-) presence of blighted structures;

(-c-) presence of inadequate transportation;

(-d-) lack of accessibility to and/or presence of inadequate health care facilities, law enforcement and fire fighting facilities, social and recreational facilities, and other public facilities comparable to those typically found in neighborhoods containing comparable but unassisted housing;

(-e-) the presence of significant crime;

(-f-) the presence, condition, and performance of public education; or

(-g-) the presence of local business providing employment opportunities.

(III) A municipality or county is not required to identify and address all of the factors identified in this clause ~~(i) of this subparagraph~~, but it must set forth in its plan those factors that it has identified and determined it will address.

(IV) The adopting municipality or county must have based its plan on the findings of the foregoing assessment and must have afforded the public an opportunity to provide input and comment on the proposed plan and the factors that it would address. To the extent that issues identified require coordination with other authorities, jurisdictions, or the like, such as school boards or hospitals, the adopting municipality should include coordination with such bodies in its plan and, to the extent feasible, secure their cooperation.

(V) The adopted plan, taken as a whole, must be a plan that can reasonably be expected to revitalize the ~~community~~ neighborhood and address in a substantive and meaningful way the material factors identified. Generally, because revitalization must identify specific matters needing to be addressed by revitalization and provide a plan and budget specifically directed to those identified issues, revitalization will be considered distinct and separate from broader economic development efforts. For example, staff will review the neighborhood for the presence of existing aging structures and infrastructure, and staff will review plans for evidence that the local government endeavors to address the aging nature of the structures and area through a deliberate and substantive revitalization effort. The adopted plan must specifically address how ~~the~~ providing ~~of~~ affordable rental housing fits into the overall plan and is a necessary component thereof. The target areas should be limited in size along the lines of specific neighborhoods rather than encompassing large areas of a city or county.

(VI) The adopted plan must describe the planned sources and uses of funds to accomplish its purposes.

(VII) To be eligible for points under this item, the community revitalization plan must already be in place as of the Pre-Application Final Delivery Date pursuant to §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) evidenced by a certification that:

(-a-) the plan was duly adopted with the required public comment processes followed;

(-b-) the funding and activity under the plan has already commenced; and

(-c-) the adopting municipality or county has no reason to believe that the overall funding for the full and timely implementation of the plan will be unavailable.

(ii) Points will be awarded based on:

(I) Applications will receive ~~six~~ four (~~6~~4) points if the community revitalization plan has a total budget or projected economic value of $6,000,000 or greater; or,

(II-) Applications will receive ~~four~~ two (2~~4~~) points if the community revitalization plan has a total budget or projected economic value of at least $4,000,000; and,~~or~~

(III) Applications ~~will receive two (2) points if the community revitalization plan has a total budget or projected economic value of at least $2,000,000~~may receive two (2) points in addition to those under subclauses (I) or (II) if the Development is explicitly identified by the city or county as contributing most significantly to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause. A resolution from the Governing Body of the city or county that approved the plan is required to be submitted in the Application (this resolution is not required at pre-application). If multiple Applications submit resolutions under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application as contributing most significantly to concerted revitalization efforts.

(iii) At the time of the tax credit award the site and neighborhood of any Development must conform to the Department's rules regarding unacceptable sites.

(iv) It is recognized that municipalities and counties will need to devote time and effort to adopt a concerted revitalization plan that complies with the requirements of this scoring item. Therefore, for purposes of the 2013 Application Round only, the Department's Board may, in a public meeting, determine whether a revitalization plan substantively and meaningfully satisfies a revitalization effort, notwithstanding a failure to fulfill one or more of the factors in this subparagraph ~~not having been satisfied~~. Such pre-clearance shall be prompted by a request from the Applicant pursuant to the waiver provisions in §10.207 of this title (relating to Waiver of Rules for Applications).

(B) For Developments located in Urban Areas outside of Region 3.

(i) An Application may qualify for up to six (6) points for meeting the criteria under subparagraph (A) of this paragraph (with the exception of being located in Region 3); or

(ii) An Application will qualify for six (6) points if the city or county has an existing plan for Community Development Block Grant - Disaster Relief Program (CDBG-DR) funds that ~~includes the~~ meets the requirements of

subclauses (I) - (V) of this clause. ~~In order to~~To qualify for points, the ~~development~~ Development Site must be located in the target area defined by the plan, and the Application must have a commitment of CDBG-DR funds ~~and receive a HUD Site and Neighborhood Clearance with HUD review or approval of such clearance~~:

(I) the plan defines specific target areas for redevelopment of housing that do not encompass the entire jurisdiction;

(II) the plan affirmatively addresses Fair Housing demonstrated through an approved Fair Housing Activity Statement-Texas (FHAST);

(III) the plan is subject to administration in a manner consistent with the findings of an Analysis of Impediments approved or accepted by HUD within the last three (3) calendar years or an approved Fair Housing Activity Statement-Texas (FHAST), approved by the Texas General Land Office;

(IV) the plan is in place prior to the Pre-Application Final Delivery Date; and

(V) the plan (in its entirety) and a letter from a local government official with specific knowledge and oversight of implementing the plan are included in the pre-application.

(C) For Developments located in a Rural Area.

(i) An Application may qualify for up to six (6) points if the city, county, ~~or~~ state, or federal government has approved expansion of any of the basic infrastructure or projects to the Development Site described in subclauses (I) – (IV) of this clause, or improvements to areas within a quarter mile of the Development Site, unless a different distance is otherwise identified in subclauses (I) – (IV) of this clause. Approval cannot be conditioned upon the award of tax credits or on any other event (zoning, permitting, construction start of another development, etc.) not directly associated with the particular infrastructure expansion. The Applicant or Related Party cannot contribute funds for or finance the project or infrastructure~~.~~, except through the normal and customary payment of property taxes, franchise taxes, sales taxes, impact fees and/or any other taxes or fees traditionally used to pay for or finance such infrastructure by cities, counties, state or federal governments or their related subsidiaries. The project or infrastructure must have been completed no more than twelve (12) months prior to the beginning of the Application Acceptance Period or be approved and projected to be completed within twelve (12) months from the beginning of the Application Acceptance Period. An Application is eligible for four (4) points for one of the items described in subclauses (I) – (IV) of this clause or six (6) points for at least two (2) of the items described in subclauses (I) – (IV) of this clause:

(I) Paved roadways or expansion of paved roadways by at least one lane;

(II) Water; ~~and/or~~

(III) ~~w~~Wastewater service;

(~~III~~IV) Construction of a new police or fire station within one (1) mile of the Development Site that has a service area that includes the Development Site; and

(~~I~~V) Construction of a new hospital or expansion of an existing hospital's capacity by at least 25 percent within a five (5) mile~~s~~ radius of the Development Site and ambulance service to and from the hospital is available at the Development Site. Capacity is defined as total number of beds, total number of rooms or total square footage of the hospital.

(ii) The Applicant must provide a letter from a government official with specific knowledge of the project. However, ~~the~~ Department staff may rely on other documentation that reasonably documents that the substance of this clause is met, in Department ~~S~~staff's sole determination. A letter must include:

(I) the nature and scope of the project;

(II) the date completed or projected completion;

(III) source of funding for the project;

(IV) proximity to the Development Site; and

(V) the date of any applicable city, ~~or~~ county, state, or federal approvals, if not already completed."

21. 11.9(e)(1) – Selection Criteria – Financial Feasibility
Staff notes that while there was no public comment received relating to this item, minor technical changes were made.

22. §11.9(e)(2) – Selection Criteria – Cost of Development per Square Foot (6), (8), (19), (22), (30), (36), (42), (43), (46), (47), (52), (56), (61), (66)
COMMENT SUMMARY: Commenter (8), (22), (47) suggested this item revert to the "not to exceed" cost caps as used in the prior year QAP and further stated the language as proposed may encourage a low-balling effect among competitive developers that may leave funded projects with insufficient resources to build and fund reserves. Moreover, it is likely to provide incentive for developers to build the cheapest, most cookie cutter development they can and still be competitive in their sub-region. Commenter (22) alternatively suggested that should the draft language remain then such scores should be included in the pre-application score and the median costs be published in the pre-application log to alert developers to their status as a low-scoring outlier before those developers expend the considerable funds necessary to prepare and submit a full application.

Commenter (6), (43), (66) suggested the published draft language for this item may end up penalizing those developers who are trying to achieve a higher level of design and will likely promote more homogenous housing. Moreover, it may also discourage developers from implementing non-required amenities and construction features that add to the longevity and durability of the development which will decrease the quality of the developments. Commenter (6), (30), (42), (56) suggested this language revert to methodology used in the prior year QAP and commenter (56) further indicated a preference for the existing $80/SF benchmark standard. Should the Board maintain the draft language then commenter (6) recommended that all

structures parking costs be removed from this calculation, even those included in eligible basis. Commenter (6) further suggested that any qualified elderly development, not just those that are elevator served, be categorized within this section and recommended the following:

"(A) Each Application will be categorized as:
(i) Qualified Elderly Developments, ~~and~~ Elevator Served Development, more than 75 percent single family design, and Supportive Housing Developments; or
(ii) All other Applications proposing New Construction, Reconstruction, or Adaptive Reuse; or
(iii) All other Applications proposing Rehabilitation."

Commenter (19), (43), (66) indicated asking applicants to invest in a very expensive application process without even a number for comparison is unfair and further recommended, along with commenter (61), that should this comparison remain, then the 2011 QAP language with a cost boost of at least $3,000 per unit be reinstated because it best honors the legislative intent and statutory requirement. Such language recognizes that different types of housing in different communities are created that simply cannot be "averaged" and it does not create a 10 point "unknown."

Commenter (36) suggested in order to avoid blacklisting inner city adaptive reuse developments, including historic preservation developments that qualify for Historic Tax Credits that offset a development's cost, this item should be revised to reflect the following:

"An Application may qualify to receive up to ten (10) points based on the Building Cost (less any structured parking cost that is not included in Eligible Basis or the amount of federal historic tax credits for with the Development is eligible) per square foot of the Application, as originally submitted and certified to by the General Contractor, relative to the mean cost per square foot for all similar development types. Structured parking costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking. The square footage used will be the Net Rentable Area (NRA). For the purposes of this paragraph only, if a building is in a Qualified Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors (Elevator Served Development) the NRA will include elevator served interior corridors. If the proposed Development is a Supportive Housing Development, the NRA will include elevator served interior corridors and 50 square feet of common area per Unit. As it relates to this paragraph, an interior corridor is a corridor that is enclosed, heated and/or cooled and otherwise finished space. The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule of the Application.

(A) Each Application will be categorized as:
(i) Qualified Elderly and Elevator Served Development, Adaptive Reuse Developments, more than 75 percent single family design, and Supportive Housing Developments; or
(ii) All other Applications proposing New Construction, or Reconstruction; or~~, or Adaptive Reuse; or~~
(iii) All other Applications proposing Rehabilitation; or

(iv) All other Applications proposing both Adaptive Reuse and Elevator Served Development or Developments using federal historic tax credit financing.”.

Commenter (43) suggested should the language in this item remain, the characteristics noted in §11.9(e)(2)(A)(i) be separate categories as reflected in the following revision:

> “(A) Each Application will be categorized as:
> (i) Qualified Elderly and Elevator Served Development;,
> (ii) mMore than 75 percent single family design’, and
> (iii) Supportive Housing Developments; or
> (ivii) All other Applications proposing New Construction, Reconstruction, or Adaptive Reuse; or
> (viii) All other Applications proposing Rehabilitation.”

Commenter (52) disagreed with the language as published and stated such language is potentially in conflict with Chapter 2306. Should the Department maintain this provision, commenter (52) suggested the mean per square foot calculation for similar development types within the large cities separately (*e.g.* Austin deals should only be compared to one another, Houston deals compared to one another, etc.); otherwise the large cities will be uncompetitive.

Commenter (46) expressed support for the published draft language so long as the applications are not underwritten to low cost levels and explained that should Marshall and Swift underwriting reflect $80/SF and the applicant reflected $75/SF then the application should not be allowed to move forward.

STAFF RESPONSE:
Staff understands the concern with the new structure of this scoring item. While there is some level of uncertainty at the time an application is submitted, staff does not believe that setting cost per square foot levels within this scoring item successfully captures true costs. This adversely affects the Department’s ability to accomplish the goals of underwriting development plans based on the best information available. Moreover, a number of states use scoring items that have similar levels of uncertainty for applicants at the time of application submission. However, staff has structured the point item generously due to this being the first year of this new concept. For example, access to ten points for being under $80 per square foot provides safe harbor at 8 points, just two points below the maximum. While staff acknowledges that there is diversity in costs for different building types and areas of the state, the point item allows costs to fall within large cost ranges based on the mean. Staff also believes that the prior year’s scoring item failed to draw out any real diversity in costs despite differences in site location and building type, which is one reason for proposing the item as drafted.

Staff has clarified that changes made after award or underwriting, whichever occurs later, will not impact the application’s score which should allow applicants that acted in good faith at the time of application to make necessary changes to the costs or financing to successfully development a transaction. This should decrease the uncertainty associated with post award development activities relative to this scoring item.

In response to commenter (36), staff does not recommend adding language that would allow the use of historic tax credits to offset the costs used in the calculation. As previously stated, the point item allows costs to fall within large cost ranges based on the mean.

Staff has also clarified, as identified below, how the three categories of development would be determined. These are consistent with the types of developments that were given higher cost thresholds in previous years.

In addition, in response to commenter (22), staff does not recommend including this scoring item at pre-application. With consideration for the development process, staff believes that in most cases cost estimates that early in the process would adversely affect the natural development process and would not provide the ability to effectively assess the competition.

Staff recommends the following revisions to this scoring item:

"(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(H); §42(m)(1)(C)(iii)) An Application may qualify to receive up to ten (10) points based on the Building Cost (less any structured parking cost that is not included in Eligible Basis) per square foot of the Application, as originally submitted and certified to by the General Contractor, relative to the mean cost per square foot for all similar development types. Structured parking costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking. The square footage used will be the Net Rentable Area (NRA). For the purposes of this paragraph only, if a building is in a Qualified Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors (~~E~~elevator ~~S~~served Development) the NRA will include elevator served interior corridors. If the proposed Development is a Supportive Housing Development, the NRA will include elevator served interior corridors and 50 square feet of common area per Unit. As it relates to this paragraph, an interior corridor is a corridor that is enclosed, heated and/or cooled and otherwise finished space. The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule ~~of the Application~~.

(A) Each Application will be categorized as:

(i) Applications proposing Rehabilitation; or

(ii) If not proposing Rehabilitation, ~~Qualified Elderly and~~ ~~E~~elevator ~~S~~served Development, more than 75 percent single family design, and Supportive Housing Developments; or

(iii) All other Applications proposing New Construction, Reconstruction, or Adaptive Reuse.~~; or~~

~~(iii) All other Applications proposing Rehabilitation.~~

(B) Within each category listed in subparagraph (A) of this paragraph, points will be awarded: ~~as follows:~~

(i) Within 8 percent and equal to or less than the mean cost per square foot (10 points);

(ii) Within 5 percent and greater than the mean cost per square foot (10 points);

(iii) Within 13 percent and equal to or less than the mean cost per square foot (9 points);

(iv) Within 10 percent and greater than the mean cost per square foot (8 points);

(v) Within 18 percent and equal to or less than the mean cost per square foot (7 points);

(vi) Within 15 percent and greater than the mean cost per square foot (6 points); or

(vii) Within 20 percent of the mean cost per square foot (5 points).

(C) The mean will be fixed based on the exhibits as submitted in the original Applications received by the Department on or before March 1, 2013. Changes to a specific Application as a result of an Administrative Deficiency to be within the mean parameters in subparagraph (B) will be allowed but the Application will not receive additional points for such changes. Program or underwriting Application reviews that result in an Applicant making corrections such that the Application's revised costs fall outside of the mean parameters in subparagraph (B) may have the points reduced. Where costs change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

(~~C~~D) Developments with Building Costs of less than $80 per square foot shall receive no less than eight (8) points. Points under this subparagraph are not in addition to the points achieved under subparagraph (B) of this paragraph."

23. §11.9(e)(3) – Selection Criteria – Pre-application Participation (6), (44)

COMMENT SUMMARY: Commenter (6) stated this item requires community revitalization plans be submitted at the time of pre-application; however, the draft language does not specify that this requirement is specific to community revitalization plans under §11.9(d)(6)(A) and (B) and not to infrastructure improvements for rural developments under §11.9(d)(6)(C). Commenter (6) suggested the following revision:

> "…(I) The community revitalization plan the Applicant used for points under subsections (d)(6)(A) and (B) of this section was submitted at the time of pre-application."

Commenter (44) recommended the removal of §11.9(e)(3)(A) which prevents an applicant from qualifying for points under this item if the total number of units increases by more than 10% from pre-application to application. Commenter (44) asserted that an applicant should not be penalized if after they complete their due diligence and receive funding decisions from the local government they elect to increase their total units. Commenter (44) further noted the Department already requires re-notification for increases beyond 10% so all interested parties will be made aware of the change.

STAFF RESPONSE:

Staff recommends changes to specify only those community revitalization plans used for points under §§11.9(d)(6)(A) and (B)(i) as identified below.

In response to commenter (44), while staff does appreciate that the financial structure of these transactions is fluid, especially between pre-application and full application, staff believes that in order to accurately assess the competition, considering that there are limited funds available in each sub-region, that approximate size of a development is important. In addition, the re-notification trigger was purposefully used as the trigger for pre-application incentive points. Essentially, the reason for re-notification signifies a change that is significant enough that it is also considered to be an application without an associated pre-application.

Staff recommends the following revisions:

"(3) Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted during the Pre-Application Acceptance Period and meets the requirements described in subparagraphs (A) – (I) of this paragraph:

(A) The total number of Units does not increase by more than 10 percent from pre-application to Application;

(B) The designation of the proposed Development as Rural or Urban remains the same;

(C) The proposed Development serves the same Target Population;

(D) The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, and/or Rural);

(E) The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than six (6) points from what was reflected in the pre-application self score;

(F) All necessary waivers and pre-clearance were requested in the pre-application;

(G) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number listed at pre-application is the same at Application;

(H) The pre-application met all applicable requirements; and

(I) The community revitalization plan the Applicant used for points under subsections (d)(6)(A) and (B)(i) of this section was submitted at the time of pre-application."

24. §11.9(e)(4) – Selection Criteria – Leveraging of Private, State and Federal Resources (12), (28), (34), (38), (39), (43), (44), (47), (48), (50), (52), (53), (54), (55), (67)

COMMENT SUMMARY: Commenter (12) stated if resources are being leveraged it should not be limited to such a small list, but should be broadly based and recommended the following change:

"…(i) the Development leverages CDBG Disaster Recovery, HOPE VI, ~~or~~ Choice Neighborhoods funding or other private foundation or local, county, state or federal funding and the Housing Tax Credit Funding Request is less than 8% of the Total Housing Development Cost (3 points); or…"

Commenter (28), (34), (38), (39), (48), (50), (53), (54), (55), (67) recommended this scoring item be revised to include funding from the Public Housing Program Capital Fund, Project Based vouchers and Section 8 vouchers to assist families with their relocation.

Commenter (43) suggested increasing each of the percentages by 0.75 (*e.g.* percentage in clause (ii) would change to 7.75%). Commenter (6) recommended the following increases to the percentages in this scoring item:

> "…(i) the Development leverages CDBG Disaster Recovery, HOPE VI, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 8 percent of the Total Housing Development Cost (3 points); or
>
> (ii) If the Housing Tax Credit funding request is less than 8~~7~~ percent of the Total Housing Development Cost (3 points); or
>
> (iii) If the Housing Tax Credit funding request is less than 9~~8~~ percent of the Total Housing Development Cost (2 points); or
>
> (iv) If the Housing Tax Credit funding request is less than 10~~9~~ percent of the Total Housing Development Cost (1 point)."

Commenter (47) noted the nature of this item will force developers to underwrite more debt and the Department should be encouraging long term viability, not encouraging applicants to pursue riskier developments. Commenter (47) suggested the following increases to the funding request percentages:

> "…(ii) If the Housing Tax Credit funding request is less than 10~~7~~ percent of the Total Housing Development Cost (3 points); or
>
> (iii) If the Housing Tax Credit funding request is less than 11~~8~~ percent of the Total Housing Development Cost (2 points); or…"

Commenter (44) stated the leveraging required to achieve the maximum points is difficult to achieve in rural and non-MSA areas and will cause the applicant to reduce the quality of the development thereby compromising the sustainability of the housing. Commenter (44) recommended the following change:

> "…(i) the Development leverages CDBG Disaster Recovery, HOPE VI, or Choice Neighborhoods funding, or is located in a Rural area or non-MSA areas of Houston, Dallas, Fort Worth, San Antonio and Austin, and the Housing Tax Credit Funding Request is less than 8 percent of the Total Housing Development Cost (3 points); or…"

Commenter (52) noted there are very few HOPE VI or Choice Neighborhood grants in Texas, which will leave CDBG-DR funds as the primary leveraging source; however, such funds are only available in certain regions of the state. Commenter (52) requested this scoring item be restored to the prior year language or at least include HUD-insured loans and other loans with a 100 basis point advantage over market rates in the list of programs that qualify.

.

STAFF RESPONSE:

Staff believes that the recommended language is consistent with statutory requirements. Additionally, the inclusion of a point item specifically for HOPE VI addresses a statutory scoring requirement. Staff further included Choice Neighborhoods funding because this is known as a

successor to the HOPE VI program. CDBG-DR funding is a very unique and limited resource and while not available statewide, staff believes that incentivizing the layering of tax credits with this source of funds will aid in hurricane recovery efforts and is in the best interests of the state.

Staff does not recommend inclusion of other specifically identified funding sources. Operating or rent subsidies, such as Section 8 project-based vouchers, are not compatible with the structure of this scoring item and significant changes would be necessary to explicitly include these sources as leverage. However, Section 8 project-based assistance often provides a development access to additional rental income not otherwise available with the necessary deep rent targeting. This provides a development using rental assistance the ability to leverage and carry more debt than it would otherwise be able to service. Virtually any other subsidy or financing that an Applicant uses can help reduce the amount of credits necessary and therefore will aid in qualifying for points under this item.

While the point levels may be difficult to achieve and may require leveraging of additional debt, staff believes that the levels should not be so high as to automatically qualify applications for points. Staff performed several tests on prior year applications to ensure that the recommended levels were realistic. Staff believes that the scoring item as drafted, in combination with the underlying policy objectives of other point items, strikes an acceptable balance between efficient use of tax credits and serving the lowest income Texans.

Staff has clarified that changes made after award or underwriting, whichever occurs later, will not impact the application's score which should allow applicants that acted in good faith at the time of application to make necessary changes to the costs or financing to successfully development the transaction. This should decrease the uncertainty associated with post award development activities relative to this scoring item.

Staff recommends the following revised language:

"(4) Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3))

(A) An Application may qualify to receive up to three (3) points if at least 5 percent of the total Units are restricted to serve households at or below 30 percent of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) – (iv) of this subparagraph:

(i) the Development leverages CDBG Disaster Recovery, HOPE VI, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 8 percent of the Total Housing Development Cost (3 points); or

(ii) If the Housing Tax Credit funding request is less than 7 percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than 8 percent of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than 9 percent of the Total Housing Development Cost (1 point).

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and

Development Cost Schedule and will be rounded to the nearest hundredth. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50 percent of the developer fee can be deferred. Where costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect."

25. §11.9(e)(5) – Selection Criteria – Extended Affordability or Historic Preservation (36)
COMMENT SUMMARY: Commenter (36) suggested these items are unrelated and certainly not mutually exclusive and applications should be eligible for these points as stand-alone categories. Commenter (36) stated that by pairing historic preservation as an either/or item, historic preservation is effectively denied any points relative to other applications. According to commenter (36) this is a direct conflict with the requirements in the Housing and Economic Recovery Act of 2008 for preferential consideration of historic preservation developments in the allocation of housing tax credits. Commenter (36) asserted that historic preservation is an important public objective and recommended the heading of this scoring item be changed from "or" to "and/or" and further recommended the points available be changed from 2 points to up to 4 points.

STAFF RESPONSE: Staff believes this scoring item as drafted complies with state and federal laws. Separating the criteria under this point item into separate point categories may result in an additional element of uncertainty in the overall scoring system such that the Department's core underlying objectives are diluted. Staff recommends no change based on these comments.

26. §11.9(e)(7) – Selection Criteria – Development Size (6), (12), (46), (56)
COMMENT SUMMARY: Commenter (12) suggested this scoring item penalizes applications approaching or at 50 units, allowing smaller developments to garner more credits per unit and further stated the standard should be credits per unit, not a maximum amount of credits. Commenter (12) offered the following recommended revision:

"An Application may qualify to receive one (1) point if the Development is proposed to be fifty (50) total HTC Units or less and the Application reflects a Funding Request of Housing Tax Credits, as identified in the original Application submission of ~~$500,000 or less~~$15,000 in tax credits per unit or less."

Commenter (6) recommended the following revision to this scoring item to account for those rural sub-regions where there is slightly more than $500,000 in credits available.

"An Application may qualify to receive one (1) point if the Development is proposed to be fifty (50) total HTC Units or less and the Application reflects a Funding Request of Housing Tax Credits, as identified in the original Application submission, of $500,000 or less, or if in a rural sub-region, the amount of credits available in that sub-region or $500,000, whichever is greater."

Commenter (46) recommended this scoring item be given more weight so that more developments can be built and suggested it be worth 5 points.

Commenter (56) suggested the size of a development should be a function of market demand and financial feasibility and recommends this scoring item be eliminated.

STAFF RESPONSE:
The scoring item as drafted was based on public comment related to the difficulty of developing housing in small rural communities in Texas. Staff believes that the scoring item will provide that additional incentive to work in the more difficult and smaller rural communities in Texas. Additionally, offering one point (as opposed to more than one point) is consistent with incentivizing without turning the point item into a virtual threshold requirement. Where development of more than 50 units is economically viable and more efficient, staff believes that the one point item as structured will not become a barrier to submission of applications for development of 60 to 80 units.

Staff also does not recommend changing the evaluation from a flat credit request to a calculation of credits per unit. Staff believes that the $500,000 limit is generous given the 50 HTC unit size limitation and believes it is unnecessary to complicate the scoring item. The credit limitation tied to $500,000 also incentivizes applications requesting no more than is available in smaller rural regions of the state. Staff recommends no change based on these comments.

27. §11.9(f)(1) – Point Deductions (32), (46), (58), (66)
COMMENT SUMMARY: Commenter (32), (66) suggested the selection criteria has substantively changed from prior years; therefore, the point deduction associated with applicants that elect points for a scoring item on their self score and are unable to provide sufficient documentation for those points will receive a one point deduction per scoring item in their final score should be removed for the 2013 program year.

Commenter (58) recommended that §11.9(c)(6) – Underserved Area be exempt from consideration of point deductions. Commenter (58) stated the Underserved Area scoring item lacks concrete data for many of the categories. Specifically, economically distressed area is not something that can be confirmed by a list and the Department recently changed the definition of such area which is inconsistent with what is provided on the Texas Water Development Board's website. Moreover, commenter (58) stated this scoring item allows for points based on existing tax credit developments and argued that while there is a need for applicant due diligence there should be some ability to rely on the Department's data. Commenter (58) noted instances where the Department's property inventory is not accurate; specifically, there are tax credit developments that have opted out of the program or are no longer affordable and such properties are no longer on the inventory. Additionally, developments may be included that initially received an allocation; however, the credits were ultimately returned and such developments are not on the inventory. Commenter (58) contends the language in the Underserved Area scoring item would include awards that never got built and properties that are no longer on the property inventory.

Commenter (58) also contended that §11.9(e)(4) – Leveraging of Private, State and Federal Resources should be exempt from consideration of point deductions because the circumstances surrounding this item are similar to that of §11.9(e)(2) – Cost per Square Foot which is exempt from point deductions. Commenter (58) stated the award of points under cost per square foot

will be determined based on what is in the actual application with no indication that this will be recalculated based on administrative or underwriting changes. In contrast, the points for the Leveraging scoring item will be based on forms in the application that are subject to an administrative deficiency and could result in a new calculation and adjusted score. Commenter (58) recommended the leveraging item should be calculated based on original numbers and not be recalculated based on underwriting review and changes that result from an administrative deficiency.

Commenter (46) expressed support for penalizing applicants that claim points for which they clearly did not qualify for and suggested the penalty seems like a reasonable deterrent to such application practice. Alternatively, commenter (46) suggested that so long as good faith efforts are made to secure the points then the penalty should not be attributed to the application.

STAFF RESPONSE:
Staff recommends keeping the point deductions in place for the 2013 program year for those items that the developer applicant should clearly know are not properly supported, despite the changes to the QAP. Because staff performs full reviews on applications that appear to be competitive, it is imperative that applicants accurately self-score their applications. If applicants elect points in good faith and those points are ultimately not awarded, staff will not deduct additional points. However, staff wants to discourage applicants from requesting points for which they have no reasonable assumption of qualifying.

In response to commenter (58) regarding the points associated with underserved areas, particularly the economically distressed areas, staff will make it clear in the multifamily programs procedures manual what evidence will be acceptable in order to qualify for points. In that specific case, staff will require a letter from the Texas Water Development Board. If the applicant requests these points and is not able to produce such a letter, then staff would deduct points. In addition, should the original calculation for leveraging points be inconsistent with the requested points, staff would not deduct points, even if after underwriting that score may change. Staff appreciates the support of commenter (46).

Staff recommends the following clarifying language:

> "(f) Point Deductions.
>
> (1) Any Applicant that elects points for a scoring item on their self score form and is unable to provide sufficient documentation for Department staff to award those points will receive a one (1) point deduction per scoring item in their final score. This ~~penalty~~deduction shall not be applied to these scoring items regardless of points elected: §11.9(d)(1), (4), and (6) and §11.9(e)(2) and (3).
>
> (2) Staff will recommend to the Board a ~~penalty~~ deduction of up to (5 points) for any of the items listed in subparagraph (A) of this paragraph, unless the person approving the extension (the Board or Executive Director, as applicable) makes an affirmative finding setting forth that the facts which gave rise to the need for the extension were beyond the reasonable control of the Applicant and could not have been reasonably anticipated. Any such matter to be presented for final determination of ~~penalties~~deduction by the Board must include notice from the Department to the affected party not less than fourteen (14) days prior to the

scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant ~~penalties~~point deductions. (§2306.6710(b)(2))

(A) If the Applicant or Affiliate failed to meet the original Carryover submission or 10 percent Test deadline(s) or has requested an extension of the Carryover submission deadline, the 10 percent Test deadline (relating to either submission or expenditure).

(B) If the Developer or Principal of the Applicant violates the Adherence to Obligations.

(C) No ~~penalty~~ points will be deducted for extensions that were requested on Developments that involved Rehabilitation when the Department is the primary lender, or for Developments that involve USDA as a lender if the Applicant is not determined to be at fault for not meeting the deadline.

(D) Any ~~penalties~~deductions assessed by the Board for subparagraph (A) or (B) of this paragraph based on a Housing Tax Credit Commitment from the preceding Application Round will be attributable to the Applicant or Affiliate of an Application submitted in the current Application Round."

28. §11.10 – Challenges (47), (61), (66)

COMMENT SUMMARY: Commenter (47) recommended removing the ability to challenge undesirable area features and cited their subjective nature will make it susceptible to frivolous challenges. Commenter (61) stated the intent of the challenge process was to keep things open, honest and allowed for the self-policing of the process and offered that the proposed fee is a hindrance to this process. Such a fee, according to commenter (61), creates a barrier in which substantive omissions can find protection that never should have been allowed to stand; much less move forward in the process and further recommended the challenge fee be removed. In contrast, commenter (66) expressed support for the fee imposed on challenges as well as the additional time allowed for an applicant to respond to such challenges. Commenter (25) noted pursuant to the proposed Remedial Plan and Judgment the published draft fails to address a mechanism by which public opposition on 4% HTC applications can be challenged.

STAFF RESPONSE:

In response to commenter (47), staff believes that because applicants have the opportunity to obtain pre-clearance for undesirable area features, failure to disclose the feature in an environment that specifically requests such is an egregious error which could (and probably should) be challenged. Staff appreciates the support of commenter (66) and, in response to commenter (61), staff believes that the fee will keep unsubstantiated challenges to a minimum and is based on significant support expressed during roundtables held during the rule drafting process.

In response to commenter (25) staff has incorporated the following language into Chapter 10, Subchapter C, §10.201:

"(9) Challenges to Opposition for Tax-Exempt Bond Developments. Any written statement from a Neighborhood Organization expressing opposition to an

Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local governmental entity. If any such comment is challenged, the challenger must declare the basis for the challenge. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any support for accuracy of its assertions. All such materials and the analysis of the Department's staff will be provided to a fact finder, chose by the Department, for review and a determination. The determination will be final and may not be waived or appealed."

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

Index of Commenters

Comment #	Commenter
1	Michael Ash, Commonwealth Development
2	Ginger McGuire
3	Brett Johnson, Overland Property Group
4	Bobken Simonians, Houston Housing Authority
5	Craig Litner, Pedcor
6	Diana McIver, DMA Development Company
7	Mark Mayfield
8	Matt Hull, Texas Association of Community Development Corporations
9	Sarah Andre
10	Lynn Blakeley, Blakeley Commercial Real Estate
11	Claire Palmer
12	Craig Taylor
13	Cynthia Bast, Locke Lord
14	Dennis Hoover, Hamilton Valley Management
15	Ken Smith, Revitalize South Dallas Coalition
16	Linda Brown, Casa Linda Development Corporation
17	Bernadette Nutall, Dallas ISD
18	Rafael Anchia, State Representative District 103
19	Benjamin Farmer, Rural Rental Housing Association
20	Sarah Anderson, S. Anderson Consulting
21	Scott McGuire, McGuire Development
22	Sean Brady, Rea Ventures Group, LLC
23	Walter Moreau, Foundation Communities
24	R.L. Bobby Bowling IV, G. Granger MacDonald, T. Justin MacDonald, Mike Sugrue, Diana McIver, Dennis Hoover
25	Michael Daniel, Daniel & Beshara, P.C.
26	MaryAnn Russ, Dallas Housing Authority
27	Richard Knight, Frazier Revitalization, Inc.
28	Rodolfo “Rudy” Ramirez, Edinburg Housing Authority
29	Stan Waterhouse, Housing Authority of the City of El Paso
30	San Antonio Housing Authority, El Paso Housing Authority, Fort Worth Housing Authority, Houston Housing Authority
31	Ryan Hettig, Hettig/Kahn Holding, Inc.
32	Michael Hartman, Tejas Housing Group
33	Tim Lang, Tejas Housing Group
34	Deborah Sherrill & Gary Allsup, Corpus Christi Housing Authority
35	Lisa Stephens, Sagebrook Development
36	Hal Fairbanks, HRI Properties
37	Morgan Little & John a. Miterko, Texas Coalition of Veterans Organizations
38	Wayne Pollard, Tarrant County Housing Authority
39	Mary Vela, Alamo Housing Authority
40	Alice Menendez, HK Capital Management
41	Ron Kowal, Housing Authority of the City of Austin & the Austin Affordable Housing Corporation

David Liette, Miller Valentine Group
David Mark Koogler, Mark-Dana Corporation
Donna Rickenbacker, Marque Real Estate Consultants
Eric Johnson, State Representative District 100
Bill Fisher, Sonoma Housing Advisors, LLC
Stuart Shaw, Bonner Carrington
Apolonio (Nono) Flores, Flores Residential, L.C
Jim Slaughter, Mill City Renaissance
Laura Llanes, Housing Authority of the City of Laredo
Barry Palmer, Coats | Rose
Ruben Sepulveda, Weslaco Housing Authority
J. Fernandez Lopez, Pharr Housing Authority
Jose A. Saenz, McAllen Housing Authority
Henry Flores, Madhouse Development
Laolu Davies-Yemitan, Five Woods, LLC
Alyssa Carpenter
Demetria McCain, Inclusive Communities Project & Ann Lott, Inclusive Communities HDC
Veronica Chapa-Jones, City of Houston
Lora Myrick, Betco Development
Lon Burnam, State Representative District 90
John Dugan, City of San Antonio
Michael Bodaken, National Housing Trust
Janine Sisak, JSA Development Company
Texas Association of Affordable Housing Providers
Arnold Garcia, Dilley Housing Authority
Dan Branch, State Representative District 108
R.L. Bobby Bowling IV, Tropicana Building Corporation
Anthony Jackson
Prestwick Development

State of Texas Qualified Allocation Plan

§11.1. General.

(a) Authority. The rules in this chapter apply to the allocation by the Texas Department of Housing and Community Affairs (the "Department") of Housing Tax Credits authorized by applicable federal income tax laws and whereby the Department is authorized to make such allocations for the State of Texas pursuant to Texas Government Code, Chapter 2306, Subchapter DD. As required by Internal Revenue Code (the "Code"), §42(m)(1), the Department developed this Qualified Allocation Plan (QAP) to establish the procedures and requirements relating to an allocation of Housing Tax Credits. All requirements herein and all those applicable to a Housing Tax Credit Development or Application in Chapter 10 of this title (relating to Uniform Multifamily Rules), or otherwise incorporated by reference herein constitute the QAP required by Texas Government Code, §2306.67022.

(b) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the QAP or be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to independently perform the necessary due diligence to research, confirm and verify any data, opinions, interpretations, or other information upon which an Applicant bases an Application. Notwithstanding the fact that these rules along with other Department resources may not contemplate unforeseen situations that may arise, the Department will apply a reasonableness standard to the evaluation of Applications for Housing Tax Credits.

(c) Competitive Nature of Program. Applying for competitive housing tax credits is a technical process that must be followed completely. As a result of the highly competitive nature of applying for tax credits, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that makes timely adherence impossible. If an Applicant chooses to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants should further ensure that all documents are legible, properly organized and tabbed, and that digital media is fully readable. Applicants are strongly encouraged to submit the required items well in advance of established deadlines.

(d) Definitions. The capitalized terms or phrases used herein are defined in §10.3 of this title (relating to Definitions), unless the context clearly indicates otherwise. Any capitalized terms that are defined in Texas Government Code, Chapter 2306, §42 of the Code, or other Department rules have, when capitalized, the meanings ascribed to them therein. Defined terms when not capitalized, are to be read in context and construed according to common usage.

§11.2. Program Calendar for Competitive Housing Tax Credits.

Non-statutory deadlines specifically listed in the Program Calendar may be extended for good cause by the Executive Director for a period of not more than five (5) business days provided, however, that the Applicant has requested an extension prior to the date of the original deadline. Extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party.

Deadline	Documentation Required
12/17/2012	Application Acceptance Period Begins.
12/17/2012	Pre-application Neighborhood Organization Request Date.
01/08/2013	Pre-Application Final Delivery Date (including pre-clearance and waiver requests).
01/18/2013	Full Application Neighborhood Organization Request Date.
03/01/2013	Full Application Delivery Date.
03/01/2013	Quantifiable Community Participation (QCP) Delivery Date.
03/01/2013	Third Party Report Delivery Date (Environmental Site Assessment (ESA), Property Condition Assessment (PCA), Appraisal (if applicable).
04/01/2013	Final Input from State Representative or State Senator Delivery Date.
04/01/2013	Market Analysis and Site Design and Development Feasibility Report~~Civil Engineer Feasibility Study~~ Delivery Date.
04/01/2013	Resolutions Delivery Date.
05/01/2013	Challenges to Neighborhood Organization Opposition Delivery Date.
05/15/2013	Application Challenges Deadline.
Mid-May	Final Scoring Notices Issued for Majority of Applications Considered "Competitive."
06/14/2013	Deadline for public comment to be included in a summary to the Board at a posted meeting.
June	Release of Eligible Applications for Consideration for Award in July.
Late July	Final Awards.
Mid-August	Commitments are Issued.
11/01/2013	Carryover Documentation Delivery Date.

Deadline	Documentation Required
07/01/2014	10 percent Test Documentation Delivery Date.
12/31/2015	Placement in Service.
Five (5) business days after the Deficiency Notice date (without incurring point loss)	Administrative Deficiency Response Deadline (unless an extension has been granted).

§11.3. Housing De-Concentration Factors.

(a) Two Mile Same Year Rule (Competitive HTC Only). (§2306.6711(f)) Staff will not recommend for award, and the Board will not make an award to an Application that proposes a Development Site located in a county with a population that exceeds one million if the proposed Development Site is also located less than two linear miles from the proposed Development Site of another Application that is awarded in the same calendar year.

(b) Twice the State Average Per Capita. (§2306.6703(a)(4)) If the Development is located in a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins (or for Tax-Exempt Bond Developments at the time the Certificate of Reservation is issued by the Texas Bond Review Board), the Applicant must obtain prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development. Such approval must include a resolution adopted by the Governing Body of the municipality or county, as applicable, setting forth a written statement of support, referencing Texas Government Code, §2306.6703(aA)(4), and authorizing an allocation of Housing Tax Credits for the Development. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual.

(c) One Mile Three Year Rule. (§2306.6703(a)(3))

(1) An Application that proposes the New Construction or Adaptive Reuse of a Development that is located one linear mile or less (measured by a straight line on a map) from another Development that meets all of the criteria in subparagraphs (A) – (C) of this paragraph shall be considered ineligible.

(A) The Development serves the same type of household as the proposed Development, regardless of whether the Development serves families, elderly individuals, or another type of household; and

(B) The Development has received an allocation of Housing Tax Credits or private activity bonds for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Certificate of Reservation is issued); and

(C) The Development has not been withdrawn or terminated from the Housing Tax Credit Program.

(2) Paragraph (1) of this subsection does not apply to a Development:

(A) that is using federal HOPE VI (or successor program) funds received through HUD;

(B) that is using locally approved funds received from a public improvement district or a tax increment financing district;

(C) that is using funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701 et seq.);

(D) that is using funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.);

(E) that is located in a county with a population of less than one million;

(F) that is located outside of a metropolitan statistical area; or

(G) that the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under paragraph (1)(A) of this subsection. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual.

(3) Where a specific source of funding is referenced in paragraph (2)(A) - (D) of this subsection, a commitment or resolution documenting a commitment of the funds must be provided in the Application or prior to the Resolutions Delivery Date (for Tax Exempt Bond Developments the resolution must be submitted no later than 14 days prior to the Board meeting where the tax credits will be considered).

(d) Limitations on Developments in Certain Census Tracts. An Application that proposes the New Construction or Adaptive Reuse of a Development proposed to be located in a census tract that has more than 30 percent Housing Tax Credit Units per total households as established by the U.S. Census Bureau for the most recent Decennial Census shall be considered ineligible unless:

(1) the Development is in a Place whose population is less than 100,000; or

(2) the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and submits to the Department a resolution referencing this rule.

(e) Additional Phase. Applications proposing an additional phase of an existing tax credit Development serving the same Target Population, or Applications proposing Developments that are adjacent to an existing tax credit Development serving the same Target Population, or Applications that are proposing a Development serving the same Target Population on a contiguous site to another Application awarded in the same program year, shall be considered ineligible unless the other Developments or phase(s) of the Development have been completed and have maintained occupancy of at least 90 percent for a minimum six (6) month period as reflected in the submitted rent roll.

§11.4. Tax Credit Request and Award Limits.

(a) Credit Amount (Competitive HTC Only). (§2306.6711(b)) The Board may not allocate to an Applicant, Developer, Affiliate or Guarantor (unless the Guarantor is also the General Contractor, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an amount greater than $3 million in a single Application Round. All entities that share a Principal are Affiliates. For purposes of determining the $3 million limitation, a Person is not deemed to be an Applicant, Developer, Affiliate or Guarantor solely because it:

(1) raises or provides equity;

(2) provides "qualified commercial financing;"

(3) is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services; or

(4) receives fees as a Development Consultant or Developer that do not exceed 10 percent of the Developer Fee (or 20 percent for Qualified Nonprofit Developments) to be paid or $150,000, whichever is greater.

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150 percent of the credit amount available in the sub-region based on estimates released by the Department on December 1, or $1,500,000, whichever is less, or $2,000,000 for Applications under the At-Risk Set-Aside. The Department will consider the amount in the Funding Request of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant's request to the maximum allowable under this subsection if exceeded. Regardless of the credit

amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than $2 million in a single Application Round. (§2306.6711(b))

(c) Increase in Eligible Basis (30 percent Boost). Applications will be evaluated for an increase of up to but not to exceed 30 percent in Eligible Basis provided they meet the criteria identified in paragraph (1) or (2) of this subsection. Staff will not recommend such an increase in Eligible Basis if it is determined it would cause the Development to be over sourced, as evaluated by the Real Estate Analysis division, in which case a credit amount necessary to fill the gap in financing will be recommended. The criteria in paragraph (2) of this subsection are not applicable to Tax-Exempt Bond Developments.

(1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 30 percent Housing Tax Credit Units per total households in the tract as established by the U.S. Census Bureau for the most recent Decennial Census. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 30 percent Housing Tax Credit Units per total households in the tract are not eligible to qualify for a 30 percent increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5)(C) of the Code. For Tax-Exempt Bond Developments, as a general rule, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. Applicants must submit a copy of the census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT;

(2) The Development meets one of the criteria described in subparagraphs (A) - (D) of this paragraph (pursuant to the authority granted by H.R. 3221):

(A) the Development is located in a Rural Area;

(B) the Development is proposing entirely Supportive Housing and is expected to be debt free or have no foreclosable or non-cash flow debt;

(C) the Development meets the criteria for the Opportunity Index as defined in §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria); or

(D) ~~the Board may allow a boost for~~the Development is a non-Qualified Elderly Development not located in a QCT that is in an ~~target~~ area covered by ~~under~~ a community revitalization plan. A Development will be considered to be in an area covered by a community revitalization plan if it is eligible for points under §11.9(d)(6) of the chapter.

§11.5. Competitive HTC Set-Asides. (§2306.111(d)) This section identifies the statutorily-mandated set-asides which the Department is required to allocate. An Applicant may elect to compete in as many of the set-asides described in this section for which the proposed Development qualifies.

(1) Nonprofit Set-Aside. (§2306.6729 and §2306.6706(b)) At least 10 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of §42(h)(5) of the Code and Texas Government Code, §2306.6729 and §2306.6706(b). Qualified Nonprofit Organizations must have the controlling interest in the Development Owner applying for this set-aside (e.g. greater than 50 percent ownership in the General Partner). If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, a Qualified Nonprofit Development submitting an Application in the Nonprofit Set-Aside must have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or a co-Developer as evidenced in the development agreement. An Applicant that meets the requirements to be in the Qualified Nonprofit Set-Aside is deemed to be applying under that set-aside unless their Application specifically includes an affirmative election to not be treated under that set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit. The Department reserves the right to request a change in this determination

and/or not recommend credits for those unwilling to switch if insufficient Applications in the Nonprofit Set-Aside are received.

(2) USDA Set-Aside. (§2306.111(d-2~~d)(2)~~) At least 5 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. If an Application in this set-aside involves Rehabilitation it will be attributed to and come from the At-Risk Development Set-Aside; if an Application in this set-aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region. Commitments of Competitive Housing Tax Credits issued by the Board in the current program year will be applied to each set-aside, Rural Regional Allocation, Urban Regional Allocation and/or USDA Set-Aside for the current Application Round as appropriate. Applications must also meet all requirements of Texas Government Code, §2306.111(d-2)~~)(2)~~.

(3) At-Risk Set-Aside. (§2306.6714; §2306.6702)

(A) At least 15 percent of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-Aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional allocation formula required under §11.6~~(a)~~ of this chapter (relating to Competitive HTC Allocation Process). Through this set-aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments identified as At-Risk Developments. (§2306.6714) Up to 5 percent of the State Housing Credit Ceiling associated with this set-aside may be given priority to Rehabilitation Developments funded with USDA.

(B) An At-Risk Development must meet all the requirements of Texas Government Code, §2306.6702(a)(5).

(C) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in Texas Government Code, §2306.6702 will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of the same site.

(D) Developments must be at risk of losing affordability from the financial benefits available to the Development and must retain or renew the existing financial benefits and affordability unless regulatory barriers necessitate elimination of a portion of that benefit for the Development. For Developments retaining public housing operating subsidies to qualify under the At-Risk Set-Aside, only a portion of the subsidy must be retained for the proposed Development, but no less than 25 percent of the proposed Units must be public housing units.

(E) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a Qualified Contract under §42 of the Code. Evidence must be provided in the form of a copy of the recorded LURA, the first years' IRS Forms 8609 for all buildings showing Part II of the form completed and, if applicable, documentation from the original application regarding the right of first refusal.

(F) An amendment to an Application seeking to enable the Development to qualify as an At-Risk Development, that is submitted to the Department while the Application is under review will not be accepted.

§11.6. Competitive HTC Allocation Process. This section identifies the general allocation process and the methodology by which awards are made.

(1) Regional Allocation Formula. The Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region ("sub-region") Housing Tax Credits in an amount consistent with the Regional Allocation Formula developed in compliance with Texas Government Code, §2306.1115. The process of awarding the funds made available within each sub-region shall follow the process described in this section. Where a particular situation that is not contemplated and addressed explicitly by the process described herein, Department staff shall formulate a recommendation for the Board's consideration based on the objectives of regional allocation together with other policies and purposes set out in Texas Government Code, Chapter 2306 and the Department shall provide Applicants the opportunity to comment on and propose alternatives to such a recommendation. In general, such a recommendation shall not involve broad reductions in the funding request amounts solely to accommodate regional allocation and shall not involve

rearranging the priority of Applications within a particular sub-region or set-aside except as described herein. If the Department determines that an allocation recommendation would cause a violation of the $3 million credit limit per Applicant, the Department will make its recommendation by selecting the Development(s) that most effectively satisfy the Department's goals in meeting set-aside and regional allocation goals.

(2) Credits Returned and National Pool Allocated After January 1. For any credits returned after January 1 and eligible for reallocation, the Department shall first return the credits to the sub-region or set-aside from which the original allocation was made. The credits will be treated in a manner consistent with the allocation process described in this section and may ultimately flow from the sub-region and be awarded in the collapse process to an Application in another region, sub-region or set-aside. For any credit received from the "national pool" after the initial approval of awards in late July, the credits will be added to and awarded to the next Application on the waiting list for the state collapse.

(3) Award Recommendation Methodology. (§2306.6710(a) - (f); §2306.111) The Department will assign, as described herein, Developments for review by the program and underwriting divisions. In general, Applications will be prioritized for assignment, with highest priority given to those identified as most competitive based upon the Applicant self-score and an initial program review. The procedure identified in subparagraphs (A) - (F) of this paragraph will also be used in making recommendations to the Board.

(A) USDA Set-Aside Application Selection (Step 1). The first level of priority review will be those Applications with the highest scores in the USDA Set-Aside until the minimum requirements stated in §11.5(2) of this chapter (relating to Competitive HTC Set-Asides. (§2306.111(d))) are attained. The minimum requirement may be exceeded in order to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement;

(B) At-Risk Set-Aside Application Selection (Step 2). The second level of priority review will be those Applications with the highest scores in the At-Risk Set-Aside statewide until the minimum requirements stated in §11.5(3) of this chapter are attained. This may require the minimum requirement to be exceeded to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement. This step may leave less than originally anticipated in the 26 sub-regions to award under the remaining steps, but these funds would generally come from the statewide collapse;

(C) Initial Application Selection in Each Sub-Region (Step 3). The highest scoring Applications within each of the 26 sub-regions will then be selected provided there are sufficient funds within the sub-region to fully award the Application. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made available within each of the sub-regions;

(D) Rural Collapse (Step 4). If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region ("Rural sub-region") that remain after award under subparagraph (C) of this paragraph, those tax credits shall be combined into one "pool" and then be made available in any other Rural Area in the state to the Application in the most underserved Rural sub-region as compared to the sub-region's allocation. This rural redistribution will continue until at least 20 percent of the funds available to the State are allocated to Applications in Rural Areas. (§2306.111(d)(3)) In the event that more than one sub-region is underserved by the same percentage, the priorities described in clauses (i) – (ii) of this subparagraph will be used to select the next most underserved sub-region:

(i) the sub-region with no recommended At-Risk Applications from the same Application Round; and

(ii) the sub-region that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(E) Statewide Collapse (Step 5). Any credits remaining after the Rural Collapse, including those in any sub-region in the State, will be combined into one "pool." The funds will be used to award the highest scoring Application (not selected in a prior step) in the most underserved sub-region in the State compared to the amount originally made available in each sub-region. This process will continue until the funds remaining are insufficient to award the next highest scoring Application in the next most underserved sub-region. In the event that more than one sub-region is underserved by the same

percentage, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved sub-region:

(i) the sub-region with no recommended At-Risk Applications from the same Application Round; and

(ii) the sub-region that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(F) Contingent Qualified Nonprofit Set-Aside Step (Step 6). If an insufficient number of Applications participating in the Nonprofit Set-Aside are selected after implementing the criteria described in subparagraphs (A) – (F) of this paragraph to meet the requirements of the 10 percent Nonprofit Set-Aside, action must be taken to modify the criteria described in subparagraphs (A) – (F) of this paragraph to ensure the set-aside requirements are met. Therefore, the criteria described in subparagraphs (C) – (F) of this paragraph will be repeated after selection of the highest scoring Application(s) under the Nonprofit Set-Aside statewide are selected to meet the minimum requirements of the Nonprofit Set-Aside. This step may cause some lower scoring Applications in a sub-region to be selected instead of a higher scoring Application not participating in the Nonprofit Set-Aside.

(4) Waiting List. The Applications that do not receive an award by July 31 and remain active and eligible will be recommended for placement on the waiting list. Applications on the waiting list are selected for an award when the remaining balance of tax credits is sufficient to award the next Application on the waiting list. The waiting list is not static. The allocation process will be used in determining the Application to award. For example, if credits are returned, those credits will first be made available in the set-aside or sub-region from which they were originally awarded. This means that the first Application on the waiting list is in part contingent on the nature of the credits that became available for award. (§2306.6710(a) - (f); §2306.111)

§11.7. Tie Breaker Factors. In the event there are Competitive HTC Applications that receive the same number of points in any given set-aside category, rural regional allocation or urban regional allocation, or rural or state collapse, the Department will utilize the factors in this section, in the order they are presented, to determine which Development will receive preference in consideration for an award. The tie breaker factors are not intended to specifically address a tie between equally underserved sub-regions in the rural or statewide collapse.

(1) Applications ranking higher on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.

(2) Applications proposed to be located the greatest distance from the nearest Housing Tax Credit assisted Development.

§11.8. Pre-Application Requirements (Competitive HTC Only).

(a) General Submission Requirements. The pre-application process allows Applicants interested in pursuing an Application to assess potential competition across the thirteen (13) state service regions, sub-regions and set-asides. Based on an understanding of the potential competition they can make a more informed decision whether they wish to proceed to prepare and submit an Application. A complete pre-application is a pre-application that meets all of the Department's criteria, as outlined in subsections (a) and (b) of this section, with all required information and exhibits provided pursuant to the Multifamily Programs Procedures Manual.

(1) The pre-application must be submitted, along with the required pre-application fee as described in §10.901 of this chapter (relating to Fee Schedule), no later than the Pre-application Final Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits). If such pre-application and corresponding ~~fee are~~fee is not submitted on or before this deadline the Applicant will be deemed to have not made a pre-application.

(2) The pre-application shall consist of one (1) CD-R containing a PDF copy and Excel copy to the Department in the form of a single file and individually bookmarked as presented in the order as required in the Multifamily Programs Procedures Manual.

(3) Only one pre-application may be submitted by an Applicant for each Development Site.

(4) Department review at this stage is limited, and not all issues of eligibility and threshold are reviewed or addressed at pre-application. Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. While the pre-application is more limited in scope than an Application, pre-applications are subject to the same limitations, restrictions, or causes for disqualification or termination as a full Application, and pre-applications will thus be subject to the same consequences for violation, including but not limited to loss of points and termination of the pre-application.

(b) Pre-Application Threshold Criteria. Pursuant to Texas Government Code, §2306.6704(c) pre-applications will be rejected unless they meet the threshold criteria described in paragraphs (1) and (2) of this subsection:

(1) Submission of the competitive HTC pre-application in the form prescribed by the Department which identifies at a minimum:

(A) Site Control meeting the requirements of §10.204(9) of this title (relating to Required Documentation for Application Submission);

(B) Funding request;

(C) Target Population;

(D) Requested set-asides (At-Risk, USDA, Nonprofit, and/or Rural);

(E) Total Number of Units proposed;

(F) Census tract number in which the Development Site is located;

(G) Expected score for each of the scoring items identified in the pre-application materials;

(H) All issues requiring waivers necessary for the filing of an eligible Application; and

(I) Any community revitalization plan the Applicant anticipates using for points under §11.9(d)(6)(A) and (B)(i) of this chapter (relating to Competitive HTC Selection Criteria).

(2) Evidence in the form of a certification provided in the pre-application, that all of the notifications required under this paragraph have been made. (§2306.6704)

(A) Neighborhood Organization Requests. The Applicant must request a list of Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site:

(i) No later than the Pre-application Neighborhood Organization Request Date identified in §11.2 of this chapter, the Applicant must e-mail, fax or mail with registered receipt a completed Neighborhood Organization Request letter as provided in the pre-application to the local elected official, as applicable, based on where the Development is proposed to be located. If the Development is located in an area that has district based locally elected officials, or both at-large and district based locally elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located in an area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or it's Extra Territorial Jurisdiction (ETJ), the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format;

(ii) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as provided by the

local elected officials, or that the Applicant has knowledge of (regardless of whether the organization is on record with the county or state) as of the date of pre-application submission.

(B) Notification Recipients. No later than the date the pre-application is submitted, notification must be sent to all of the persons or entities prescribed in clauses (i) – (viii) of this subparagraph whose jurisdiction or boundaries include the Development Site. Developments located in an ~~Extra Territorial Jurisdiction (~~ETJ~~)~~ of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with registered return receipt or similar tracking mechanism in the format required in the Pre-application Notification Template provided in the pre-application. The Applicant is encouraged to retain proof of delivery in the event the Department requires proof of notification. Acceptable evidence of such delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of receipt by the recipient for fax and e-mail. Officials to be notified are those officials in office at the time the pre-application is submitted.

(i) Neighborhood Organizations on record with the state or county whose boundaries include the proposed Development Site;

(ii) Superintendent of the school district;

(iii) Presiding officer of the board of trustees of the school district;

(iv) Mayor of the municipality;

(v) All elected members of the Governing Body of the municipality;

(vi) Presiding officer of the Governing Body of the county;

(vii) All elected members of the Governing Body of the county; and

(viii) State Senator and State Representative;

(C) Notice Requirements. The notification must include, at a minimum, all of the information described in clauses (i) – (vi) of this subparagraph:

(i) the Applicant's name, address, an individual contact name and phone number;

(ii) the Development name, address, city and county;

(iii) a statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(iv) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse, or Rehabilitation;

(v) the type of Development being proposed (single family homes, duplex, apartments, townhomes, high-rise etc.); and

(vi) the approximate total number of Units and approximate total number of low-income Units.

(c) Pre-application Results. Only pre-applications which have satisfied all of the pre-application requirements, including those in §11.9(e)(3) of this chapter will be eligible for pre-application points. The order and scores of those Developments released on the Pre-application Submission Log do not represent a Commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the Pre-application Submission Log. Inclusion of a Development on the Pre-application Submission Log does not ensure that an Applicant will receive points for a pre-application.

§11.9. Competitive HTC Selection Criteria.

(a) General Information. This section identifies the scoring criteria used in evaluating and ranking Applications. The criteria identified in subsection (b) of this section include those items required under Texas Government Code, Chapter 2306, §42 of the Code, and other criteria established in a manner consistent with Chapter 2306 and §42 of the Code. There is no rounding of numbers in this section for any of the

calculations in order to achieve the desired requirement or limitation, unless rounding is explicitly stated as allowed for that particular calculation or criteria. Due to the highly competitive nature of the program, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation or fail to submit supporting documentation in good faith will not be allowed to cure the issue through an Administrative Deficiency. However, Department staff may provide the Applicant an opportunity to explain how they believe the Application, as submitted, meets the requirements for points or otherwise satisfies the requirement to provide supporting documentation in good faith.

(b) Criteria promoting development of high quality housing.

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)) An Application may qualify for up to fourteen (14) points under subparagraphs (A) and (B) of this paragraph.

(A) Unit Sizes (7 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), for Developments receiving funding from USDA, or for Supportive Housing Developments without meeting these square footage minimums only if requested in the Self Scoring Form.

(i) five-hundred-fifty (550) square feet for an Efficiency Unit;

(ii) six-hundred-fifty (650) square feet for a one Bedroom Unit;

(iii) eight-hundred-fifty (850) square feet for a two Bedroom Unit;

(iv) one-thousand-fifty (1,050) square feet for a three Bedroom Unit; and

(v) one-thousand, two-hundred-fifty (1,250) square feet for a four Bedroom Unit.

(B) Unit Features (7 points). Applications in which Developments provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in §10.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions) and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments will start with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. §42(m)(1)(C)(iv) (1 point)~~(2)~~. ~~An Application may qualify to receive points under subparagraph (A) or (B) of this paragraph.~~

~~(A) An Application may qualify to receive up to one (1) point provided the ownership structure meets one of the requirements described in clauses (i) – (iii) of this subparagraph:~~

~~(i) A Person with at least 50 percent ownership interest in the General Partner also owns at least 50 percent interest in the General Partners of at least three (3) existing tax credit developments in Texas, none of which are in Material Noncompliance. The IRS Form(s) 8609 must have been issued for each of the properties used for points under this paragraph and each must have a Uniform Physical Condition Standard (UPCS) score of at least 85 based on their most recent inspection.~~

~~(ii) The ownership structure of the Development Owner includes a joint venture between an experienced Developer and an inexperienced owner. In order to qualify for this point, the inexperienced party must be unable to obtain an Experience Certificate under §10.204(5) of this title (relating to Required Documentation for Application Submission). In addition, the experienced Owner must own at least 30 percent interest in the General Partner and also own at least 50 percent interest in the General Partner of at least three (3) existing tax credit developments in Texas, none of which are in Material Non-Compliance. The IRS Form(s) 8609 must have been issued for each of the properties used for points under this subparagraph and each must have a UPCS score of at least 85 based on their most recent inspection.~~

~~(iii) A HUB as certified by the Texas Comptroller of Public Accounts has at least 51 percent ownership interest in the General Partner, materially participates in the Development and~~

~~operation of the Development throughout the Compliance Period, and will receive at least 20 percent of the cash flow from operations and at least 10 percent of the developer fee.~~

~~(B~~A~~)~~ An Application may qualify to receive ~~up to three~~ one (~~3~~1) point~~s~~ provided the ownership structure contains ~~meets some combination of the requirements described in clauses (i) – (iii) of this subparagraph.~~:

~~(i) A Person with at least 50 percent ownership interest in the General Partner also owns at least 50 percent interest in the General Partners of at least three (3) existing tax credit developments in Texas, none of which are in Material Noncompliance. The IRS Form(s) 8609 must have been issued for each of the properties used for points under this paragraph, and each must have a Uniform Physical Condition Standard (UPCS) score of at least 85 based on their most recent inspection. (2 points)~~

~~(ii) A Person with at least 50 percent ownership interest in the General Partner also owns at least 50 percent interest in the General Partner of at least two (2) existing tax credit developments in Texas, none of which are in Material Non-Compliance. Both properties must be placed in service as of Full Application Delivery Date, and the IRS Form(s) 8609 must have been issued for at least one of the properties used for points under this subparagraph and must have a UPCS score of at least 85 based on their most recent inspection. (1 point)~~

~~(iii)~~ A HUB, as certified by the Texas Comptroller of Public Accounts, or Qualified Nonprofit Organization, provided the Application is under the Nonprofit Set-Aside, has some combination of ownership interest, cash flow from operations, and developer fee which taken together equal at least ~~100~~ 80 percent and no less than 5 percent for any category. For example, ~~the~~ a HUB or Qualified Nonprofit Organization may have 20 percent ownership interest, 30 percent of the developer fee, and ~~50~~ 30 percent of cash flow from operations. The HUB or Qualified Nonprofit Organization must also materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience ~~relative~~ directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. The HUB or Qualified Nonprofit Organization cannot be a Related Party to any other member of the Applicant or Developer unless the other member is a wholly-owned subsidiary of the HUB or Qualified Nonprofit Organization. ~~(1 point)~~

(c) Criteria to serve and support Texans most in need.

(1) Income Levels of Tenants. (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e); and §42(m)(1)(B)(ii)(I)) An Application may qualify for up to fifteen (15) points for rent and income restricting a Development for the entire Affordability Period at the levels identified in subparagraph (A) or (B) of this paragraph.

(A) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs:

(i) At least 40 percent of all low-income Units at 50 percent or less of AMGI (15 points);

(ii) At least 30 percent of all low income Units at 50 percent or less of AMGI (13 points); or

(iii) At least 20 percent of all low-income Units at 50 percent or less of AMGI (11 points).

(B) For Developments proposed to be located in areas other than those listed in subparagraph (A) of this paragraph:

(i) At least 20 percent of all low-income Units at 50 percent or less of AMGI (15 points);

(ii) At least 15 percent of all low-income Units at 50 percent or less of AMGI (13 points); or

(iii) At least 10 percent of all low-income Units at 50 percent or less of AMGI (11 points).

(2) Rent Levels of Tenants. (§2306.6710(b)(1)(G)) An Application may qualify to receive up to eleven (11) points for rent and income restrictions of a Development for the entire Affordability Period. These levels are in addition to those committed under paragraph (1) of this subsection.

(A) At least 20 percent of all low-income Units at 30 percent or less of AMGI for Supportive Housing Developments qualifying under the Nonprofit Set-Aside only (11 points);

(B) At least 10 percent of all low income Units at 30 percent or less of AMGI or, for a Development located in a Rural Area, 7.5 percent of all low income Units at 30 percent or less of AMGI (9 points); or

(C) At least 5 percent of all low-income Units at 30 percent or less of AMGI (7 points).

(3) Tenant Services. (§2306.6710(b)(1)(I) and §2306.6725(a)(1)) A Supportive Housing Development qualifying under the Nonprofit Set-Aside may qualify to receive up to nine (9) points and all other Developments may receive up to eight (8) points. By electing points, the Applicant certifies that the Development will provide a combination of supportive services, which are listed in §10.101(b)(7) of this title, appropriate for the proposed tenants and that there is adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application will remain ~~must remain~~ the minimum~~same~~. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item.

(4) Opportunity Index.

(A) For Developments located in an Urban Area, ~~I~~if the proposed Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (or 35 percent for Developments in Regions 11 and 13), an Application may qualify to receive up to seven (7) points upon meeting the additional requirements in ~~subparagraphs~~ clauses (~~A~~i) – (~~E~~v) of this subparagraph. The Department will base poverty rate on data from the most recent 5-year American Community Survey as available on November 15. ~~Developments located in Rural Areas are exempt from meeting the elementary school and poverty rate factors under each of subparagraphs (A) – (E) of this paragraph, but the elementary schools in which tenants may attend can have a rating below acceptable in order to qualify for points. An elementary school attendance zone for the Development Site does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, districts with district-wide enrollment and only one elementary school are acceptable. The applicable school rating will be the 2011 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions.~~

(~~A~~i) Development targets the general population or Supportive Housing; income in the census tract is in the top quartile of median household income for the county or MSA as applicable and the Site is in the attendance zone of an elementary school that is rated exemplary or recognized (7 points);

(~~B~~ii) Development targets the general population or Supportive Housing; income in the census tract is in the top two quartiles of median household income for the county or MSA as applicable and the Site is in the attendance zone of an elementary school that is rated exemplary or recognized (5 points);

(~~C~~iii) Any Development, regardless of population served is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable and the Site is in the attendance zone of an elementary school that is rated exemplary or recognized (5 points);

(~~D~~iv) Any Development, regardless of population served is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable (3 points); or

(~~E~~v) Any Development, regardless of population served is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable (1 point).

(B) For Developments located in a Rural Area, an Application may qualify to receive up to seven (7) points upon meeting the requirements in clauses (i) – (v) of this subparagraph.

(i) Development targets the general population or Supportive Housing; income in the census tract is in the top quartile of median household income for the county or MSA as applicable and the Site is in the attendance zone of an elementary school that is rated at least acceptable (7 points);

(ii) Development targets the general population or Supportive Housing; income in the census tract is in the top two quartiles of median household income for the county or MSA as applicable and the Site is in the attendance zone of an elementary school that is rated at least acceptable (5 points);

(iii) Any Development, regardless of population served, is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable and the Site is in the attendance zone of an elementary school that is rated at least acceptable (5 points);

(iv) Any Development, regardless of population served, is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable (3 points); or

(v) Any Development, regardless of population served, is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable (1 point).

(C) An elementary school attendance zone for the Development Site does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment ~~and only one elementary school are acceptable~~ an Applicant may use the lowest rating of all elementary schools. The applicable school rating will be the 2011 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions.

(5) Educational Excellence. An Application may qualify to receive up to three (3) points for a Development Site located within the attendance zone of a public school with an academic rating of recognized or exemplary (or comparable rating) by the Texas Education Agency, as described in subparagraphs (A) and (B) of this paragraph. An attendance zone does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment ~~and only one elementary, middle or high school (as applicable) are acceptable~~an Applicant may use the lowest rating of all elementary, middle, or high schools, respectively. The applicable school rating will be the 2011 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an

elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings.

(A) Development is within the attendance zone of an elementary school, a middle school and a high school with an academic rating of recognized or exemplary (3 points); or

(B) Development is within the attendance zone of an elementary school and either a middle school or high school with an academic rating of recognized or exemplary (1 point).

(6) Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive ~~up to~~ two (2) points for general or Supportive Housing Developments or one (1) point for Qualified Elderly Developments, if the proposed Development~~s~~ is located in one of the areas described in subparagraphs (A) – (D) of this paragraph. ~~Points will be awarded based on the Development's Target Population as identified in subparagraph (E) or (F) of this paragraph.~~

(A) A Colonia;

(B) An Economically Distressed Area;

(C) A ~~municipality~~Place, or if outside of the boundaries of any ~~municipality~~Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development; or

(D) For Rural Areas only, a census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population.

~~(E) General or Supportive Housing Developments (2 points); or~~

~~(F) Qualified Elderly Developments (1 point).~~

(7) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive up to two (2) points for Developments in which at least 5 percent of the Units are set aside for Persons with Special Needs. For purposes of this scoring item, Persons with Special Needs is defined as persons with alcohol and/or drug addictions, Colonia residents, Persons with Disabilities, victims of domestic violence, persons with HIV/AIDS, homeless populations, veterans, wounded warriors (as defined by the Caring for Wounded Warriors Act of 2008), and migrant farm workers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require a minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant. After the twelve-month period, the Development Owner will no longer be required to hold Units vacant for households with special needs, but will be required to continue to affirmatively market Units to household with special needs.

(d) Criteria promoting community support and engagement.

(1) Quantifiable Community Participation. (§2306.6710(b)(1)(B); §2306.6725(a)(2)) An Application may qualify for up to sixteen (16) points for written statements from a Neighborhood Organization. In order for the statement to qualify for review, ~~T~~the Neighborhood Organization must have been in existence prior to the Pre-Application Final Delivery Date, and its ~~be on record with the Department or county in which the Development Site is located and whose~~ boundaries must contain the Development Site~~, and which has been in existence no later than the Pre-Application Final Delivery Date.~~ In addition, the Neighborhood Organization must be on record with the state (or the Department) or county in which the Neighborhood Organization is located. Neighborhood Organizations may request to be on record for the current application cycle with the Department by submitting documentation (such as evidence of board meetings, bylaws, etc.) by the Quantifiable Community Participation (QCP) Delivery Date. The written statement must meet the requirements in subparagraph (A) of this paragraph.

(A) Statement Requirements.

(i) the Neighborhood Organization's name, a written description and map of the organization's boundaries, signatures and contact information (phone, email and mailing address) for at least two individual members with authority to sign on behalf of the organization;

(ii) certification that the boundaries of the Neighborhood Organization contain the Development Site and that the Neighborhood Organization meets the definition pursuant to Texas Government Code, §2306.004(23-a) and includes at least two separate residential households; and

(iii) an explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason forming the basis of that opposition. A Neighborhood Organization is encouraged to be prepared to provide additional information with regard to opposition.

(B) Technical Assistance. For purposes of this section, if there is no Neighborhood Organization already on record, the Applicant, Development Owner, or Developer is allowed to provide technical assistance in the creation of and/or placing on record of a Neighborhood Organization provided that no Neighborhood Organization exists.

(i) Technical assistance is limited to:

(I) the use of a facsimile, copy machine/copying, email and accommodations at public meetings; and

(II) assistance in completing the QCP Neighborhood Information Packet, providing boundary maps and assisting in the Administrative Deficiency process;

(ii) No person required to be listed in accordance with §2306.6707 may participate in any way in the deliberations of a Neighborhood Organization of the Development to which the Application requiring their listing relates. This does not preclude their ability to present information and respond to questions at a duly held meeting where such matter is considered;

(iii) For non-Identity of Interest Applications the seller or their agents could be a member of the Neighborhood Organization if the seller will maintain primary residence within the Neighborhood Organizations boundaries.

(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in clauses (i) – (vi) of this subparagraph. Points will not be cumulated. Where more than one written statement is received for an Application, the averaged weight of all statements received in accordance with this subparagraph will be assessed and awarded.

(i) sixteen (16) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement~~,~~ that qualified as Quantifiable Community Participation~~,~~ opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(ii) fourteen (14) points for explicitly stated support from a Neighborhood Organization;

(iii) twelve (12) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds~~,~~ provided a written statement, that qualified as Quantifiable Community Participation~~,~~ opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(iv) ten (10) points for statements of neutrality from a Neighborhood Organization or statements not meeting all the explicit requirements of this section, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality;

(v) ten (10) points for areas where no Neighborhood Organization is in existence, equating to neutrality; or

(vi) zero (0) points for statements of opposition meeting the requirements of this subsection.

(D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations,

including zoning determinations, of a municipality, county, school district, or other local governmental entity having jurisdiction or oversight over the funding or determination. If any such statement ~~comment~~ is challenged, the challenger must declare the basis for the challenge. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any support for the accuracy of its assertions. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination. The determination will be final and may not be waived or appealed.

(2) Community Input other than Quantifiable Community Participation. If ~~there is no Neighborhood Organization on record~~an Application receives points under §§11.9(d)(1)(C)(iv) or (v) of this chapter, then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters must be submitted within the Application. At no time will the Application receive a score lower than zero (0) for this item.

(A) An Application may receive (2 points) for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose of the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide some documentation of its tax exempt status and its existence and participation in the community in which the Development is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts), or taxing entities. Should an Applicant elect this option and the Application receives letters in opposition, then two (2) points will be subtracted from the score for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this subparagraph.

(B) An Application may receive (2) points for a letter of support, from a property owners association created for a master planned community whose boundaries include the Development Site that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (1) of this subsection.

(C) An Application may receive (2) points for a letter of support from a Special Management District~~,~~ whose boundaries, as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site and for which there is not a Neighborhood Organization on record with the county or state.

(D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, standing alone, cause staff or the Department to terminate the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(3) Commitment of Development Funding by Unit of General Local Government. (§2306.6710(b)(1)(E)) An Application may receive up to thirteen (13) points for a commitment of Development funding from the city or county in which the Development is proposed to be located. Development funding from instrumentalities of a city or county will not qualify for points under this scoring item unless such instrumentalities ~~are~~ first award~~ing such~~ the funds to the city or county for their administration, ~~or~~ at least 60 percent of the governing board of the instrumentality ~~is~~consists of city council members from the

city in which the Development will be located (for Developments located in a city) or county commissioners from the county in which the Development will be located (for Developments not located in a city), or 100 percent of the governing board of the instrumentality is appointed by the elected officials of the city in which the Development is located (if the Development is located within a city) or county in which the Development is located (for Developments not located within a city). ~~A~~ The government instrumentality providing Development funding under this scoring item may not be a Related Party to the Applicant. Development funding must be provided in the form of a construction and/or permanent loan with an interest rate no higher than ~~the Applicable Federal Rate (AFR)~~3 percent per annum and term of at least 5 years, a grant, an in-kind contribution, a contribution which will support the Development, such as vouchers, or combination thereof. Funds cannot have been provided to the Unit of General Local Government by the Applicant or a Related Party. HOME Investment Partnership Program or Community Development Block Grant funds administered by the State of Texas cannot be utilized for points under this scoring item except where the city, county, or instrumentality is an actual applicant for and subrecipent of such funds for use in providing financial support to the proposed Development. The Applicant must provide evidence in the Application that an application or request for the development funds has been submitted in the form of an acknowledgement from the applicable city or county. The acknowledgement must also state that a decision with regard to the awards of such funding will occur no later than August 1. A firm commitment of funds is required by Commitment or the points will be lost (except for Applicants electing the point under subparagraph (B) of this paragraph).

(A) Applications will qualify for points based on the amount of funds at the levels described in clauses (i) – (v) of this subparagraph. For the purpose of this calculation, the Department will use the population of the Place from which the Development's Rural or Urban Area designation is derived. For ~~d~~Developments located outside a census designated place, the Department will use the population of the nearest ~~place~~Place.

(i) twelve (12) points for a commitment by a Unit of General Local Government of the lesser of the population of the Place multiplied by a factor of 0.15 in funding per Low Income Unit ~~and~~ or $15,000 in funding per Low Income Unit;

(ii) eleven (11) points for a commitment by a Unit of General Local Government of the lesser of the population of the Place multiplied by a factor of 0.10 in funding per Low Income Unit ~~and~~ or $10,000 in funding per Low Income Unit;

(iii) ten (10) points for a commitment by a Unit of General Local Government of the lesser of population of the Place multiplied by a factor of 0.05 in funding per Low Income Unit ~~and~~ or $5,000 in funding per Low Income Unit;

(iv) nine (9) points for a commitment by a Unit of General Local Government of the lesser of the population of the Place multiplied by a factor of 0.025 in funding per Low Income Unit ~~and~~ or $1,000 in funding per Low Income Unit; or

(v) eight (8) points for a commitment by a Unit of General Local Government of the lesser of the population of the Place multiplied by a factor of 0.01 in funding per Low Income Unit ~~and~~ or $500 in funding per Low Income Unit.

(vi) seven (7) points for a resolution of support from the Governing Body of the city (if located in a city) or county (if not located within a city) in which the Development is located stating that the city or county would provide development funding but has no development funding available due to budgetary or fiscal constraints and, despite reasonable efforts, has been unable to identify and secure any such funding. The resolution must be submitted with the Application and dated prior to March 1, 2013. A general letter of support does not qualify.

(B) One (1) point may be added to the points in clauses (i) – (v) of subparagraph (A) ~~of this paragraph~~ if the Applicant provides a firm commitment for funds in the form of a resolution from the Unit of General Local Government in the Application.

(4) Community Support from State Representative or Senator. (§2306.6710(b)(1)(F); §2306.6725(a)(2)) Applications may receive up to twelve (12) points or have deducted up to twelve (12) points for this

scoring item. To qualify under this paragraph letters must be on the State Representative's or State Senator's letterhead, be signed by the State Representative or State Senator, identify the specific Development and clearly state support for or opposition to the specific Development. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative or Senator and must be submitted no later than the Input from State Senator or Representative Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits). Once a letter is submitted to the Department it may not be changed or withdrawn. Therefore, it is encouraged that letters not be submitted earlier than the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives or Senators to be considered are those in office at the time the letter is submitted and whose district boundaries include the proposed Development Site. Neutral letters or letters that do not specifically refer to the Development or specifically express support or opposition will receive zero (0) points. Points under this scoring item will be averaged. If one letter is received in support and one letter is received in opposition the score would be zero (0) points. A letter that does not directly express support but expresses it indirectly by inference~~,~~ (e.g. "the local jurisdiction supports the Development and I support the local jurisdiction") will be treated as a neutral letter.

(5) Declared Disaster Area. (§2306.6710(b)(1)) An Application may qualify to receive up to eight (8) points for this scoring item. An Application will receive seven (7) points if at the time the complete Application is submitted or at any time within the two-year period preceding the date of submission, the proposed Development Site is located in an area declared to be a disaster area under ~~of~~ the Texas Government Code, §418.014 (this excludes disaster declarations that are pre-emptive in nature). An Application will receive eight (8) points if the disaster declaration, within the two-year period preceding the date of submission, is localized, in other words, if the disaster declaration does not apply to the entire state.

(6) Community Revitalization Plan.

(A) For Developments located in an Urban Area of Region 3.

(i) An Application may qualify to receive up to six (6) points if the proposed Development is located in an area ~~covered~~ targeted for revitalization by a community revitalization plan and ~~that~~ meets the criteria described in subclauses (I) – (VII) of this clause:

(I) The community revitalization plan must have been adopted by the municipality or county in which the Development is proposed to be located.

(II) The adopting municipality or county must have performed, in a process providing for public input, an assessment of the factors in need of being addressed as a part of such community revitalization plan. Factors to be considered may include:

(-a-) adverse environmental conditions, natural or manmade, that are material in nature and are inconsistent with the general quality of life in typical average income neighborhoods. By way of example, such conditions might include significant and recurring flooding, presence of hazardous waste sites or ongoing localized emissions not under appropriate remediation, nearby heavy industrial uses, or uses presenting significant safety or noise concerns such as major thoroughfares, nearby active railways (other than commuter trains), or landing strips; significant and widespread (e.g., not localized to a small number of businesses or other buildings) rodent or vermin infestation acknowledged to present health risks requiring a concerted effort; or fire hazards;

(-b-) presence of blighted structures;

(-c-) presence of inadequate transportation;

(-d-) lack of accessibility to and/or presence of inadequate health care facilities, law enforcement and fire fighting facilities, social and recreational facilities, and other public facilities comparable to those typically found in neighborhoods containing comparable but unassisted housing;

(-e-) the presence of significant crime;

(-f-) the presence, condition, and performance of public education; or

(-g-) the presence of local business providing employment opportunities.

(III) A municipality or county is not required to identify and address all of the factors identified in this clause ~~(i) of this subparagraph~~, but it must set forth in its plan those factors that it has identified and determined it will address.

(IV) The adopting municipality or county must have based its plan on the findings of the foregoing assessment and must have afforded the public an opportunity to provide input and comment on the proposed plan and the factors that it would address. To the extent that issues identified require coordination with other authorities, jurisdictions, or the like, such as school boards or hospitals, the adopting municipality should include coordination with such bodies in its plan and, to the extent feasible, secure their cooperation.

(V) The adopted plan, taken as a whole, must be a plan that can reasonably be expected to revitalize the ~~community~~ neighborhood and address in a substantive and meaningful way the material factors identified. Generally, because revitalization must identify specific matters needing to be addressed by revitalization and provide a plan and budget specifically directed to those identified issues, revitalization will be considered distinct and separate from broader economic development efforts. For example, staff will review the neighborhood for the presence of existing aging structures and infrastructure, and staff will review plans for evidence that the local government endeavors to address the aging nature of the structures and area through a deliberate and substantive revitalization effort. The adopted plan must specifically address how ~~the~~ providing ~~of~~ affordable rental housing fits into the overall plan and is a necessary component thereof. The target areas should be limited in size along the lines of specific neighborhoods rather than encompassing large areas of a city or county.

(VI) The adopted plan must describe the planned sources and uses of funds to accomplish its purposes.

(VII) To be eligible for points under this item, the community revitalization plan must already be in place as of the Pre-Application Final Delivery Date pursuant to §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) evidenced by a certification that:

(-a-) the plan was duly adopted with the required public comment processes followed;

(-b-) the funding and activity under the plan has already commenced; and

(-c-) the adopting municipality or county has no reason to believe that the overall funding for the full and timely implementation of the plan will be unavailable.

(ii) Points will be awarded based on:

(I) Applications will receive ~~six~~ four (~~6~~4) points if the community revitalization plan has a total budget or projected economic value of $6,000,000 or greater; or,

(II-) Applications will receive ~~four~~ two (2~~4~~) points if the community revitalization plan has a total budget or projected economic value of at least $4,000,000; and,~~or~~

(III) Applications ~~will receive two (2) points if the community revitalization plan has a total budget or projected economic value of at least $2,000,000~~may receive two (2) points in addition to those under subclauses (I) or (II) if the Development is explicitly identified by the city or county as contributing most significantly to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause. A resolution from the Governing Body of the city or county that approved the plan is required to be submitted in the Application (this resolution is not required at pre-application). If multiple Applications submit resolutions under this subclause from the same Governing Body, none of

the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application as contributing most significantly to concerted revitalization efforts.

(iii) At the time of the tax credit award the site and neighborhood of any Development must conform to the Department's rules regarding unacceptable sites.

(iv) It is recognized that municipalities and counties will need to devote time and effort to adopt a concerted revitalization plan that complies with the requirements of this scoring item. Therefore, for purposes of the 2013 Application Round only, the Department's Board may, in a public meeting, determine whether a revitalization plan substantively and meaningfully satisfies a revitalization effort, notwithstanding a failure to fulfill one or more of the factors in this subparagraph ~~not having been satisfied~~. Such pre-clearance shall be prompted by a request from the Applicant pursuant to the waiver provisions in §10.207 of this title (relating to Waiver of Rules for Applications).

(B) For Developments located in Urban Areas outside of Region 3.

(i) An Application may qualify for up to six (6) points for meeting the criteria under subparagraph (A) of this paragraph (with the exception of being located in Region 3); or

(ii) An Application will qualify for six (6) points if the city or county has an existing plan for Community Development Block Grant - Disaster Relief Program (CDBG-DR) funds that ~~includes the~~ meets the requirements of subclauses (I) - (V) of this clause. ~~In order to~~To qualify for points, the ~~d~~Development Site must be located in the target area defined by the plan, and the Application must have a commitment of CDBG-DR funds ~~and receive a HUD Site and Neighborhood Clearance with HUD review or approval of such clearance~~:

(I) the plan defines specific target areas for redevelopment of housing that do not encompass the entire jurisdiction;

(II) the plan affirmatively addresses Fair Housing demonstrated through an approved Fair Housing Activity Statement-Texas (FHAST);

(III) the plan is subject to administration in a manner consistent with the findings of an Analysis of Impediments approved or accepted by HUD within the last three (3) calendar years or an approved Fair Housing Activity Statement-Texas (FHAST), approved by the Texas General Land Office;

(IV) the plan is in place prior to the Pre-Application Final Delivery Date; and

(V) the plan (in its entirety) and a letter from a local government official with specific knowledge and oversight of implementing the plan are included in the pre-application.

(C) For Developments located in a Rural Area.

(i) An Application may qualify for up to six (6) points if the city, county, ~~or~~ state, or federal government has approved expansion of any of the basic infrastructure or projects to the Development Site described in subclauses (I) – (IV) of this clause, or improvements to areas within a quarter mile of the Development Site, unless a different distance is otherwise identified in subclauses (I) – (IV) of this clause. Approval cannot be conditioned upon the award of tax credits or on any other event (zoning, permitting, construction start of another development, etc.) not directly associated with the particular infrastructure expansion. The Applicant or Related Party cannot contribute funds for or finance the project or infrastructure~~.~~, except through the normal and customary payment of property taxes, franchise taxes, sales taxes, impact fees and/or any other taxes or fees traditionally used to pay for or finance such infrastructure by cities, counties, state or federal governments or their related subsidiaries. The project or infrastructure must have been completed no more than twelve (12) months prior to the beginning of the Application Acceptance Period or be approved and projected to be completed within twelve (12) months from the beginning of the Application Acceptance Period. An Application is eligible for four (4) points for one of the items described in subclauses (I) – (IV)

of this clause or six (6) points for at least two (2) of the items described in subclauses (I) – (IV) of this clause:

(I) Paved roadways or expansion of paved roadways by at least one lane;

(II) Water; ~~and/or~~

(III) ~~w~~Wastewater service;

(~~III~~IV) Construction of a new police or fire station within one (1) mile of the Development Site that has a service area that includes the Development Site; and

(~~I~~V) Construction of a new hospital or expansion of an existing hospital's capacity by at least 25 percent within a five (5) mile~~s~~ radius of the Development Site and ambulance service to and from the hospital is available at the Development Site. Capacity is defined as total number of beds, total number of rooms or total square footage of the hospital.

(ii) The Applicant must provide a letter from a government official with specific knowledge of the project. However, ~~the~~ Department staff may rely on other documentation that reasonably documents that the substance of this clause is met, in Department ~~S~~staff's sole determination. A letter must include:

(I) the nature and scope of the project;

(II) the date completed or projected completion;

(III) source of funding for the project;

(IV) proximity to the Development Site; and

(V) the date of any applicable city, ~~or~~ county, state, or federal approvals, if not already completed.

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) An Application may qualify to receive a maximum of eighteen (18) points for this item. To qualify for points, a 15-year ~~itemized~~ pro forma ~~that includes~~itemizing all projected income, operating expenses and debt service, and specifying the underlying growth assumptions~~,~~ and reflecting a minimum must-pay debt coverage ratio of 1.15 for each year must be submitted. The pro forma must include the signature and contact information evidencing that it has been reviewed and found to be acceptable by an authorized representative of a proposed Third Party construction or permanent ~~Third Party~~ lender. An acceptable form of lender approval letter is found in the application. If the letter evidences review of the Development alone it will receive sixteen (16) points. If the letter evidences review of the Development and the Principals, it will receive eighteen (18) points.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(H); §42(m)(1)(C)(iii)) An Application may qualify to receive up to ten (10) points based on the Building Cost (less any structured parking cost that is not included in Eligible Basis) per square foot of the Application, as originally submitted and certified to by the General Contractor, relative to the mean cost per square foot for all similar development types. Structured parking costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking. The square footage used will be the Net Rentable Area (NRA). For the purposes of this paragraph only, if a building is in a Qualified Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors (~~E~~elevator ~~S~~served Development) the NRA will include elevator served interior corridors. If the proposed Development is a Supportive Housing Development, the NRA will include elevator served interior corridors and 50 square feet of common area per Unit. As it relates to this paragraph, an interior corridor is a corridor that is enclosed, heated and/or cooled and otherwise finished space. The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule. ~~of the Application.~~

(A) Each Application will be categorized as:

(i) Applications proposing Rehabilitation; or

(ii) If not proposing Rehabilitation, ~~Qualified Elderly and Elevator Served~~ Development, more than 75 percent single family design, and Supportive Housing Developments; or

(iii) All other Applications proposing New Construction, Reconstruction, or Adaptive Reuse~~; or~~

~~(iii) All other Applications proposing Rehabilitation.~~

(B) Within each category listed in subparagraph (A) of this paragraph, points will be awarded~~ as follows:~~

(i) Within 8 percent and equal to or less than the mean cost per square foot (10 points);

(ii) Within 5 percent and greater than the mean cost per square foot (10 points);

(iii) Within 13 percent and equal to or less than the mean cost per square foot (9 points);

(iv) Within 10 percent and greater than the mean cost per square foot (8 points);

(v) Within 18 percent and equal to or less than the mean cost per square foot (7 points);

(vi) Within 15 percent and greater than the mean cost per square foot (6 points); or

(vii) Within 20 percent of the mean cost per square foot (5 points).

(C) The mean will be fixed based on the exhibits as submitted in the original Applications received by the Department on or before March 1, 2013. Changes to a specific Application as a result of an Administrative Deficiency to be within the mean parameters in subparagraph (B) will be allowed but the Application will not receive additional points for such changes. Program or underwriting Application reviews that result in an Applicant making corrections such that the Application's revised costs fall outside of the mean parameters in subparagraph (B) will have the points reevaluated. Where costs change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

(~~C~~D) Developments with Building Costs of less than $80 per square foot shall receive no less than eight (8) points. Points under this subparagraph are not in addition to the points achieved under subparagraph (B) of this paragraph.

(3) Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted during the Pre-Application Acceptance Period and meets the requirements described in subparagraphs (A) – (I) of this paragraph:

(A) The total number of Units does not increase by more than 10 percent from pre-application to Application;

(B) The designation of the proposed Development as Rural or Urban remains the same;

(C) The proposed Development serves the same Target Population;

(D) The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, and/or Rural);

(E) The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than six (6) points from what was reflected in the pre-application self score;

(F) All necessary waivers and pre-clearance were requested in the pre-application;

(G) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number listed at pre-application is the same at Application;

(H) The pre-application met all applicable requirements; and

(I) The community revitalization plan the Applicant used for points under subsections (d)(6)(A) and (B)(i) of this section was submitted at the time of pre-application.

(4) Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3))

(A) An Application may qualify to receive up to three (3) points if at least 5 percent of the total Units are restricted to serve households at or below 30 percent of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) – (iv) of this subparagraph:

(i) the Development leverages CDBG Disaster Recovery, HOPE VI, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 8 percent of the Total Housing Development Cost (3 points); or

(ii) If the Housing Tax Credit funding request is less than 7 percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than 8 percent of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than 9 percent of the Total Housing Development Cost (1 point).

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule and will be rounded to the nearest hundredth. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50 percent of the developer fee can be deferred. Where costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

(5) Extended Affordability or Historic Preservation. (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) An Application may qualify to receive two (2) points for this scoring item.

(A) In accordance with the Code, each Development is required to maintain its affordability for a 15-year compliance period and, subject to certain exceptions, an additional 15-year extended use period. Development Owners that agree to extend the affordability period for a Development to thirty-five (35) years total may receive the two (2) points; or

(B) An Application proposing the use of historic (rehabilitation) tax credits and providing documentation that an existing building that will be part of the Development will reasonably be able to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609 may qualify to receive two (2) points.

(6) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) An Application may qualify to receive one (1) point for Development Owners that will agree to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period in accordance with Texas Government Code, §2306.6726 and the Department's rules including §10.407 of this chapter (relating to Right of First Refusal) and §10.408 of this chapter (relating to Qualified Contract Requirements).

(7) Development Size. An Application may qualify to receive one (1) point if the Development is proposed to be fifty (50) total HTC Units or less and the Application reflects a Funding Request of Housing Tax Credits, as identified in the original Application submission, of $500,000 or less.

(f) Point Deductions.

(1) Any Applicant that elects points for a scoring item on their self score form and is unable to provide sufficient documentation for Department staff to award those points will receive a one (1) point deduction per scoring item in their final score. This ~~penalty~~deduction shall not be applied to these scoring items regardless of points elected: §11.9(d)(1), (4), and (6) and §11.9(e)(2) and (3).

(2) Staff will recommend to the Board a ~~penalty~~ deduction of up to (5 points) for any of the items listed in subparagraph (A) of this paragraph, unless the person approving the extension (the Board or Executive Director, as applicable) makes an affirmative finding setting forth that the facts which gave rise to the need for the extension were beyond the reasonable control of the Applicant and could not have been reasonably anticipated. Any such matter to be presented for final determination of ~~penalties~~deduction by the Board must include notice from the Department to the affected party not less than fourteen (14) days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant ~~penalties~~point deductions. (§2306.6710(b)(2))

(A) If the Applicant or Affiliate failed to meet the original Carryover submission or 10 percent Test deadline(s) or has requested an extension of the Carryover submission deadline, the 10 percent Test deadline (relating to either submission or expenditure).

(B) If the Developer or Principal of the Applicant violates the Adherence to Obligations.

(C) No ~~penalty~~ points will be deducted for extensions that were requested on Developments that involved Rehabilitation when the Department is the primary lender, or for Developments that involve USDA as a lender if the Applicant is not determined to be at fault for not meeting the deadline.

(D) Any ~~penalties~~deductions assessed by the Board for subparagraph (A) or (B) of this paragraph based on a Housing Tax Credit Commitment from the preceding Application Round will be attributable to the Applicant or Affiliate of an Application submitted in the current Application Round.

§11.10. Challenges of Competitive HTC Applications.

Challenges. The Department will address challenges received from unrelated entities to a specific active Application. The Department will utilize a preponderance of the evidence standard and determinations made by the Department concerning challenges cannot be appealed by a party unrelated to the Applicant that is the subject of the challenge. The challenge process shall be as stated in paragraphs (1) - (12) of this section. A matter, even if raised as a challenge, that staff chooses to treat as an Administrative Deficiency will be treated and handled as an Administrative Deficiency, not as a challenge.

(1) The challenge must be received by the Department no later than the Application Challenges Deadline as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) and must be accompanied by the corresponding non-refundable challenge processing fee as described in §10.901 of this title (relating to Fee Schedule). Unless the required fee is received with the challenge, no challenge will be deemed to have been submitted, and the challenge fee must be paid for each Application challenged by a challenger.

(2) A challenge must be clearly identified as such, using that word in all capital letters at the top of the page, and it must state the specific identity of and contact information for the person making the challenge.

(3) Challengers must provide, at the time of filing the challenge, any briefing, documentation or other information that the challenger offers in support of the challenge. Challengers must provide sufficient credible evidence that, if confirmed, would substantiate the challenge.

(4) Challenges to the financial feasibility of the proposed Development are premature and will not be accepted; as such issues will be addressed during the underwriting phase of the process.

(5) Challenges relating to undesirable area features as described in §10.101(a)(4) of this ~~chapter~~title (relating to Site and Development Requirements and Restrictions) will not be accepted unless they relate to a failure to disclose substantive issues not already disclosed.

(6) Challengers are encouraged to be prudent in identifying issues to challenge, realizing that most issues will be identified and addressed through the routine review and Administrative Deficiency process;

(7) Once a challenge on an Application has been submitted, subsequent challenges on the same Application from the same challenger will not be accepted;

(8) The Department shall promptly post all items received and purporting to be challenges and any pertinent information to its website;

(9) The Department shall notify the Applicant that a challenge was received within seven (7) business days of the challenge deadline;

(10) The Applicant must provide a response regarding the challenge within fifteen (15) business days of their receipt of the challenge; and

(11) The Department shall promptly post its determinations of all matters submitted as challenges. Because of statutory requirements regarding the posting of materials to be considered by the Board, staff may be required to provide information on late received items relating to challenges as handouts at a Board meeting.

(12) Staff determinations regarding all challenges will be reported to the Board as report items.

Attachment B: Preamble, Reasoned Response, and Repealed Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC, Chapter 49, §§49.1 – 49.17, concerning the 2011 Housing Tax Credit Program Qualified Allocation Plan, without changes to the proposed text as published in the September 21, 2012 issue of the *Texas Register* (37 TexReg7430) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the repeal will replace the sections with a new QAP applicable to the 2013 cycle.

The Department accepted public comments between September 21, 2012 and October 22, 2012. Comments regarding the repeal sections were accepted in writing and by fax. No comments were received concerning the repeal section.

The Board approved the final order adopting the repeal section on November 13, 2012.

STATUTORY AUTHORITY. The repealed sections are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the repealed sections are adopted pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

§49.1. General Program Information
§49.2. Definitions
§49.3. Program Calendar
§49.4. Ineligible Applicants, Applications and Developments
§49.5. Site and Development Restrictions
§49.6. Allocation Process
§49.7. Application Process
§49.8. Threshold Criteria
§49.9. Selection Criteria
§49.10. Board Decisions
§49.11. Tax-Exempt Bond Developments
§49.12. Post Award Activities
§49.13. Board Reevaluation (§2306.6731(b))
§49.14. Program Related Fees
§49.15. Manner and Place of Filing All Required Documentation
§49.16. Waiver and Amendment of Rules
§49.17. Department Responsibilities

Attachment C: Preamble, Reasoned Response, and Repealed Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC, Chapter 50, §§50.1 – 50.17, concerning the 2012-2013 Housing Tax Credit Program Qualified Allocation Plan, without changes to the proposed text as published in the September 21, 2012 issue of the *Texas Register* (37 TexReg 7431) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the repeal will replace the sections with a new rule that encompasses QAP applicable to the 2013 cycle.

The Department accepted public comments between September 21, 2012 and October 22, 2012. Comments regarding the repeal sections were accepted in writing and by fax. No comments were received concerning the repeal section.

The Board approved the final order adopting the repeal section on November 13, 2012.

STATUTORY AUTHORITY. The repealed sections are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the repealed sections are adopted pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

§*50.1* General Program Information
§*50.2* Definitions
§*50.3* Program Calendar
§*50.4* Ineligible Applicants, Applications and Developments
§*50.5* Site and Development Restrictions
§*50.6* Allocation Process
§*50.7* Application Process
§*50.8* Threshold Criteria
§*50.9* Selection Criteria
§*50.10* Board Decisions
§*50.11* Tax-Exempt Bond Developments
§*50.12* Post Award Activities
§*50.13* Board Reevaluation (§2306.6731(b))
§*50.14* Program Related Fees
§*50.15* Manner and Place of Filing All Required Documentation
§*50.16* Waiver and Amendment of Rules
§*50.17* Department Responsibilities

2013

Official Public Comment

for the

Qualified Allocation Plan

and

Uniform Multifamily Rules

October 9, 2012 Board Meeting
Public Comment

Comment (1)

Michael Ash
Commonwealth Development

Comment (2)
Ginger McGuire

Comment (3)
Brett Johnson, Overland Property Group

Comment (4)
Bobken Simonians, Houston Housing Authority

Comment (5)
Craig Litner, Pedcor

Comment (6)
Diana McIver, DMA Development Company

Comment (7)
Mark Mayfield

Comment (8)
Matt Hull
Texas Association of Community Development Corporations

Comment (9)
Sarah Andre

Comment (21)
Scott McGuire, McGuire Development

Comment (72)
Prestwick Development

that in. When you come to the microphone, state who you are and who you represent and the item that you're commenting on.

Good morning.

Comment (1)

MR. ASH: Good morning. Thank you all for your time. My name is Michael Ash from Irving, Texas. I represent Commonwealth Development. We are new tax credit developer to the state so the thing I'm speaking specifically on is the sponsorship characteristic language that essentially would require us to partner with a developer with three Texas projects. I understand it's not a requirement, but given the fact that there are three points involved, essentially it is a requirement.

To give you a little bit of background about my company and myself, because I think it's important in terms of our position, the company I work for is Commonwealth Development. We've been in business ten years, owned by a gentleman named Louis Lange. Over that ten years, all of our practice has been in Wisconsin. We've developed 22 tax credit projects, over a thousand units at this point. We were named developer of the year in Wisconsin by the Wisconsin Builders Association. We're typically one of Wisconsin's highest scoring developers. They score the development team and we've done very well. So we have a great depth of

experience just in terms of numbers. We also have broad experience in terms of what we've done. We've done new construction, adaptive reuse, acquisition rehab, we've partnered with housing authorities, we've partnered with cities, so a very broad experience.

In terms of the people involved, my principal, the company owner is named Louis Lange. He is a retired Marine officer, spent three years working for another for-profit developer and his own company for ten years. He is very cautious, he is very conservative, he's a very smart guy. He walks me back from the ledges of lots of stupid projects that I look at that I really like. So he's done a great job with that.

I have been in the tax credit business for probably 16 years now. I'm a recovering attorney. It took me about nine years to figure out that there were lots of people that --

MR. OXER: You understand that's like amoebic dysentery, you never really get rid of it.

(General laughter.)

MR. ASH: I don't know that I would use that comparison, but I understand what you're saying.

MR. OXER: And the counsel on my left here and the one behind me.

MR. ASH: I realize there were a lot of people

who were better suited to practicing law than I was.

MR. OXER: I'm surrounded by attorneys up here.

MR. ASH: I'm sorry about that.

MR. OXER: Talk about walking you back from the ledge, trust me, I'm the one who gets walked back frequently.

MR. ASH: I worked at the Wisconsin Housing Economic Development Authority for twelve years, including a number of years as a multifamily and tax credit underwriter, and a number a years as director of multifamily tax credits and our lending programs. So the fact that I'm appearing in opposition to language that staff has drafted, I apologize to the Board and to Cameron. This is the first time I've been here and I don't necessarily want to speak in opposition, but I feel like I have to.

I've worked for a year for this company. Prior to that I worked for three years for another for-profit developer in Wisconsin. They were also a very good developer, they were also picked as developer of the year by the Wisconsin Builders Association. The only thing in common those two companies ever had was me, and I don't say that to prove anything except for the fact that there's a big difference between correlation and causation. They were both excellent companies, I was lucky to work there, and they've done a lot of good work.

Some of the projects that I've worked on include the rehabilitation of a 239-unit Section 8 project in inner city Milwaukee. It was a combination 9 percent tax credits, 4 percent tax credits, and bonds. Also worked on a private-public partnership between the City of La Crosse and the former company I was with that involved them building the shell of the building, there was a transit station and retail on the first floor, there was condominiumized low income units on the second, third and fourth floor, and then there was condominiumized condos on the top floor. Those eventually became apartments in the 2008-2009 crash. But really what I'm trying to point out is we've dealt with an extreme variety of projects and very difficult projects too, not simple project.

The real point I want to get to -- and I'm sorry it's taken this long -- is that I'm not sure the language as drafted really accomplishes any of the state's goals. The language that would require our firm to partner with someone who has done three projects in Texas I don't think is going to create any additional housing, I don't think it's going to create better housing, I don't think it's going to serve any additional geographic markets, I don't think it's going to serve any additional use markets, special needs, families, senior, anything like that.

What I do think it's going to do, I think it's going to add to the complexity of the transaction, I think it's going to add to the risk of the transaction, I think it's going to add somewhat to the costs of the transaction, both in terms of legal and accounting fees, and I don't know that it's going to get what I think the state wants to get through that language.

So I'm speaking in opposition. I guess my suggestion -- and we're a member of TAAHP, this is certainly not TAAHP's position, I don't' know what their position would be -- would be to make it a threshold item that can be addressed by partnership with someone if we don't have adequate experience. If you're looking for a bright line that you have to have X amount of experience, I would not relate it to the State of Texas, I would relate it to tax credit projects of a similar nature. And if you're looking for a number, given that we have 22 projects under our belt, I'd say the number ought to be about 20 or 21 projects, something like that.

So thank you for your time. I appreciate it.

MR. OXER: Indeed. Thank you.

Hold on, Cameron. Is there anybody else that wants to speak on the sponsorship characteristics? We'll start from the left over here; we have three ringers in there.

And that way you can respond to all of them in kind at one time, Cameron.

Comment (2)

MS. McGUIRE: Good morning. My name is Ginger McGuire. I'm speaking on behalf of the Rural Rental Housing Association of Texas.

And I, first of all, want to agree with the previous speaker regarding the out-of-state requirements and the three projects with 8609s and 85 percent compliance score. The 85 percent is fine, the three projects with the 8609s actually, in our opinion, does not do what it's intended because it freezes out a lot of the Texas rural developers that don't have 8609s. They're very capable, they've done a number of projects, and this particular provision would prevent them from getting additional tax credits or getting tax credits. This is in rural areas where the funds are really limited and tax credits are just about the only resource they have for rehab in those areas.

Secondly, on the award limits, do you want me to stop here so he can address all of those, or do you want me to continue?

MR. OXER: Continue. We'll get all the sponsorship, but go ahead with your comments.

MS. McGUIRE: Okay. And secondly, the Rural Rental Housing wants to note that seniors in rural areas have

been identified in the statewide housing analysis as the stable and growing population in rural Texas, and so we really do not agree with penalizing elderly, particularly in rural Texas where that's going to be the stable population for a lot of these communities. We'd like to see the rural projects receive parity always in scoring points with family developments because they're so needed in rural areas, and the rehab is just tremendously needed.

MR. OXER: Eventually all of us get to be in one of those special needs groups with age. I'm hoping, anyway, I hope I get there.

(General laughter.)

MS. McGUIRE: That's right, that's a good scenario.

And tie-breaker factors, they're first measured by opportunity index and then by the greatest distance from the nearest housing tax credit. We would like to see more clarification on that. If it's 9 percent that you intend there, we'd like to see that clarification; if not, then we want to see that clarification as well.

In addition, last legislative session the legislature clarified some unintended language on the 538 program and made it permissible to use the 538 in the set-asides, the at-risk and the USDA, as long as there is

a 515 -- which is the original Farmers Home projects -- retained with that loan. So it would be rehab only, and again, that's one of the few sources, tax credits are one of the few sources of funds that these projects have for their developments.

And lastly from me, special needs, we would like to see the definition of special needs expanded. For example, Wounded Warriors, as defined by the Wounded Warriors Act of 2008, that's just one example. But applicants should have the opportunity to obtain agency approval of other categories, unanticipated at this time, of special needs not specifically listed at the time of cost certification.

Thank you.

MR. OXER: Good. Any questions of the Board?

(No response.)

MR. OXER: Okay. Thanks very much. And everybody make sure you sign in up here just so we have your name spelled correctly for the record.

Good morning. Welcome back.

Comment (14). Additional Letter provided behind #14.

MR. HOOVER: Good morning. Thank you.

My name is Dennis Hoover. I'm going to start off, I'm in at least two capacities here this morning, the first one being speaking for the Housing Authority of the City of Edinburg on an application they helped to make this year.

They bought property about four or five years ago and I want to speak to the opportunity index.

I've been participating in the program since '87 and I want to applaud TDHCA and the staff for the job they do every year, not just this year, on trying to tweak these rules, and it's been a bigger job this year. And I think everybody here knows you make a rule this year, it's not till next year that you discover all the unintended consequences, and that's not saying we don't need rules. And this opportunity index, as you look at it, you don't realize until you look at it in depth what it does.

In the City of Edinburg, the housing authority bought themselves a piece of land five years ago that's in the part of town, it's in the second quartile, it's got great schools around it, it has exemplary and recognized schools, it's sort of sparsely populated, there's a lot of agricultural, there's some nice houses, there's some older rundown houses, there's one of their own housing authority properties there. But the City of Edinburg has got probably some of the highest poverty rates in the United States. And so it's in the second quartile, it's in a great area of town, it has great schools, but it's got 35.08 percent poverty and would be excluded under the opportunity index.

And as we start looking at how the opportunity

index affects different regions, to be equitable in its effect, almost every region needs a different percentage rate. The Belton-College Station-Temple area needs a higher poverty rate, the Corpus region needs a higher poverty rate, the Lower Rio Grande Valley needs a higher poverty rate even than 35 percent if we're going to include at least half of the census tracts in the eligibility on the poverty side, and that's not even counting the quartiles.

The particular problem is the incidence of poverty in Edinburg, and I don't think the intent the opportunity index is to block out the whole town, it's just to block out areas of town. And that's because Edinburg has much higher poverty across the board, even in the better parts of town. It's because the poverty level is measured in the whole United States together, not just in the State of Texas.

The opportunity index -- and now I'm speaking for the Rural Rental Housing Association -- the way the quartiles affect, starting to look at my USDA properties and where they're located in little small towns, I started making a list, I had to go to the fourteenth town before I found one that would get inside the first or second quartiles. And it's my recommendation that for at-risk that the opportunity index be set aside. Those properties are already there, they're already USDA properties or they're already tax credit

properties, they need to be rehabbed, and I'd rather not be making -- I've got 15 properties that need to be rehabbed, I'd rather rehab the one that needs it the worst, but what am I doing? I'm looking down to see which one scores the most, unfortunately. So the opportunity index.

The commitment of funding by the unit of local government -- and again, I'm speaking for Rural Rental Housing here -- that's been tightened up quite a bit from years past, but still I found myself in the position of trying to figure out how am I going to get this loan from the city where it doesn't cost the city anything, and therefore, it skirts the intent of what's meant here. If this doesn't cost the city something, then it puts developers, everybody included, in the position of trying to figure out how am I going to construct this so I can get the points where it doesn't cost the city anything, and therefore, they'll agree with it. It needs to cost the city something.

MR. OXER: They need to have some skin in the game. That's what we were actually looking for because that constitutes a commitment, rather than coming up later and having the entire city say we didn't want this project. Well, if you've got something in there that says you funded it, there's a resolution. That was the intent, the best I recall.

MR. HOOVER: It's much better than it was.

MR. OXER: We're not there yet but we're inching closer, I hope. But go ahead. I'm sorry, Dennis.

MR. HOOVER: It needs to really cost the city something or else -- I mean, I was in a meeting yesterday trying to figure out how to --

MR. OXER: Game the system.

MR. HOOVER: -- how to game the system. Exactly.

MR. OXER: Unfortunately, we have to have winners and losers because, as we were talking earlier this morning, we've got plenty of projects, we're looking for money. Now we've got to peel the list down, so there's some that meet the criteria and some don't, and unfortunately, you don't get shaved half points in here. It's a hard problem to manage because every time you push something in here to sharpen up, it opens up something with unintended consequence on the other side.

We appreciate your comments and recognize that this is far from a perfect program. Part of what I had thought was there may be some other programs that had an opportunity to provide some relief to some of these areas of need that we haven't developed to a state of such competitiveness as the Tax Credit Program has. And I don't know how to do that, I'll admit that, but that's one of the things. The Tax Credit Program is essentially a tool to solve certain problems, it

can't solve every problem. In fact, if you try to use it to solve every problem, eventually you're going to run into the situation you're essentially using a hammer to solve an electrical problem, it's just not going to work. Okay?

MR. HOOVER: And that's the case with some of these smaller USDA programs. They get to the point where they're so small, the syndicators won't buy them, and therefore, what do you do? USDA has no money anymore and the HOME Program is about the only thing left.

MR. OXER: I'm sorry to interrupt. Did you have additional?

MR. HOOVER: A couple more comments. The cost per square foot, we had a lot of comment from our members back on that, and I think we just want to say we agree with the TAAHP recommendation of take it back to the 2011 with a $3,000 per unit boost on top of that.

The definition of rural needs to be clarified where it's one definition. I think there's a lot of confusion and some disagreement even amongst our members on that about which definition to use. So the small projects that are under 50 units gets an extra point. I happen to like that one, but most of our membership doesn't, so I'm just going to have to speak against it. And the quantifiable community participation, a neighborhood, one point extra for

neighborhood organization, I spoke against it last year. Most of our members say if it's a positive community neighborhood organization comment, it should count the same either way.

MR. OXER: Okay. Thanks.

MR. HOOVER: Thank you.

MR. OXER: Good morning.

Comment (21). Comments also located immediately following the end of this transcript.

MR. McGUIRE: Good morning. My name is Scott cGuire, and good morning, Mr. Oxer and Board members, Mr. rvine.

I'm here to comment on, first of all, I've been in the business for 25 years and I think I gave Dennis Hoover the first allocation when I was with the agency in 1986. In '86 we created the program and in '87 Dennis got the first allocation in that round. Everybody got an award.

MR. HOOVER: I think the application was five pages long.

DR. MUÑOZ: Let's say that again to get in the record.

(General talking and laughter.)

MR. McGUIRE: But I'm here to reiterate a couple of things, a couple of points that have already been made. One is sponsor characteristics. Again, I'd like to vent a question by a client of mine. I represent rural developers,

one of them which is an out-of-state developer, and with a permission, I'd like to read their letter into the record, if that's okay.

Comment (72)

"Prestwick Development is an Atlanta, Georgia based affordable housing development organization. It's principals collectively bring over 60 years of affordable housing development asset management experience, with over 14,000 developed to date throughout the south and southeast. All of our developments are in full compliance with the Housing Tax Credit rules of the respective states and Section 42 of the IRS Code. Prestwick successfully competed for and was awarded a 2012 Housing Tax Credit allocation for the development of the Manor at Hancock Park, a 58-unit elderly community located in Lampasas, Texas.

"As currently written under sponsor characteristics, developers with Texas experience are favored over experienced out-of-state developers. The language is putting forth an anti-competition, anti-free market agenda that is in direct contrast to the pro-business environment that Texas has long been known for. "As clearly stated in the Texas Government Code in Chapter 2306, one of the main purposes of TDHCA is to provide for the housing needs of individuals and families of moderate, low, very low and extremely low income, and to serve as a source of the

information to the public regarding all affordable housing resources. The Low Income Housing Tax Credit Program is a federal housing program of the U.S. Department of Treasury and it is administered for the benefit of Texans by TDHCA.

"While no one will argue that developer experience is one of the most important underwriting criteria, the location of that experience should be immaterial to the Qualified Allocation Plan. If an experienced out-of-state developer can provide for the affordable housing needs within Texas communities throughout the Tax Credit Program, he/she should be allowed to do so without impediment or handicapping in the application process. It is incumbent upon TDHCA to administer all federal affordable housing resources fairly, equitably, and without bias to where the developer is domiciled.

"We request the words 'in Texas' be removed from the sponsor characteristic section of the QAP and allow an even playing field for all experienced and compliant developers."

The second point that they're making is in the elderly, disparity in points between elderly and families in rural Texas. My comment there is in addition to supplement Prestwick's comment is I'd like to read from the Bowen National Research study that was conducted by TDHCA. Bowen was hired

by the agency to develop a report. And in that report I'd like to just read one section in their summary.

"Demographic trends and migration patterns indicate that younger people and families under the age of 25 appear to be leaving the rural areas, while senior, age 55-plus, population and households are growing rapidly in the rural areas. Rapid senior demographic growth trends will increase the need for senior-oriented housing. Without modifications to existing supply and/or development of new senior-oriented housing that will allow seniors to age in place, rural areas may experience migration of seniors from rural to more developed urban markets."

As I travel through rural Texas, I hear the same plea over and over again from mayors and city managers: Please help us keep our aging population in our community by creating affordable housing for our seniors who want to stay.

Thank you.

MR. OXER: Good. Thanks, Scott.

Cameron, are you up to speed on this? Do you need any time, or do you want to get the rest of them in?

MR. DORSEY: No. Let's keep going.

MR. OXER: Okay. Good morning.

Comment (3)

MR. JOHNSON: Mr. Chairman, members of the Board.

My name is Brett Johnson. I'm a partner with Overland Property Group out of Topeka, Kansas. And most of what I'd prepared to speak has already been covered today, so I'm going to do a little on-the-fly change here and give you a little bit of insight as to how an out-of-state developer views the Texas process.

We've developed over 27 communities throughout the Midwest, over 1,500 units in the past ten years. Without question, the TDHCA application process is the most fair, the most balanced and the most transparent scoring system out there. There are other states -- and I won't name names, but one of them just went to the SEC -- that doesn't even show the scoring, so we have no idea where we compare to other developers.

That being said, competition -- and I know this is strange coming from a developer -- competition is a good thing for you guys, it's not only a good thing for you guys, you have more options, more choices, more communities are going to be approached. A great example, this year we were fortunate enough to be awarded two deals, one in Burkburnett and one in Dumas. At one point there were four developers competing for land in Dumas, Texas. I think that's pretty unique, and if we throw up barriers and essential hamstring out-of-state or new developers by deducting three points,

that's a deal-killer for a lot of them which is not good for those communities. I think it's healthy to have 200-plus applications a year.

Some of the states we deal in are actively recruiting out-of-state developers because they don't have what you have down here which is competition. So I would like to stress that even though it's harder for developers like us to come in and get deals because we have to compete, it's better for the system in general. We had to sharpen our pencils considerably to get our deals approved, and if there were less developers competing against us, I don't know that that would necessarily be the case.

I don't know that it's also fair to penalize those who have less experience. It doesn't mean they're not capable of following rules. Just because Overland Property Group doesn't have three 8609s under our belt, that doesn't mean we aren't a good developer and can't follow along with what you guys want. And I know that compliance is driving this, but I would focus this more on penalizing the bad people than penalizing up front and assuming that somebody can't follow the rules.

So that being said, obviously I'm in opposition to this. I would encourage the staff to rethink that and look into the benefits of how the system is already working,

which is a free market system which is exactly what it was built on back in '86.

MR. OXER: Good. Thank you.

Any comments from anybody for Mr. Johnson?

(No response.)

MR. OXER: Whoever is next, come back and sign in, if you would, please.

Comment (29). Additional Letter provided behind #29.

MR. WATERHOUSE: Good morning. My name is Stan Waterhouse. I'm the chief operating officer for the Housing Authority of the City of El Paso.

For the last several months, in conjunction with the QAP, several of the large housing authorities here in Texas, San Antonio, Houston, Fort Worth, Dallas and El Paso, have had conversations about the QAP and how it affects our businesses and how we'd like to participate in it. The second part of that is we've had a lot of conversations with our local representatives at the city level to discuss their interest in how the QAP affects that joint interest.

Just as a way of background, really we want to talk about the fact that as housing authorities we accommodate approximately a million folks here in the State of Texas through the different programs. A large portion of that we also work with folks in the tax credit world. El Paso, as an example, I have 20 tax credit projects, I know San Antonio

has about 4,000 units in tax credit, so tax credit is a major piece of what we do and it's a nice complement to our total portfolios.

And the concern I have or want to express right now is the unit of local government funding issue. We're not, obviously, a unit of local government in a technical sense, we are in the sense that we get federal funds, we sort of live at the intersection, if you will, of the federal government and the city financing.

MR. OXER: Caught in the crossfire.

MR. WATERHOUSE: Absolutely. And it's an interesting place to be and it creates a lot of interesting opportunity.

But the QAP now, with the changes that have been reflected in it or placed in it, basically take us out of having a voice in that. Essentially, our monies become -- it changes the context of the funds that we put forward. As an example, we were fortunate enough to win a tax credit award this past round. We put, as the housing authority from the City of El Paso, approximately almost $6 million into a project, and essentially what the new QAP would say is that those funds have no value in the scoring process. And we've had conversations with the staff, I completely understand the perspectives that you guys have put forward as to the

involvement of the cities, but the city, in our instance, could never have contributed at that level to these projects and basically see us as an integral funding source for those type of projects.

We're clearly the only folks that can build PHAs, public housing units, and if you look at the way that public housing is being built currently, it's a multi-finance project where you have a combination of tax credits, you have a combination of affordables all the way to market rate and PHAs count as part of that mix. Without our funding, those kind of projects would not occur with a PHA as a component part. So we feel like our monies are governmental, they're clearly designed to feed a need, and they're clearly designed to work in conjunction with the city's needs.

MR. OXER: May I ask a question?

MR. WATERHOUSE: Sure.

MR. OXER: What is the housing authority's authority conditioned on what or founded on what? Is it a resolution? What created the housing authority?

MR. WATERHOUSE: Well, they're created via state but they're also basically chartered by the cities as well.

MR. OXER: Does that not constitute -- does that not qualify, Cameron?

MR. DORSEY: In the past it has but the way the

point item is currently written, a housing authority would only qualify for providing points under this item, and I'll get back to all the other places where that financing would get points. But under this item, if the board were at least 60 percent city council members or county commissioners, if that makes sense, basically it's substantially representative of the city's interests. The boards of housing authorities are oftentimes appointed by mayors.

MR. OXER: Not elected.

MR. DORSEY: That's right, not elected, and not necessarily substantially representative of the city's interests. And we do see where government instrumentalities veer directly in conflict with a city's will or desires in many cases. Again, this is under one specific point item and under what qualifies under this specific point item, it's not any kind of statement about government instrumentalities generally.

MR. OXER: Right. Go ahead, Tim.

MR. IRVINE: And just for clarification, the statutory provision is the level of development funding by local political subdivisions.

MR. WATERHOUSE: Well, and Chairman, in all honesty, in the past we've always been considered that, and so our funding has been considered from a point standpoint

to win those points.

MR. OXER: And I understand that, and I guess where we'll eventually wind up on this is that it's evident that the funding you provide is extraordinarily important, of course, and there may be other places where you have the opportunity to score points on that that others would not able to score on, it's just in this interpretation. We had to have some mechanism to sort this all out.

MR. WATERHOUSE: Absolutely.

MR. OXER: Your point is well made, we recognize the funding, we're trying to contribute some value to that in the scoring, perhaps someplace else, but your point is made.

MR. WATERHOUSE: Thank you.

And just in reaction to one of Cameron's points, all of our boards are appointed by the political beings within that community, whether it's the mayor or the council, so irrespective of whether there's a council person sitting on that board -- and he is correct, there are circumstances in any political environment where there's a disconnect between boards and maybe the folks that appoint them, but at the end of the day, at least for the large ones that I'm familiar with, we all work very, very closely with the political folks to make sure that the needs of the community are well taken

care of. And so I think when you start looking at the 60 percent crossover threshold that he's talking about, I'm not sure how realistic that is, certainly when it comes to larger communities such as ours.

MR. OXER: Understood. We appreciate your comments.

MR. WATERHOUSE: Not a problem.

Comment (30). Additional letter provided behind #30.

MS. McCORMICK: Good morning. My name is Kathy McCormick. I head up development for the San Antonio Housing Authority.

What I wanted to do is just spend a few minutes talking a little bit about what we do in San Antonio and then make some comments about some of the other aspects of the QAP that we're concerned about.

First of all, as Stan said, we have been talking with all the larger housing authorities. We are in agreement and do ask that you give consideration to how we're defined as an instrumentality. We are quasi-political subdivisions of the state and we think that provides us something. Also, most housing authorities can be taken over at any point in time by their elected officials if they're not happy with how the work is being done, so I would ask you to consider that as well.

But with SAHA, let me tell you a little bit about

what we do. We own and manage almost 12,000 housing units in San Antonio. Of those, close to 6,500 -- we have a few more than Stan mentioned -- are done in mixed income tax credit developments. But what's important to us about that is that those tax credit developments are all public-private partnerships. This isn't SAHA acting as a developer alone, but we've worked in partnership with NRP, Carlton Development Corporation, Franklin Development, Home Spring, and now more recently, we're also going to be working with McCormick Barry Salazar out of St. Louis.

What's important about these particular transactions for us, as Stan also said, is that we do a lot of deeply subsidized housing in these developments, so we do mixed income transactions. We develop them to a very high quality standard because as a housing authority we know that we're going to be owning these properties for 30 years. It's not just a matter of putting them up and then being able to walk away at the end of the tax credit compliance period or at the end of 15 years when you think you might come back in for more tax credits, we own and manage them for a really long time.

And because of the strategy that we take, we are distributing affordable housing throughout the communities in which we work which I think is an important public policy

and initiative that we all want to be aware of. It's not concentrating poverty, it's not concentrating a certain income level, it's getting them distributed throughout the community, which we think is also very important.

In San Antonio, in particular, though, we're probably one of the oldest housing authorities in the state. This week we're celebrating our 75th anniversary, we've been in business a pretty long time, and we have public housing that is 70 years old. And as we start looking at how we're going to begin redeveloping these products, because they are 70 years old, we have to do them in mixed income developments, we do rely on tax credits, and we also work very closely with our cities to set up what we call revitalization areas. So I just wanted to speak to that for a moment in the QAP.

We're going to be asking for consideration that you look at what multiple initiatives might be in a city as opposed to having an adopted revitalization plan the way it's defined here. So for example, in San Antonio we have neighborhood plans that have overlaid on them different tax increments and different kinds of development incentives like we have in the downtown plan where we might get waivers of fees, we might be able to get density bumps, those kinds of things. We're saying begin looking at all of these plans and where there's an intersection that clearly is an

incentive, have that count as though it was part of a revitalization strategy.

The other thing that we also ask consideration for is that -- this is on revitalization but also somewhat on the opportunity areas -- more and more we're looking at working and partnering with the federal government where we're developing some of our properties through the Choice Program which is a replacement of the old HOPE VI Program and we're a finalist, one of nine in the country, for the Choice implementation which would include the redevelopment of a public housing site but also the surrounding neighborhood. So it extends just past one site and looks at what's happening in the surrounding area. In this case it's an area that's been divested of, we have a lot of vacant lots, a lot of vacant properties where we'll be doing some in-fill rental housing.

So when we look at an opportunity area, it wouldn't really qualify, and yet the opportunity is that it's going to bring an additional $30 million into the community for revitalizing an entire area. So we think that needs to be considered both in the opportunity area definition, as well as the revitalization area.

And that is all I have for today. Thank you.

MR. OXER: Thanks.

Diana. I'm sorry, you're up next, you'll be up

next.

MS. McIVER: Good morning. Are you with a housing authority, though? Go ahead so you're a trio.

MR. OXER: That's right.

Comment (4).

MR. SIMONIANS: I'm Bobken Simonians, Houston Housing Authority. Good morning.

I don't want to reiterate whatever was said, just in support of what was said. I'd like to make two points, however. Number one is hard to develop areas, undesirable areas is creating a lot of problems for City of Houston, specifically, and I know in many other cities. We have 25 developments, about five of them are 1939-1940s, they need to be remodeled, they need to be reconstructed. They need to be excluded or exempted from the current rules because they are not admitting poverty, they are not creating new developments next to a railroad or whatever, they are there, there is nothing we can do with them, they are just improving the lives and improving neighborhoods. I think staff has possibly supported that idea to make it in the record as part of the exemption.

The other issue I have is what was said before with some variation. City of Houston is in a unique position, along with two or three other cities that receive federal disaster recovery funds, CDBG funds from the federal

government through GLO. Those monies, some of them directly go to the housing authority, some go to the City of Houston. With our very close cooperation with the City of Houston, the City of Houston has developed targeted areas, working with HUD, to use the money to improve those neighborhoods.

Now, in those neighborhoods, if we are using CDBG disaster recovery funds which are provided by the GLO and the city, we would like that to be considered as funding sanction, so to speak, and gets the 13 additional points for the city funding. Those are not funds that we have, we don't really have much funds, but this is sanctioned by the city, supported by the city, supported by the federal government, supported by GLO. Everybody in government is behind these developments and not giving them the 13 points would negatively impact the positive development plans we have.

I think I should stop there. We will submit written comments so that we won't take too much of your time, but it will be in the record.

MR. OXER: Good. Thanks very much. Diana, good morning.

MS. McIVER: Good morning, Chair, Board, staff. Diana McIver with DMA Development Company. And I would like to speak to the sponsor characteristics, primarily the use of HUBs as part of that category. To that, Dr. Muñoz isn't

here so I could redeem myself with him, for those of you who were at the last meeting, but if you'll vouch for me.

MR. OXER: If you want to wait.

MS. McIVER: Maybe I should wait. It's very positive. Do you want to go first?

MR. OXER: Trust me, you're going to be there. That's all right. Go ahead.

MR. SORAI: Good morning. My name is Kit Sorai, I'm with S2A Development Consulting.

I'd like to take this opportunity to read a letter into the record with regards to the proposed sponsor characteristics scoring item.

"Chairman Oxer and Members of the Board, I apologize for not being present today, but do appreciate your allowing me the opportunity of having our company's views read into the official record.

Comment (5). → "My name is Craig Whitner and I work with Pedcor which is a large developer, contractor and manager of affordable housing based in Indiana. I wanted to address the proposed sponsor characteristics scoring item and its potential impact on out-of-state developers such as myself.

"If the language is finalized in a way that penalizes out-of-state developers, we will no longer participate in the 9 percent program. While we have not been

successful in obtaining an award of 9 percent credits in the last two years, we have been very close and realize that with the perceived good old boy playing field for 2013, it makes sense to place our efforts somewhere else.

"Our company currently develops in eleven states, we self-manage our entire portfolio of 14,000 units, with 11,000 of those units being tax credit units. We are one of only a handful of companies in the United States that were given permission from HUD to go over the $250 million debt cap. Our company has a historical record of compliance that could be put up against anyone's in this country, but again, if the draft language is finalized, we would come out of the chute into the penalty box.

"Mr. Chairman, when reading the transcripts from an earlier board meeting, it seems clear that your desire is to have this scoring item look at the broader history of the applicant, not just in Texas but anywhere they have developed, which we agree with. I request that you instruct staff to investigate and present to the Board some of the various ways that other states have successfully approached this issue.

"Thank you for your time and consideration."

MR. OXER: Good. Any other questions from the Board?

We may have to give him some more slack here, Diana. We have a lost Board member.

MS. McIVER: Okay. Go ahead, Mark, bail me out.

(General laughter.)

MR. OXER: Let's do this, let's take a quick ten-minute break because we've been sitting here in our chairs for an hour and a half, and I, for one, need to stand up for a minute. So everybody be back in your chairs here at 20 of 12:00. And so that you know, we're going to break just a few minutes after 12:00 for lunch.

(Whereupon, at 11:30 a.m., a brief recess was taken.)

MR. OXER: Let's get started.

Diana, I think your revered guest is here so you can address your comments to him.

Comment (6). Additional letter provided immediately following the end of this transcript.

MS. McIVER: Yes. Thank you, Dr. Muñoz, for joining us, because this is very important, it's near and dear to my heart.

Again for the record, I'm Diana McIver, DMA Development Company, and I would like to speak on sponsor characteristics. The part of sponsor characteristics that I would like to speak to is some work that I did with staff following last meeting, and I think we came up with a very good way, in my mind, of treating the HUB participation in

tax credit developments.

When you go to the QAP and the draft that was printed, it's a little confusing because there's a section A, there's an option A and then there's an option B, and I would like to support option B. They look very similar except when you go to option B you'll see there's one point for participation in the development by a HUB, a Historically Underutilized Business, and how that is done is it is actually taking a concept that the HUB must have combined 100 percent benefits from a combination of ownership, developer fee and cash flow, and those can be in any percent as long as they add up to 100 percent.

Now, the reason I like that is, one, it makes the HUB not a substitute for inexperience but it makes the HUB a supplement to experience, so I think that's very positive. Another reason I like it is because you heard from the nonprofits that they were being penalized because they could not joint venture with a HUB and stay in the nonprofit set-aside. Under this concept, they can because they could give the HUB 20 or 30 percent of ownership and still, as the nonprofit, meet that test of materially participating.

The third reason I like it is because it's not unduly prescriptive, and everybody last time was saying you're telling us you want us to joint venture with a HUB but you're

telling us exactly what they must do, that they must have at least 51 percent ownership and that's not fair when we're going out and we're doing the personal guarantees and all of that. And so this allows the developer to decide how that HUB will participate in those three categories.

Now, the only thing I would suggest -- and this sort of gets to the fact that we don't want people gaming the system -- the only thing I would suggest is that maybe we tighten it up a little bit so that no one of those three categories can be less than either 5 percent or less than 10 percent, or something like that. And I say that because I would hate to go through all this and then see a situation where someone came in and got a HUB involved and that HUB was getting a half a percent of ownership and a half a percent of the developer fee and 99 percent cash flow on a deal that is not going to see cash flow for five, six, seven years. So I would say some rule of thumb like maybe 5 percent is fair, maybe it's 10 percent, but something in that range. And that was the only comment I'd have on tightening it up.

So I'm here saying we worked with staff on this and I think it's a very good substitute and I'm all in favor of the substitute.

I wasn't going to speak to the Texas experience thing, but I will tell you, from personal experience, eight

years ago I submitted in the State of Georgia, so I started laughing when the Georgia developer was speaking. I submitted in the State of Georgia and was dinged points because I did not have any Georgia experience, so other states do give points to their in-state developers and just want to throw that out. So those are my only comments on sponsor characteristics.

I have a very brief comment on the local government loans, and right now, as it's worded, the local government loans are tied to the applicable federal rate in order to qualify. They have to be five years in term and they have to be at or below the applicable federal rate. Well, we have used that terminology for a lot of years now, and when we first started using that terminology the applicable federal rate was about 4-1/2 percent. Today that midrange rate for five years, the applicable federal rate is .93. So I went into, or someone on my staff went into a community the other day where an economic development corporation was making loans that we thought would qualify for that contribution, and the loans are at 1-1/2 percent, so they would not qualify.

So I am saying, one, rates are hysterically --

(General laughter.)

MS. McIVER: -- historically and hysterically have gone down, and I think that since we're going to be asking

these communities for a five-year commitment, we need to have a little more latitude on that, and I would suggest one of two things. If we're going to use the applicable federal rate, that we do it with like plus 200 basis points or plus 250 basis points, something that is much more reasonable, or just do a flat fixed rate of 3-1/2 percent or whatever you all think is fair. Because it would be very, very difficult as we're going through -- and we hope rates stay low, but none of us can guarantee that, so as we're going through this period, I think there's going to be probably we need to come up with another test, either tied to the AFR or a specific rate, but definitely something above .93 percent.

And those are my only comments. Thank you.

MR. OXER: Good. Thank you. Any comments from the Board?

(No response.)

Comment (7)

MR. MAYFIELD: Thank you, Board members, Mr. Chairman. My name is Mark Mayfield, and I actually represent two housing authorities: I represent the Marble Falls Housing Authority in the City of Marble Falls just west of this community, and also a new housing authority called the Texas Housing Foundation which was only created, we had our first organizational meeting in January of '06.

The Marble Falls Housing Authority is a housing authority that was created in '65, it's a municipal housing authority, and it was created and works an annual contributions contract with the United States Department of Housing and Urban Development. The Texas Housing Foundation, however, is an independent housing authority. I believe it's the only housing authority of its kind in the country. It's fully independent and is not under any kind of contract with the federal government, and we created that basically as an offshoot of the Marble Falls Housing Authority development activity that we started with the housing authority a few years back and we were getting to where our portfolio of properties was more on the affordable side than it was from the public housing side, and we had to find a solution to that so we did create the new housing authority. It's a regional public housing authority created under Chapter 392 of the Local Government Code.

It's very intimidating talking behind Diana McIver. She's the encyclopedia of this business and a dear friend of mine, but I'll give it my best shot.

But I'm coming actually to speak in support of the sponsor characteristics. We basically focus all of our attention on rural communities in the state. We just recently closed a deal just last week in Canadian, Texas. We have

an application we're hoping might reach down to Monahans, Texas, and what we do is through public and private partnerships. And frankly, with that incentive not being there, the developers will not coming knocking on our door. There's no motivation really for that to happen because it does add layers, if you will, to the transaction, but if we want to see housing developed out in rural communities, there's got to be a motivation for it to be there because there's other factors that kind of hinder their willingness to come out to these communities.

Secondly, for a public housing authority, we're restricted by law of what we can do. We can't pledge assets, we cannot make guarantees on loans or anything like that, that are required in order to develop tax credit properties. As a rule, those are requirements that are within them, and that has to be with developer partners. So without the concept of the public-private partnerships, we just wouldn't see housing being developed. We've developed about 17 properties, I believe, since we started, and every one of our properties are with private partners, but they're owned by our newly created housing authority, and it's just a new way, I believe, that we've been able to meet some of these demands in the rural communities.

There are over 400 housing authorities in the State

of Texas, and you hear all the time of Dallas and San Antonio and Houston and El Paso but you don't hear about Bangs, Texas and Monahans, Texas and Marble Falls, Texas and the small communities, and I can tell you the pent-up need for housing because the funding from the federal government is just drying up. And how these rural communities are going to meet the housing needs within their communities, it's only going to be through creative ways and incentives for those that are able to put these properties on the ground and be able to come out to these rural communities and do it.

And so I stand in support of that sponsor characteristics, and appreciate the time and opportunity to speak with you guys. Thank you.

MR. OXER: Great. Any comment from the Board?

(No response.)

MR. OXER: Thank you, and make sure you sign in there.

Good morning.

Comment (35)

MS. STEVENS: Good morning. I'm Lisa Stevens. I'm with Sagebrook Development, and I represent several developers that have been working in Texas now for almost five years. 2013 would be our fourth allocation cycle.

We have 6,000 units that are in compliance, we've been in this business since 1987, we have no properties that

are in non-compliance within our entire portfolio. That being said, having been in Texas for four years, we just opened our first property. We opened it in August, and I'm proud to say it's 95 percent occupied and we are submitting for our 8609s. However, because we don't have three 8609s in the State of Texas, we will not be eligible for the sponsor characteristics, nor will most developers who want to partner with us because were they to partner with us, the cap would be 100 percent allocated to them, so as a competitor, I'm going to find it very difficult to find someone who is willing to partner with us.

We've been in this business in Texas, we've moved here, we have an office here, we've hired staff here, and we've been here for almost five years now. We can't qualify for three. That means that the only folks who can qualify for those three points under sponsor characteristics are folks who have been in this business for six or seven years. If they've been in this business for six or seven years, those are the same folks that you're having issues with -- not all of them, obviously, but Compliance is saying that they're having some issues. You have to have been here for six years plus to be one of those parties and yet those are the only parties eligible for two points or three points for sponsor characteristics.

Chairman Oxer, you mentioned at the last board meeting that your goal was to identify where you have problems and to try to put a stop to the problems. At that point, when you made that comment, the sponsor characteristics were with one point. Since then another revision has come out and now they're worth two points, and yet there still is not a prohibition for those who have caused problems, there is only a benefit for those who have been in the state developing and can show that they have three developments that are performing. You could have five that are not performing, but if you've got three that are performing, you're considered golden according to this application.

I know you've heard all of this before, I'm not going to reiterate what you've already heard. It was said that it almost feels like you're guilty until you can prove you're innocent, rather than you're innocent until you're proven guilty. I'd ask, given that the direction this has taken from the last draft to this draft, that you take another look at it and perhaps provide some direction as to what you're looking for in terms of a penalty rather than a point for in-state experience.

Thank you.

MR. OXER: Thanks, Lisa.

MS. SISAK: Good afternoon. My name is Janine

Comment (65). Additional letter provided behind #65.

Sisak. I'm speaking on behalf of JSA Development Company today.

My company is a HUB, it's a Texas Historically Underutilized Business, and while I've co-developed two deals and therefore meet the experience threshold under the current language of the QAP, I would not qualify if I did a deal on my own this year under the sponsor characteristics point category, I would get zero points. Still, I'm fine with the language that's proposed for a few reasons.

First of all, while I can put together an application and it can get award of tax credits, I'm very experienced in the application process, I don't have any deals in my portfolio or that are in operation, so I really do need to joint venture with an experienced developer in order to bring financial capacity to my deals and make them successful. That being said, I like the language because it gives me options to joint venture with both out-of-state and in-state developers but it really encourages me to joint venture with in-state developers which, quite frankly, would be my preference anyway.

Again, getting the application done and getting the credits is only half the battle. I've been in this business long enough to know that asset management, a local management company is extremely important, both in

maintaining the physical asset and keeping your compliance scores up. So I really like this language because it gives me opportunities to joint venture with the best developers with the largest portfolios, and in my opinion, it would give my deals the greatest chance of success.

I would like for the staff to speak a little bit there's been a lot of talk about the three point disadvantage for people that don't have experience. I don't think it's written that way. I think the way it's written in the part B, which I'm speaking on behalf of or in support of, says that if you have three 8609s you get two points, if you have two 8609s you get one point, and if you partner with a HUB you get one point. So we're really talking about a two point for a company with three deals versus a one point for an out-of-state that joint ventures with a HUB.

And I love the extra language in terms of true capacity-building, a HUB materially participating, a HUB that has real estate experience and has significant financial, a true financial participation in the property. And also, to reiterate what Diana said, it also gives HUBs the ability to joint venture with nonprofits without threatening their set-aside, their ability to find the set-aside.

So I think that's it. Thank you very much.

MR. OXER: Good. Any questions from the Board?

(No response.)

MR. OXER: Thanks, Janine.

Sarah, you're on deck. Good morning.

MR. HULL: Good morning. My name is Matt Hull. I'm the executive director with the Texas Association of Community Development Corporations, and we represent about 150 nonprofits around the state providing affordable housing and community facilities in low income areas.

Comment (8). Additional letter immediately following the end of this transcript.

And many of our members are tax credit developers, or have been in the past, and they're expressing a little bit of heartburn around some of the s sponsor characteristic points, as you've heard, mainly related to how they'll be able to compete as nonprofits, not only the nonprofit set-aside, but also as 100 percent general partners. Many of our nonprofit developers have a lot of experience but wouldn't meet the current threshold criteria for sponsor characteristics because they don't meet the bar that's been set.

And so their alternatives are they can partner with a developer, in which case, then, they wouldn't be a nonprofit or they wouldn't be able to qualify for things such as the supportive housing tax exemption because they wouldn't be a 100 percent nonprofit deal anymore. Or they could partner with a HUB, in which case, my understanding is, that

would still take them out of the nonprofit set-aside and you would have trouble meeting your nonprofit 10 percent set-aside like you did this past year.

I know several of our members have made comments to Cameron and have talked with others and we'll be following up on that. We would just ask that there be some consideration to allow them to be able to compete on a level playing field. If you're going to give a point for HUBs, perhaps you could also give a point if you're a 100 percent nonprofit deal.

On the experience side, some of our members have 2,600 multifamily units, others have 800 units and they still wouldn't meet the bar, so I would just appreciate the staff's consideration in trying to rectify that, how can a true nonprofit compete as a nonprofit as we move forward and meet the experience threshold requirements.

One of our members, or actually a couple of our members had some problems with using the initial inspection score as one of the criteria. As you know, that is when the property is about to go online, they go in. Things that are sometimes beyond their control can reduce the points that they get. Furniture moved up against a window will reduce points. They would suggest using the final construction inspection as a more relevant measure of their preparedness to move on and of their compliance.

So happy to take any questions.

MR. OXER: Any questions from the Board? I have a question.

MR. HULL: Yes, sir.

MR. OXER: And we are as proud as we can possibly be of having a chief of compliance who has got a nationwide reputation for enforcement compliance in this business, and as I recall, there's a black and white universe that she lives in and you're either in one side of the rule or you're not. And the problem is once a property is rented there are things that happen internal to that that the developer doesn't control, renters move the furniture, they leave a cord out, who knows. So your point is taken. How do you develop a rule that applies to that? And that's where we're going.

MR. HULL: Yes, and so the recommendation would be use the final construction inspection report which is based, I think the top you can get is one or zero, and so set some threshold around that because that is something that the developers can control.

MR. OXER: Okay, good. Thanks very much.

MR. HULL: Thank you.

MR. OXER: Good morning, Sarah.

Comment (20). Additional letter provided behind #20.

MS. ANDERSON: Good morning. My name is Sarah Anderson, and I'm here representing S2A Development

Consulting, Sarah number two when it comes to speaking to the Board. Sarah number one, unfortunately, has been detained. She was actually going to go ahead and cover the sponsor characteristic issues, as she did last time, but I think that you've heard plenty on that.

I think the only comment I would make, in addition to the fact that we don't like as it is right now, is that this would be my ninth or tenth cycle that I'm going into. We've been awarded upwards of 40 deals in the last eight or nine years, we've worked with 20-plus different developers, in-state, out-of-state, and at the end of the day, I would say that geography is not a good litmus test to quality. We have in-state people that are horrible, we have in-state people that are great; we have out-of-state people that are great, we have out-of-state people that we don't work with anymore. So I guess I would just ask, I'm still not sure what the purpose is of it because I don't see the purpose coming from the language as written.

The only other comment I have is a little bit more esoteric, it's about the local political subdivision scoring item. And as you know, I love the way that staff has done a stair step for the amount of funding that you bring in relative also to the population of an area, so that rather than everybody having to get top scoring points, $15,000 a

unit, you do a formula and it's based on the size of the city.

The top scoring item, the threshold seems to be at about 100,000 in population, so if you were a town of 100,000 or more, you have to bring in the full $15,000 per unit to get maximum points. I was talking with Cameron earlier, and I think that that population seems a little low. I think that the expectation that a city, a Longview or a Waco, can bring to the table the same amount of money that a Houston, Dallas or Austin can, doesn't seem quite correct. So I would ask that that top threshold for $15,000 be changed where maybe it's a population of 500,000 and above, a million and above, but just that that be looked at for fairness.

And also, right now the way the scoring is, it's a certain amount of points for $100 a unit, $500, I think it goes $5,000, $10,000 and $15,000, and there's only one point difference between each of those. So you could be bringing in 100 times more money per unit and only be getting four more points. I'm not sure if that's exactly correct. But I'd like to see maybe a dropping and a little bit more of a spreading out instead of five categories, maybe $500, $7,500, $15,000, and let there be more scoring differential. If I can bring in the equivalent of $15,000 a unit, I should get significantly more points.

And I think that's it.

MR. OXER: Good. Any comments from the Board?

(No response.)

MR. OXER: Walter, good morning -- or afternoon by now.

Comment (23). Additional letter provided behind #23.

MR. MOREAU: Walter Moreau, director of Foundation Communities.

I wanted to respond to your question about instead of a inspection score, instead use the final compliance score. And I can give you a good example. Our Southwest Trails Apartments, about ten years old, the only tax credits built west of MoPac in Austin, 100 percent full, great learning center. I think our last physical inspection was two years ago -- they only come out every three years. Inspector walked around the property, knocked off eight points for furniture placement, so we ended up with a score of 81. And there were a bunch of other little things. We fixed everything. You don't get a re-inspection, but if you fix everything right away and document it, then your final compliance score, the physical inspection doesn't count against you. So our final compliance score was a zero. You get zero to 30, 30 is material noncompliance.

I think the staff have looked for what they could grab in the compliance system to use as a threshold bar for good developers and grabbed this once every three years

physical inspector report. And we can't appeal it, we can't dispute it, all we can do is fix everything and then it's dropped from your final compliance score.

So my suggestion is instead of the physical inspection, you say maybe it's a final compliance score less than ten so at the upper end of your final compliance scores. You want to keep that inspection system as an incentive for developers to fix things. Now it's being used as a threshold. And that's my suggestion on that.

MR. OXER: Good. Thanks, Walter.

Okay, Sarah, I know that you had something that you wanted to say and you're running late, but you're the last one on the list, so jump in. Good morning.

MS. ANDRE: Good morning.

MR. OXER: You do have a penchant for timing. Or afternoon.

Comment (9).

MS. ANDRE: Good afternoon. I'm Sarah Andre. I'm a consultant in the Tax Credit Program and in affordable housing. I am here to speak about the point item for selection criteria on basically the experience of a developer.

Right now there's an additional point for a developer who has three Texas 8609s, so that's a developer who has developed three properties in Texas. And I was here last month and spoke about that, and I thought that my comments

that there was some level of agreement between Chairman Oxer and myself regarding providing an incentive to somebody that had been in Texas. And in fact, if you look at the transcript, there actually was some agreement. To quote Chairman Oxer, on page 123 of the transcript --

MR. OXER: That's not as rare as you might think. Okay?

(General laughter.)

MS. ANDRE: "My interest would be not to award somebody for being here but to penalize them for being here and screwing up, which is where I was headed with all that." Meaning looking at the developers experience.

MR. OXER: History.

MS. ANDRE: History, experience in affordable housing, and in tax credits, in particular, and in development.

My point is that I would still like to see the advantage for a local or Texas-based developer or someone with three Texas 8609s removed. I've commented to staff about this. They appear to need additional direction. Right now that point criteria remains.

That's it.

MR. OXER: Thanks, Sarah. I think Cameron got your point, it was right between the second and third rib

over there.

(General laughter.)

MR. OXER: And looking at the hour, I'm going to ask everybody to sit still here for a second because of some recording issues we've had with noise when everybody leaves. We're going to break for lunch here, but I'm going to ask everybody to sit still for 60 seconds because there's something I have to read into the record. We're going to table this, you're going to finish up your report after we get finished with this, that will give you some time to put it all together, Cameron

But for the purposes of the recorder, the Governing Board of the Texas Department of Housing and Community Affairs will go into closed session at this time, pursuant to Texas Open Meetings Act, to discuss pending litigation with its attorney under Section 551.071 of the Act, to receive legal advice from its attorney under Section 551.071 of the Act, to discuss certain personnel matters under Section 551.074 of the Act, to discuss certain real estate matters under Section 551.072 of the Act, and to discuss issues related to fraud, waste or abuse under Section 2306.039(c) of the Texas Government Code.

The closed session will be held in the small banquet room in the grill. The time now is 12:10. We'll

DMA DEVELOPMENT COMPANY, LLC

October 22, 2012

Comment (6)

Cameron Dorsey
Director of Multifamily Programs
Texas Department of Housing
& Community Affairs
P.O. Box 3941
Austin, Texas 78711-3941

Dear Cameron:

This letter is in response to the Draft 2013 Uniform Multifamily Rules that have been posted for public comment.

1. **Section 10.101(a)(2). Site and Development Requirements and Restrictions**

We support the radii for site characteristics contained in the current draft. Although we are aware that comments are being made in support of increasing the radius, it is our belief that to increase the distance will detract from the quality of the real estate.

2. **Section 10.205(5). Civil Engineering Feasibility Study.**

The topics and attachments required in the Civil Engineering Feasibility Study are too extensive. Instead of requiring applicants to provide a study in the form of a narrative and/or report, we recommend instead that the applicant be required to submit the following only:

a. Preliminary site plan identifying all structures, site amenities, parking and drive way, topography, drainage and detention, water and waste water utility distribution retaining walls, and other typical or required items, including off-site requirements. The site plan needs to adhere to all applicable zoning, site development, and building code ordinances (new language underlined);
b. A survey or current plat; and
c. A soil borings report.

3. **Section 11.7. Tie Breaker Factors.**

We support the first tie breaker contained in the current draft.

4. **Section 11.9(b)(2). Sponsor Characteristics.**

We support Subsection B as it gives maximum points to developers with significant Texas experience, and it provides for meaningful participation by Historically Underutilized Businesses. If the Board wishes to expand this experience to include out-

of-state experience, we would recommend that the "out-of-state" experience required be twice that of Texas experience to ensure that "out-of-state" experience ensures ability to adhere to TDHCA compliance rules, known to be some of the toughest in the country.

5. **Section 11.9(c)(6). Underserved Areas.**

We recommend that senior developments be given 2 points only if they are in a rural area census tract with no other tax credits of any kind. So if it is a senior deal, and there is a family deal in that same census tract, the senior deal would get 1 point. But if it is a senior deal in a rural area census tract in which has no other tax credit developments, the senior deal gets two points. This will allow for greater local choice and input.

6. **Section 11.9(d)(2) Community Input other than Quantifiable Community Participation.**

We recommend that developments for which a Neighborhood Organization submits a letter that does not meet the requirements of Section 11.9(d)(1) and receives 10 points under Section 11.9(d)(1)(C)(iv) be allowed to qualify for points under this section. This is consistent with the treatment under the 2011 QAP of developments for which ineligible QCP letters were submitted.

7. **Section 11.9(d)(3) Commitment of Development Funding by Unit of General Local Government.**

We recommend that the interest rate for loans under this section be required to be no higher than 3%. Additionally, we recommend that the Department define the data source that will be used to determine the population of a Place.

8. **Section 11.9(d)(6). Community Revitalization Plan.**

With regard to community revitalization plans described under Sections 11.9(d)(6)(A) and (B), many Texas cities have community revitalization plans that meet the spirit of the QAP, but do not follow a format that identifies specific financial projections as required under Section 11.9(d)(6)(A)(i)(VI). In order to allow these valid community revitalization plans to qualify under this section, we propose that in order to meet the requirement of Section 11.9(d)(6)(A)(i)(VI), Applicants be allowed to submit a letter from an authorized City official identifying the economic impact of the community revitalization plan.

With regard to Section 11.9(d)(6)(C) related to Developments located in a Rural Area, we recommend that the infrastructure work be approved prior to the Full Application Delivery Date, although the work still can be completed within 12 months.

We also recommend that water and wastewater service be split out into two separate categories, and that expansions of existing hospital's capacity be further defined. We suggest the following language:

(I) Paved roadways or expansion of paved roadways by at least one lane;

(II) Water ~~and/or wastewater~~ service;

(III) Wastewater service;

(~~II~~IV) Construction of a new police or fire station within one (1) mile of the Development Site that has a service area that includes the Development Site; and

(~~I~~V) Construction of a new hospital or expansion of an existing hospital's capacity by at least 25 percent within five (5) miles of the Development Site and ambulance service to and from the hospital is available at the Development Site. Capacity is defined as total number of beds, total number of rooms, or total square footage of the hospital.

9. Section 11.9(e)(2). Cost of Development per Square Foot.

Our concern about this scoring item is that it will discourage developers from innovative design that might cost even slightly more than "average." For instance, we are looking at a site in a high opportunity area where the best design would be a townhome product with an integrated carport. However, we are considering proposing a two story walk-up instead because it is safer in terms of achieving the maximum points under this category. We are working with another City that wants a mixed-use design in its downtown area, which is subject to a high level of design requirements, including the use of clay bricks on 100% of the exterior." We may decide to pass on this site in favor of one not in the downtown area because meeting these design requirements may take us too far over the mean. The current methodology may actually penalize those developers who are trying to achieve a higher level of design, and will likely promote more homogenous housing. Moreover, the current methodology might also discourage developers from implementing non-required amenities and construction features that add to the longevity and durability of the development. This will decrease the quality of housing funded by tax credits in the 2013 round.

Based on the foregoing, we recommend that this point category revert back to the methodology used in last year's QAP.

Should this methodology remain, we recommend that all structures parking costs be removed from this calculation, even those included in Eligible Basis.

Additionally, related to Section 11.9(e)(2)(A)(i), we suggest that any Qualified Elderly development, not just those that are elevator served be categorized within this section. As such we recommend the following language:

(i) Qualified Elderly Developments, ~~and~~ Elevator Served Development, more than 75 percent single family design, and Supportive Housing Developments; or

Our reasoning for this is that we have senior community designs which include both elevator served buildings and single-story cottages in order to provide maximum choices for our senior residents.

10. Section 11.9(e)(3)(I). Pre-application Participation.

Regarding the requirement that Community Revitalization Plans are submitted at the time of pre-application, the current language does not specify that this requirement is specific to community revitalization plans under Sections 11.9(d)(6)(A) and (B), and not to infrastructure improvements for Rural developments under Section 11.9(d)(6)(C). Therefore, we propose a revision to the draft language to clarify this requirement:

(I) The community revitalization plan the Applicant used for points under subsections (d)(6)(A) and (B) of this section was submitted at the time of pre-application.

11. Section 11.9(e)(4). Leveraging.

We recommend that the percentages be increased to 8, 9, and 10 for 3, 2 and 1 points respectively.

12. Section 11.9(e)(7). Development Size.

We recommend adding the following language to the end of the sentence to account for those rural sub regions with slightly more than $500,000 in credits available.

"or if in a rural sub-region, the amount of credits available in that subregion or $500,000, whichever is greater."

We appreciate your time and consideration of these comments. Please do not hesitate to contact me with any questions or concerns. I can be reached directly at 512-328-3232 ext. 165.

Sincerely,

DMA DEVELOPMENT COMPANY, LLC

Diana McIver
President

4101 PARKSTONE HEIGHTS DRIVE, SUITE 310 AUSTIN, TEXAS 78746
TEL: 512.328.3232 WWW.MCIVER.COM FAX: 512.328.4584

TACDC
ENHANCING COMMUNITIES THROUGHOUT TEXAS

Comment (8)

October 22, 2012

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
P.O. BOX 13941
Austin, TX 78711-3941

Mr. Irvine:

On behalf of the Texas Association of Community Development Corporations, please accept our comments on the draft 2013 QAP for the state low income housing tax credit program.

The Texas Association of Community Development Corporations is the state trade association for nonprofits working to build affordable housing in traditionally low income areas in Texas. To develop the following comments, TACDC held two conference calls with CDCs to gather their input on the draft QAP. A few common recommendations emerged from the discussions. Several of the CDCs participating in the calls may submit their own comments and we encourage you and your staff to consider these comments as well.

Recommendation #1 regarding Sponsor Characteristics:
TACDC members were pleased to see the board make a recommendation on eliminating scoring preferences for Texas-based developers with more than three 8609s issued and to move away from using the physical conditions inspection for other means of measuring compliance within the program.

However, many of our members have concerns around the preference points given to HUBs. While our members certainly understand the benefit of a for-profit developer partnering with a HUB, mission driven non-profits are unique in a few ways that should be taken into consideration:

1. To remain in the nonprofit set aside in the QAP, the nonprofit must maintain more than 51% of the ownership of the deal.
2. Mission based nonprofits cannot give up a part of the ownership of the general partner and maintain the property tax exemption under 11.1825 of the tax code, a vital source of funding for reducing rents and providing for social services.
3. Many mission based nonprofits would rather chose to defer the developer fee, or at least significant portions of it, in order to build a higher quality development than take the fee up front.
4. Most mission driven nonprofits use cash flow for increasing social services and livability at the complex.

Therefore, by requiring that nonprofits bring a HUB into a deal just to score points takes away from the social mission of the organization and **can reduce the**

number of applicants in the nonprofit set aside. Therefore TACDC suggests the following options to address the issue:

1) Allow either the HUB point OR equal point(s) for a nonprofit that has at least 100% of the GP/developer fee/cash flow. This also allows for-profits to partner with nonprofits on mission driven projects.
2) Allow a sole nonprofit project to get the same HUB point if the nonprofit works with construction and/or other professional services that are contracted with HUBs. This is a meaningful way to support HUBs**.**
3) Allow either the HUB point or a nonprofit point, but not both**,** so long as the nonprofit is 100% of the GP and cash flow is dedicated to support services and/or replacement reserve.

Recommendation #2 regarding Undesirable Area Features (10.101(a)(4)
TACDC is concerned that the language used to describe Undesirable Area Features is vague and that nonprofit developers will not know ahead of time if an area has an undesirable feature that will count against them in an application. Mission driven nonprofits often work in areas that have a history of crime and other undesirable features because their mission is to address those very issues. For many CDCs, providing affordable housing is one strategy in an overall revitalization plan to improve conditions in their neighborhoods by eliminating blight, reducing crime, and removing substandard housing in their neighborhoods.

TACDC encourages the staff and board to try to quantify this section so any developer can self-score their application, but also to think about what they want to accomplish with this section of the QAP. Does the board want to simply keep tax credit properties away from areas with known crime, even though that is not defined and is left up to interpretation and subjectivity, or does the board want to consider policies that make affordable housing part of a broader strategy to improve neglected areas of a city?

Recommendation #3 regarding Undesirable Site Features (10.101(a)(3)
TACDC recommends that an exception be made to the section on building within 300 feet of an active railroad track for those projects that mitigate the increased sound by using the official HUD sound attenuation standards.

Recommendation #4 regarding Cost of Development per Square Foot
As currently drafted in the QAP available through the Texas Register, the section on Cost of Development per Square Foot creates too much uncertainty for developers. At best, the uncertainty around gaining up to 10 points will provide incentive for developers to build the cheapest, most cookie cutter development they can and still be competitive in their sub region. Creativity in design and innovation in building with sustainable and durable materials and energy efficiency will be lost as everyone aims to maximize points.

While the rules in past QAPs around cost per square foot have not been perfect, developers could at least make informed decisions about whether to proceed with an application or to terminate an application based on scoring. Therefore, TACDC suggests returning to previous QAP language for this section and to take a longer,

TACDC
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more detailed look during the interim at how best to address this issue within the uniqueness of the Texas QAP.

Recommendation #5 regarding Mandatory Site Characteristics
TACDC recommends including access to public transportation in the list of mandatory site characteristics**.**

Thank you for considering our recommendations for the 2013 QAP and please let me know if you have any questions.

Sincerely,

Matt Hull

Comment (21)

Good morning Mr. Chairman, Board members and Mr. Irvine.

My name is Scott McGuire, I am a developer and consultant with McGuire Development. I have over twenty five years experience in the Tax Credit program.

I am currently working with Rural developers in Texas. I am here today to request two major scoring changes to the current draft of the QAP.

My first request is to ask that the point disparity between senior developments and those for the general population be equalized in Rural areas of Texas.

You have seen the results of TDHCA's own independent study that was conducted by Bowen National Research. I would like to read from the Summary of Key Findings in that report and I quote.

" Demographic trends and migration patterns indicate that younger people and families under the age of 25 appear to be leaving the rural areas while the senior (age 55+) population and households are growing rapidly in the rural areas. Rapid senior demographic growth trends will increase the need for senior-oriented housing. Without modifications to existing supply and/or development of new senior-oriented housing that will allow seniors to age in place, rural areas may experience migration of seniors from rural to more developed/urban markets."

As I travel throughout rural Texas, I hear the same plea over and over again from Mayors and City Managers. Please help us keep our aging population in our community by creating affordable housing for our seniors who want to stay.

As you can see from the Bowen research report the need is clearly evident for additional seniors' housing. I ask that you change two scoring sections of the QAP that currently have a negative impact on seniors' housing developments.

1. Underserved Area - Census tracts in Rural areas with no existing tax credit developments are identified as an underserved area. If the proposed development is serving the General population there are 2 points allowed while Qualified Elderly developments only receive 1 point.

2. Opportunity Index - Points for proposed developments for the general population earn 2 more points than for seniors' developments. I respectfully request that you equalize this point differential for Rural developments.

The second request I have for your consideration is set forth under Sponsor Characteristics where Texas developers are favored over experienced out of state developers. We have several very experienced out -of-state developers who have years of experience and numerous tax credit properties throughout other parts of the country. These quality projects are well managed and are in full compliance with the rules of their respective States and Section 42 of the IRS code. Please do not establish an isolationist rule that would effectively prevent these reputable developers from competing for the privilege of creating quality affordable housing in our State.

Comment (10)
Lynn Blakeley
Blakeley Commercial Real Estate

From: Cameron Dorsey
To: Teresa Morales;
Subject: FW: Proposed Changes to Current Restrictions in the Draft 2013 QAP
Date: Thursday, October 11, 2012 10:59:15 AM

From: Lynn Blakeley [mailto:lynn@blakeleyres.com]
Sent: Thursday, October 11, 2012 10:13 AM
To: Cameron.dorsey@tdhca.state.tx.us
Subject: Proposed Changes to Current Restrictions in the Draft 2013 QAP

Mr. Cameron Dorsey, Director
Multifamily Finance
Texas Department of Housing & Community Affairs
221 E. 11th Street
Austin, TX 78701

PROPOSED CHANGES TO CURRENT RESTRICTIONS IN THE DRAFT 2013 QAP
PUBLIC COMMENT

Dear Mr. Dorsey:

As an experienced commercial broker who is working with consultants and multifamily developers in the San Antonio market area who wish to make application to the Competitive Multifamily 9% Tax Credit Program for the 2013 funding cycle, I wish to make these recommendations during the Public Comment period:

1) As currently proposed, it is my understanding that Non-Participating Jurisdictions will be restricted from accessing the Department's HOME funds, which were allocated to the State for the purpose of furthering affordable housing opportunities, in Non-Participating Jurisdictions. This seems extremely prejudicial to these smaller, non-entitlement communities, as it represents a 13 point score and could mean the difference between a project's being approved for funding or not being competitive pursuant to the scoring criteria in the upcoming funding cycle. These smaller

communities are already burdened with the cost of extending their infrastructure and are frequently burdened with bond debt for a variety of programs, at a time when ad valorem property tax revenues are low and they are strapped for cash. I encourage you and the TDHCA Board of Directors to allow Non-Participating Jurisdictions to access HOME Funds with the support of the local jurisdiction, so that these communities can compete for affordable housing funding on a level playing field with the larger, entitlement cities.

2) Also, the current draft of the 2013 QAP proposes that the radius for services in proximity to a proposed development be set at 1 mile for an Urban project and 2 miles for a Rural project. This radius does not take into account that in many Urban settings, services may be concentrated in an area where multifamily land for an affordable development is either not available due to a community's build out, or the land is too expensive, due to proximity to mixed-use developments. This creates a serious restriction on a developer's ability to gain access to services, particularly when this is a mandatory requirement in the proposed 2013 QAP.

In Rural areas, services are frequently scattered along intersections where some services may be available, but may not allow for a concentration of the mandatory requirement of 6 services within the current radius which is set at 2 miles. Often, this limitation is a function of restrictions on water and sewer service in these rural areas and cannot be overcome by the local jurisdiction.

Since this is now a mandatory threshold requirement for the Competitive Multifamily 9% Tax Credit Program as well as for the Tax Exempt Multifamily Bond/4% Tax Credit Program, and is currently included in the Draft 2013 QAP, I would like to recommend that a more feasible radius for the provision of services is 2 miles for an Urban project and 3 miles for a

Rural project.

Thank you for your consideration.

Sincerely,

Lynn Blakeley, CPM
Blakeley Commercial Real Estate
7330 San Pedro, Suite 510
San Antonio, Texas 78216
210-724-5111
lynn@blakeleyres.com

Comment (11)
Clarie Palmer

Comments to 2013 Definitions and Rules

1. 8. Bedroom. Does the den have to have a door?

2. 10.Building Cost- I think the use of "vertical construction" limits the costs more than was intended.

3. 24. Control—The definition still says that control can be as little as 10% ownership. Last year this was in the definition but not allowed to be control for purposes of the QAP. Will 10% ownership now be considered as having control? How do you "indirectly" manage, etc?

4. 30. Developer—Shouldn't this also include the 20% consultant fee on non-profit deals?

5. 35. Development Team--- This is expanded and is important for eligibility. Is there a reason it was expanded? It is sufficient to be part of the Development Team to play "a role"? How much role? Does this mean that you need to check that all subcontractors or vendors are in TDHCA compliance?

6. 43. Existing Residential Development-- This question goes back to the issue with the Canton Street project. Does one unit in a building that is residential and the rest used for something else qualify? What if the rehab is for a building in a residential development that the building being rehabbed is not residential?

7. 46. General Contractor—Many Non-profits serve as the GC to get the tax exemption then subcontract the work to a contractor. Is that no longer allowed?

8. 49. Government Entity—Does the definition include quasi-governmental entities like Housing Authorities? If so, should that be specified?

9. 53. Guarantor—Doesn't include the construction guarantor. Was that intentional?

10. 69. Material Deficiency— This still seems very subjective.

11. 85. Principal- 10% ownership interest alone, without also being an officer, should not make you a principal.

12. 96. Reconstruction- If you demo one building out of many, how much do you have to rebuild?

13. 97. Rehabilitation— Are rehabilitation and Reconstruction now the same thing?

14. 101. Right of First Refusal—Is there a way to designate one entity that has the ROFR? That used to be done.

15. 120. Unit of Local Government—Same question about quasi-governmental, like housing authorities?

Staff Determination-- As I read this, if you file a pre-app you must raise your questions before pre-app. Many times the big questions come up while you are doing the application? Why this rule??

Site and Development Requirements and Restrictions

Undesirable Area Features—(B)Who decides what is significant blight?
(D) What is "frequent" police reports? In Dallas, this can be an issue because there may be an issue at one complex that results in a lot of reports even thought the rest of the area is great.

Rehabilitation Costs—Could this be tiered for all projects. If less than 20 years old, one amount and the $25,000 for others?

Unit Amenities-- By making most of these .5 points, you now have to do almost all. There is not much selection.

Application Submission Requirements

On page 4 of 8, under Applicants—(D)- Breach of Contract—should allow the application if the applicant is in the process of curing. (G) delinquent on loan—There may be a dispute about amount owed. That should not prohibit the application.

On page 9 of 18, Is this saying you must have financing in place at application? That is what it seems like (i) means. Is it (i) loan commitment **or** (ii) term sheet??

On page 11 of 18, Occupied Rehab now requires Relocation Plan with application? This could trigger some unintended consequences. You certainly don't want the clock ticking starting at application.

On page 16 of 18- Can you clarify for me about the civil engineering feasibility report. Last year that was appoints item. Is it now a requirement??

From: Jean Latsha
To: Teresa Morales;
Subject: FW: 2013 QAP
Date: Wednesday, October 17, 2012 9:33:07 AM

To be included in public comment:
Email thread below basically requests that rural applications can get CRP points by submitting a CRP plan, not just by proving up infrastructure improvements. Current language does not allow rural developments to get the points by submitting a community revitalization plan.
Thanks,
Jean

From: Claire Palmer [mailto:clairepalmer@sbcglobal.net]
Sent: Wednesday, October 17, 2012 9:18 AM
To: 'Jean Latsha'
Subject: RE: 2013 QAP

That would be great. By the way, I sent you and Cameron a bunch of questions on the definitions. Will that be part of the reasoned response too???

Claire Palmer
972.948.3166 (cell)
clairepalmer@sbcglobal.net

From: Jean Latsha [mailto:jean.latsha@tdhca.state.tx.us]
Sent: Wednesday, October 17, 2012 9:15 AM
To: Claire Palmer
Subject: RE: 2013 QAP

I hear you loud and clear, which is why we would be open to the idea. We crafted the rule in order to give these communities a chance to get the points, so I would not be surprised if it were revised in the final version. At the same time, we don't want to be in another situation where communities claim to have plans in place that are really non-existent.
If you would like I can just include this discussion in the public comment; that way it will be part of our reasoned response. Thanks,

Jean

From: Claire Palmer [mailto:clairepalmer@sbcglobal.net]
Sent: Tuesday, October 16, 2012 5:40 PM
To: Jean Latsha
Subject: Re: 2013 QAP

I tend to disagree. A lot of small communities are old and really need something to spark revitalization. Sometimes just getting this new housing can give that spark!!

Please excuse the typos
Sent from my IPhone

On Oct 16, 2012, at 5:05 PM, "Jean Latsha" <jean.latsha@tdhca.state.tx.us> wrote:

> We would be open to the idea of allowing rural developments to qualify for points by submitting a revitalization plan, but staff believes that the way the rule is currently written is more appropriate. It's the train of thought that stems from the idea that it's difficult to re-vitalize something that doesn't exist. Rural communities tend to need new economic development, not revitalization.
>
> **From:** Claire Palmer [mailto:clairepalmer@sbcglobal.net]
> **Sent:** Tuesday, October 16, 2012 3:19 PM
> **To:** Cameron Dorsey; Jean Latsha
> **Subject:** 2013 QAP
>
> Another question. Why can't a Rural Deal get points for a Revitalization Plan??
>
> Claire Palmer
> 972.948.3166 (cell)
> clairepalmer@sbcglobal.net

(A) An Application may receive (2 points) for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose of the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide some documentation of its tax exempt status and its existence and participation in the community in which the Development is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts), or taxing entities. Should an Applicant elect this option and the Application receives letters in opposition, then two (2) points will be subtracted from the score for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this subparagraph.

(B) An Application may receive (2) points for a letter of support, from a property owners association created for a master planned community whose boundaries include the Development Site that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (1) of this subsection.

(C) An Application may receive (2) points for a letter of support from a Special Management District, whose boundaries, as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site and for which there is not a Neighborhood Organization on record with the county or state.

(D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, standing alone, cause staff or the Department to terminate the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(3) Commitment of Development Funding by Unit of General Local Government. (§2306.6710(b)(1)(E)) An Application may receive up to thirteen (13) points for a commitment of Development funding from the city or county in which the Development is proposed to be located. Development funding from instrumentalities of a city or county will not qualify for points under this scoring item unless such instrumentalities are first awarding such funds to the city or county for their administration or at least 60 percent of the governing board of the instrumentality is city council members from the city in which the Development will be located (for Developments located in a city) or county commissioners from the county in which the Development will be located (for Developments not located in a city). A government instrumentality may not be a Related Party to the Applicant. Development funding must be provided in the form of a construction and/or permanent loan with an interest rate no higher than the Applicable Federal Rate (AFR) and term of at least 5 years, a grant, an in-kind contribution, a contribution which will support the Development, such as vouchers, or combination thereof. Funds cannot have been provided to the Unit of General Local Government by the Applicant or a Related Party. HOME Investment Partnership Program or Community Development Block Grant funds administered by the State of Texas cannot be utilized for points under this scoring item. The Applicant must provide evidence in the Application that an application or request for the development funds has been submitted in the form of an acknowledgement from the applicable city or county. The acknowledgement must also state that a decision with regard to the awards of such funding will occur no later than August 1. A firm commitment of funds is required by Commitment or the points will be lost (except for Applicants electing the point under subparagraph (B) of this paragraph).

(This would allow for inclusion of some EDC's and some PHA's)

or the city council, mayor and/or county commissioners appoint the governing board.

Comment (12)
Craig Taylor

Comments to the DRAFT 2013 QAP
Submitted by Communities for Veterans
10/17/12

11.9.(b) DEVELOPMENT OF HIGH QUALITY HOUSING

(2) Sponsor Characteristics

(A) 1 point for having 3 Texas deals, or for JVing with a Texas developer or being a HUB

(B) 3 points for having 3 Texas deals—basically says the same thing as the above—some confusion in the language here as far as I can tell

This is in violation of the Commerce Clause of the U. S. Constitution as it specifically limits interstate commerce, which has consistently been ruled unconstitutional.

The fact that Owners do not have to be based in Texas, but have Texas based projects does nothing to diminish this effect. Tax credits are a federal program and resource and administered under the same IRS regulations regardless of the state in which projects are located. Thus, this requirement is not a measure of successful experience with the tax credit program, but a de facto limitation of access by non-Texas developers to participate in the process.

Language should be changed to allow for a similar ownership of projects in other States:

Recommended change: A Person with at least 50 percent ownership interest in the General Partner also owns at least 50 percent interest in the General Partners of at least five (5) existing tax credit developments, none of which are in Material Noncompliance.

11.9.(c) SERVE AND SUPPORT TEXANS MOST IN NEED

(4) Opportunity Index This criterion references Texans most in need, but then focuses on the "general population." It is inherent in most cases that serving populations with the greatest need will necessarily focus on specific populations. Thus, the operant language should be "**regardless of population served**" allowing the developer to target specific populations with the greatest need as dictated by local development conditions.

As presently worded, these scoring criteria state the following:

(A) Development targets the general population; income in the census tract is in the top quartile of median household income for the county or MSA as applicable and the elementary school is exemplary or recognized (7 points)

(B) Development targets the general population; income in the census tract is in the top two quartiles of median household income for the county or MSA as applicable and the elementary school is exemplary or recognized (5 points)

(C) Any Development, regardless of population served is located in the census tract is in the top quartile of median household income for the county or MSA as applicable and the elementary school is exemplary or recognized (5 points)

(D) Any Development, regardless of population served is located in the census tract is in the top quartile of median household income for the county or MSA as applicable (3 points)

(E) Any Development, regardless of population served is located in the census tract is in the top two quartiles of median household income for the county or MSA as applicable (1 point)

Recommended change: Delete item (C) in this list altogether, and change the "general population" language to "regardless of population served" in items (A) and (B).

11.9.(d) COMMUNITY SUPPORT AND ENGAGEMENT

(1). Quantifiable Community Participation This criterion seems to have been written with a specific project(s) in mind. This is unfair to other developers and projects as it sets out a standard that cannot be met by the majority of projects. This is in effect a point "set-aside," creating a limited competitive advantage for a select few.

Recommended change: The 2 point provision for having a new support letter after previous year(s) non-support letters should be dropped.

(3) Commitment for Development Funding by Unit of General Local Government

Not all projects are under the aegis of a local government. Native American lands and potential developments on Federal or State lands, etc. do not really fit this category. Therefore, the funding requirement should be expanded to include the entity which exercises ultimate authority and control over the project.

Recommended Change: An Application may receive up to thirteen (13) points for a commitment of Development funding from the city or county in which the Development is proposed to be located, **unless the project is located on State or Federal property, in which case the project may receive points for a commitment of State or Federal funding, grants, contributions of land/ground leases or in-kind services to the project.**

(5) (C) Community Revitalization Plan

This criterion limits the provision of infrastructure or added services for Rural Developments to city, county or state governments. As noted above, the primary jurisdictional authority on some potential sites may be Federal; therefore, this entity of government should be added.

Recommended change: (C) For Developments located in a Rural Area (i) An Application may qualify for up to six (6) points if the city, county, state**, OR FEDERAL GOVERNMENT** has approved expansion of any of the basic infrastructure or projects to the Development Site described in subclauses (I) – (IV) of this clause, or improvements to areas within a quarter mile of the Development Site, unless a different distance is otherwise identified.

11.9.(e) EFFICIENT USE OF LIMITED RESOURCES AND APPLICANT ACCOUNTABILITY

(4) Leveraging of Private, State, and Federal Resources If resources are being leveraged, these should not be limited to such a small list, which clearly will benefit only select applications, therefore being an implicit set-aside via scoring for those applications. Leveraging should be broadly based.

Recommended change: "CDBG Disaster Recovery, HOPE VI, Choice Neighborhoods, **or other Private Foundation or Local, County, State, or Federal funding.**

(7) Development Size This criterion is limiting the credit ask to $500,000 to get the points. This scoring penalizes applications approaching or at 50 units, allowing smaller projects to garner more credits per unit. The standard should be credits per unit, not a maximum amount of credits. For example, an application for 30 units could score these points but utilize $16,667 in credits per unit, while a 50 unit project would only access $10,000 in credits per unit. This is not a sound basis for credit limitation or fairness.

Recommended change: Drop the language regarding maximum credits per project and add the following: "**a Funding Request of Housing Tax Credits, as identified in the original Application submission, of $15,000 in tax credits per unit or less."**

Comment (13)
Cynthia Bast
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MEMORANDUM

TO: Texas Department of Housing and Community Affairs

FROM: Cynthia Bast

DATE: October 18, 2012

RE: COMMENTS ON QUALIFIED ALLOCATION PLAN

Our firm represents G.G. MacDonald Companies, which is a developer of rural properties using low-income housing tax credits. On behalf of our client, we submit the following comment to the draft 2013 Qualified Allocation Plan.

Section 11.9(c)(4) Opportunity Index

Issue: When a rural community is in an MSA, it is inappropriate to compare that community's household income to the household income of the MSA. Rather, the household income for any rural community should be compared to the household income for the county.

Reasoning: Chapter 10, Subchapter A defines a "Rural Area" to include communities in an MSA with a population of less than 25,000. Typically, rural communities have lower incomes than communities in MSAs, and comparing a rural community to a city in an MSA is like comparing an apple to an orange. If rural communities in an MSA are required to use the MSA income for comparison, then fewer of such communities will fit within the top quartile. By contrast, the county's household income would provide a better comparison, because it is more inclusive of a variety of income levels, both rural and urban. Using this comparison would also ensure that all communities in a Rural Area use the same method of comparison.

Proposed Change: "Developments located in Rural Areas are exempt from meeting the elementary school and poverty rate factors under each of subparagraphs (A) – (E) of this paragraph, and will utilize the county's household income for comparison purposes, but the elementary schools in which tenants may attend can have a rating below acceptable in order to qualify for points."

I am happy to respond to any questions about these comments. Thank you for your time.

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MEMORANDUM

TO: Texas Department of Housing and Community Affairs

FROM: Cynthia Bast

DATE: November 6, 2012

RE: PUBLIC COMMENTS ON RULES – **CHAPTER 10, SUBCHAPTER A – GENERAL INFORMATION AND DEFINITIONS**

On behalf of Locke Lord LLP, please find comments to draft Chapter 10, Texas Administrative Code, Subchapter A.

Section 10.3(a)(2) Administrative Deficiencies

Issue: Should the definition also include a reference to omissions? Should it be clear that the Administrative Deficiency process is not utilized for underwriting, since the formality of the Administrative Deficiency process traditionally has not been used in that realm?

Reasoning: Clarification of actual TDHCA practice.

Proposed Change:

(2) Administrative Deficiencies--Information requested by the Department staff that is required to clarify or correct one or more inconsistencies or omissions in an Application that in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application. Administrative Deficiencies may be issued at any time while the Application or Contract is under consideration by the Department, including at any time while reviewing performance under a Contract, processing documentation for a Commitment of Funds, closing of a loan, processing of a disbursement request, close-out of a Contract, or resolution of any issues related to compliance, but excluding real estate analysis and underwriting.

Section 10.3(a)(4) Affordability Period

Issue: Reference to termination of LURA upon foreclosure should also include deed in lieu of foreclosure.

Reasoning: Consistency with federal law and the actual language of the LURA.

Proposed Change: "The term of the Affordability Period shall be imposed by the LURA or other deed restriction and may be terminated upon foreclosure or deed in lieu of foreclosure.

Section 10.3(a)(22) Compliance Period

Issue: Throughout these rules, it is not always clear which requirements apply to which programs.

Reasoning: Clarity for users.

Proposed Change: "With respect to a building financed by Housing Tax Credits, the period of fifteen (15) taxable yeas, beginning with the first taxable year of the credit period pursuant to §42(i)(1) of the Code."

Section 10.3(a)(23) Continuously Occupied

Issue: The reference to the "same household" is unclear as to how life events like births and deaths affect whether a household fits within the definition.

Section 10.3(a)(33) Development Consultant

Issue: I have previously expressed a concern that the duties of a Development Consultant are described to include activities that are not includable in eligible basis (such as work on the tax credit application), yet other portions of the rules and the Application forms themselves show the Development Consultant receiving a portion of the Development Fee. Any Development Fee paid for a non-eligible activity is not includable in basis. To the extent Development Consultants are performing non-eligible activities, they should be paid a fee separate and above the Development Fee. While the amount could be measured based upon a percentage of the Development Fee, it should not actually be paid out of the Development Fee.

Section 10.3(a)(46) General Contractor

Issue: Various parts of this Definition are unclear as to when a Person fits within the definition of a prime subcontractor and, therefore, is equivalent to the General Contractor. It would be helpful to have additional information about what TDHCA is attempting to accomplish by significantly rewriting this definition. In particular, item (C) seems to be randomly inserted

Reasoning: Logical reasoning should be provided for the significant change to this rule, and clarity should be provided for users.

Proposed Change:

(46) General Contractor (including "Contractor")--One who contracts for the construction or rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. A ~~P~~prime subcontractor~~s~~ will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, ~~if any of the criteria~~ in the scenarios described in subparagraphs (A) and (B) of this paragraph ~~are true (in which case, such subcontractor fees will be treated as fees to the General Contractor)~~:

(A) any subcontractor, material supplier, or equipment lessor receiving more than 50 percent of the contract sum in the construction contract is ~~subcontracted to one subcontractor, material supplier, or equipment lessor ("prime subcontractors")~~will be deemed a prime subcontractor; or

(B) if more than 75 percent of the contract sum in the construction contract is subcontracted to three or ~~less~~ fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed ~~("~~prime subcontractors~~"); or~~

~~(C) the General Contractor has less than seven (7) subcontractors~~.

Section 10.3(a)(56) Historically Underutilized Business

Issue: This definition should include limited liability companies, which are common forms of ownership for a HUB.

Reasoning: Consistency with actual practice.

Section 10.3(a)(58) Housing Credit Allocation

Issue: The last phrase of this definition is confusing. It refers to "this chapter" and then to "Chapter 10." This definition is in Chapter 10, so the wording seems incorrect. Perhaps it should be "this subchapter"?

Reasoning: Clarity for users.

Section 10.3(a)(59) Housing Credit Allocation Amount

Proposed Change: "With respect to a Development or a building with a Development, the amount of Housing Tax Credits the Department determines . . . . "

Section 10.3(a)(64) Low-Income Unit

Issue: This definition refers to an income eligible household "as defined by the Department." It does not tell the reader where or how the Department defines income eligible households and is not as clear or useful as it could be.

Reasoning: Clarity for users.

Section 10.3(a)(68) Market Rent

Issue: This definition is unclear. It refers to rents "determined after adjustments are made." What kind of adjustments? Who makes these adjustments? Please revise this definition.

Reasoning: Clarity for users.

Section 10.3(a)(93) and (94) Qualified Nonprofit Organization and Qualified Nonprofit Development

Issue: The word "qualified nonprofit organization" is used throughout the rules, both capitalized and non-capitalized. It is important to note that what constitutes a qualified nonprofit organization under Section 42 of the Code and what constitutes a qualified nonprofit organization for the purposes of the non-profit set-aside under Chapter 2306 of the Texas Government Code are different. Right now, TDHCA is using the term "qualified nonprofit organization" interchangeably, and that could have a detrimental affect on certain nonprofit organizations. For instance, it needs to be clear that a nonprofit organization need not meet the criteria of Chapter 2306 of the Texas Government Code in order to participate in the right of first refusal process. TDHCA needs to perform a "search" function through the entire set of rules and look very carefully at each instance in which the term "qualified nonprofit organization" issued, ensuring that each usage incorporates only those restrictions that are applicable in that particular instance.

Reasoning: Ensure that the unintentional use of a more restrictive definition does not disqualify certain nonprofit organizations from participating in certain activities.

Section 10.3(a)(99)(B) Relevant Supply

Issue: Further clarification is needed for the phrase "that may not have been presented to the Board for decision." What does it mean to be "presented to the Board for decision"?

Reasoning: Clarity for users.

Section 10.3(a)(101) Right of First Refusal

Issue: Definition needs to reflect that a right of first refusal can also be provided to a governmental agency. Both the Tax Code and the Government Code have some provisions for governmental agencies (which may be TDHCA) to participate in the right of first refusal process.

Reasoning: Consistency with law.

Section 10.3(a)(114) Third Party

Issue: This definition requires modification for it to be most effective. First, it defines the General Contractor as someone who is not a Third Party. While a General Contractor is sometimes related to the Applicant, that is not always the case. A General Contractor absolutely can be an unaffiliated Third Party. The term "Third Party" is used throughout the rules to refer to reports, certifications, and opinions that come from Persons unrelated to the Applicant or Development Owner. It is conceivable that a General Contractor could be a Third Party and could be needed to provide one of those reports. This should be permitted, and it would not be permitted, if the definition were retained as presented.

Issue: The use of the word "Related Party" should be removed. This term is defined in Government Code Chapter 2306 and used in only one context in the Government Code. Because the definition is so complex and can be difficult to understand, TDHCA should refrain from using it except in the context actually required by Chapter 2306. Otherwise, defined terms such as "Affiliate" are adequate for TDHCA's purposes.

Reasoning: Providing a more effective definition and clarity for users.

Section 10.3(a)(122) Unstabilized Development

Issue: The last sentence of this definition does not make sense and may be missing text. Should it say "The Market Analyst may not consider <u>such</u> a development stabilized in the Market Study."?

Reasoning: Clarity for users.

Section 10.4(7) Market Analysis and Civil Engineer Feasibility Study Delivery Date

Issue: The heading refers to the civil engineer feasibility study, but the text refers only to the market analysis. This makes it unclear as to whether the civil engineer feasibility study has the same delivery requirements as the market analysis.

General Comment: Throughout the Definitions, multiple terms are used for the same definition. See, for exampled Section 10.3(a)(18):

(18) Commitment (also referred to as Contract)

The Definitions section does not have a cross-reference definition for the word "Contract." Therefore, if a Person is reading the rules in a later subchapter, happens upon the word "Contract," and tries to seek the definition, it will be difficult for the reader to find. I recommend TDHCA either (1) use the "search and replace" function to establish one working definition for each term throughout the rules or (2) for those terms that use multiple defined words, establish a cross-referencing system in the Definitions. In this second scenario, both "Commitment" and "Contract" would have it own definition, but the definition of "Contract" would simply refer back to the definition of "Commitment."

I am happy to respond to any questions about these comments. Thank you for your time.

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MEMORANDUM

TO: Texas Department of Housing and Community Affairs

FROM: Cynthia Bast

DATE: November 6, 2012

RE: PUBLIC COMMENTS ON RULES – **CHAPTER 10, SUBCHAPTER B – SITE AND DEVELOPMENT REQUIREMENTS AND RESTRICTIONS**

On behalf of Locke Lord LLP, please find comments to draft 10 Texas Administrative Code, Chapter 10, Subchapter B.

Section 10.101(a)(5)

Issue: This section says that if TDHCA makes a determination that a site is unacceptable, "the Applicant will be allowed an opportunity to address any identified concerns." That does this mean outside the context of either the Administrative Deficiency process or the appeals process? If a site is determined unacceptable, the Application should be terminated and the Applicant should have the opportunity to appeal in the normal course. References to any other sort of "opportunity to address . . . concerns" implies a mechanism for resolution that is not part of TDHCA's system.

Proposed Change: "If the Department makes such a determination, the Application will be terminated and subject to appeal, as provided herein."

Section 10.101(b)(3) Rehabilitation Costs

Issue: The rule says that the rehabilitation costs per unit must be "maintained through the issuance of IRS Forms 8609." What does this mean? What if the rehabilitation uses a funding program that does not involve the issuance of Forms 8609? Is it more appropriate to say that the rehabilitation costs per unit must be "supported in the Applicant's cost certification"? Further, what happens if the Applicant does not support the requisite level of rehabilitation costs

per unit at the time of cost certification? Is the funding lost entirely? The text of this section leaves this question open for implication.

Section 10.101(b)(5)(C)(xxx)(i)(-a-)

Issue: The presence of required amenities is observed at the final construction inspection and the periodic compliance inspections. How does TDHCA monitor whether 20% of the property's irrigation needs are coming from a collection system? Is TDHCA actually seeking evidence of this? What happens in times of drought?

Section 10.101(b)(6)(B) Unit Amenities

Issue: In the first sentence, should it be clarified that the amenities must be maintained <u>for the compliance period</u>?

Section 10.101(b)(7)(G)

Issue: In the world of today's technology, should the reference to a "CD-Rom" course be changed to an "online" course?

Section 10.101(b)(7)(I) and (J)

Issue: It seems illogical that quarterly health and nutritional courses would have assigned the same point value as organized youth and sports programs. Quarterly programs are fairly easy to set up and not particularly time intensive. Organized youth programs can be much more time-intensive and can require additional expenditure for equipment or supplies.

Recommendation: Increase the points available for organized youth and sports program, commensurate with the effort and resources that are invested for this activity.

I am happy to respond to any questions about these comments. Thank you for your time

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MEMORANDUM

TO: Texas Department of Housing and Community Affairs

FROM: Cynthia Bast

DATE: November 6, 2012

RE: PUBLIC COMMENTS ON RULES – **CHAPTER 10, SUBCHAPTER C – APPLICATION SUBMISSION REQUIREMENTS, INELIGIBILITY CRITERIA, BOARD DECISIONS AND WAIVER OF RULES**

On behalf of Locke Lord LLP, please find comments to draft 10 Texas Administrative Code, Chapter 10, Subchapter C.

Section 10.201 Procedural Requirements for Application Submission

Issue: There is a reference to "fees for withdrawn Applications." I don't see such a fee established in Section 10.901.

Section 10.201(1)(B) Procedural Requirements for Application Submission

Recommendation: Insert the phrase "or extended" after the phrase "cannot be waived" in the second sentence.

Section 10.201(2)(B) Procedural Requirements for Application Submission

Recommendation: Change "receive advance notice" to "receiving advance notice" in the first sentence.

Section 10.201(5) Procedural Requirements for Application Submission

Issue: Is the cross reference to Section 1.5 correct? I do not see such a section in the current published version of the Texas Administrative Code.

Section 10.201(7) Procedural Requirements for Application Submission

Recommendation: Insert the phrase "or omissions" after "resolve inconsistencies" in the first sentence. This is consistent with my recommendation in prior comments regarding the definition of Administrative Deficiencies.

Section 10.201(7)(A) Procedural Requirements for Application Submission

Issue: The following sentence is not entirely true:

"An Applicant may not change or supplement any part of an Application in any manner after the filing deadline or while the Application is under consideration for an award, an may not add any set-asides, increase the requested credit amount, revise the Units mix (both income levels and Bedroom mixes), or adjust their self-score except in response to a direct request from the Department to do so as a result of an Administrative Deficiency."

The highlighted language creates a restriction. There are several contexts in which an Application can be changed outside of a request in the Administrative Deficiency process. First, the rules specifically state that an Application may be modified after submission as a result of the limited review opportunity process. Secondly, changes can be made during the Real Estate Analysis underwriting review. If the Real Estate Analysis division is not going to use the Administrative Deficiency process (it traditionally has not), then this is another exception to the rule.

Section 10.202(1)(L) Ineligible Applicants and Applications

Issue: This section requires disclosure in the Application. Should it also refer to the Pre-Application, as it is preferable for TDHCA to handle this disclosure as soon as possible in the process? If a denial is brought to the Board for hearing, what is the consequence if the Board determines certain individuals may not be involved with the Application? Is the Application terminated, or can the Applicant change out those individuals? The consequences of the decision are not explicitly stated.

Section 10.202(1)(M) Ineligible Applicants and Applications

Issue: It should be clear that filing a permitted challenge does not constitute "creating opposition to any Application."

Section 10.202(2)(A) Ineligible Applicants and Applications

Recommendation: In the third sentence, insert the phrase "so long as the Application remains eligible for funding" after the phrase "remains in effect."

Section 10.204(5)(A) Required Documentation for Application Submission

Issue: This section refers to 150 units but does not describe what kind of units can qualify.

Issue: This section refers to the development of 150 units but does not necessarily require the completion of 150 units. For instance, a party that has developed but not completed 150 units could provide a Construction Contract or a Development Agreement.

Recommendation: I think the language in this section could be tightened and clarified to provide users better direction as to what is required for an experience certificate.

Recommendation: In Section 10.204(5)(A)(i), at the end of the phrase, insert "prior to the first date of the Application Acceptance Period."

Section 10.204(6)(A)(i)(II) Required Documentation for Application Submission

Recommendation: For clarity, insert an "or" after the semi-colon in this subsection.

Section 10.204(6)(A)(ii)(III) Required Documentation for Application Submission

Issue: This subsection asks for term sheets for interim and permanent loans. To indicate that the term sheet must include a minimum loan term of 15 years in inconsistent with the concept of an interim loan.

Recommendation: Insert the phrase "for the permanent loan," at the beginning of subsection (III).

Section 10.204(6)(A)(ii)(VI) Required Documentation for Application Submission

Recommendation: Insert the phrase "if applicable" after the phrase "tax credits" to accommodate multifamily funding that does not include tax credits.

Section 10.204(6)(B) Required Documentation for Application Submission

Recommendation: Insert the phrase "or private" after the phrase "federal, state or local."

Section 10.204(13) Required Documentation for Application Submission

Recommendation: In the opening paragraph, refer to a nonprofit General Partner or Owner.

Reasoning: In HOME-only transactions, a limited partnership structure likely will not be utilized.

Section 10.204(13)(B) Required Documentation for Application Submission

Recommendation: In the first sentence, refer to a nonprofit General Partner or Owner.

Reasoning: In HOME-only transactions, a limited partnership structure likely will not be utilized.

Section 10.204(13)(B) Required Documentation for Application Submission

Issue: In addition to receiving the determination letter from the IRS, it may be helpful for TDHCA to have a copy of the nonprofit organization's Certificate of Formation filed with the Secretary of State, in order to cross-check the organization's exempt purpose and ensure it includes housing activities.

Section 10.205 Required Third Party Reports

Issue: In the opening paragraph, the rule states:

"The Department may request additional information from the report provider or revisions to the report as needed."

Does this happen through the Administrative Deficiency process?

Section 10.205(3) Required Third Party Reports

Issue: The definition of Rehabilitation includes Reconstruction. Does it make sense for a Reconstruction development to obtain a property condition assessment?

Section 10.205(5) Required Third Party Reports

Issue: Should a civil engineer feasibility study be required for Reconstruction in any context?

Recommendation: It is not clear what the subsections are intended to do, as there is no appropriate leading sentence for the list. It could be restructured to say something like the following:

"The report shall include an Executive Summary and shall evidence the engineer's review and conclusions regarding the following:"

From there, items (B) through (O) could be listed.

Section 10.206 Board Decisions

Issue: This paragraph opens with a broad statement about the "Board's decisions." What decisions? Decisions for awards, ineligibility, appeals? This paragraph needs to be tightened up, lest it be interpreted to apply to contexts unintended.

Section 10.207(a) Waiver of Rules for Applications

Issue: Is a pre-clearance determination referring to the same process described in Section 10.3(b)?

Section 10.207(c) Waiver of Rules for Applications

Issue: Subsection (a) says the waiver provisions apply to Subchapter B and C. Subsection (c) refers to waiver of the rules in Subchapters A through C, E, and G. Why is there a discrepancy?

Section 10.208 Forms and Templates

Issue: I am strongly opposed to including any Application forms in the rules. These Application forms, as published, present numerous concerns. They utilize terms and definitions inconsistently, they have duplicative provisions, and they just generally need to be cleaned up. TDHCA should not lock itself in to a set of forms at this juncture, when the full Application form has not been established. Additionally, from time to time, an Applicant needs to be able to make some changes to the form to accommodate unique circumstances. In the past, we have been able to do this with the cooperation of TDHCA staff. If the forms are promulgated by rule, the ability to make changes is lessened and could be problematic for Applicants. If TDHCA wants the Board and the public to be acquainted with the various forms, there are other ways to promote this, such as including them as a Report Item on a Board agenda.

I am happy to respond to any questions about these comments. Thank you for your time

Locke Lord LLP
Attorneys & Counselors

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Austin, TX 78701
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Cynthia L. Bast
Direct Telephone: 512-305-4707
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cbast@lockelord.com

MEMORANDUM

TO: Texas Department of Housing and Community Affairs

FROM: Cynthia Bast

DATE: November 6, 2012

RE: PUBLIC COMMENTS ON RULES – **CHAPTER 10, SUBCHAPTER G – FEE SCHEDULE, APPEALS AND OTHER PROVISIONS**

On behalf of Locke Lord LLP, please find comments to draft 10 Texas Administrative Code, Chapter 10, Subchapter G.

Section 10.901(12) Extension Fees

Issue: As drafted and literally read, this section provides for an owner to be exempt from paying a fee if it applies 30 days advance of the deadline and to pay a fee if it applies after the deadline, but it does not address the period consisting of the 30 days before the deadline.

Proposed Change:

All extension requests for deadlines relating to the Carryover, 10 Percent Test (submission and expenditure), or Cost Certification requirements ~~that are submitted after the applicable deadline must be accompanied by an extension fee of $2,500. Extension requests~~ submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee. Any extension request submitted fewer than thirty (30) days in advance or after the applicable deadline must be accompanied by an extension fee of $2,500.

Section 10.901(14) Right of First Refusal

Issue: As we have seen in recent practice, it may be necessary or appropriate for an owner to go through a second right of first refusal process. Will it be possible to obtain a fee waiver for a second right of first refusal request in unusual circumstances?

Section 10.901(18) Unused Credit or Penalty Fee

Issue: Is it appropriate to have a point penalty for the Tax Credit program in this section, or should it appear in the QAP? Perhaps it should appear in this section and be cross-referenced in the QAP?

Section 10.901(19) Compliance Monitoring Fee

Issue: In the header, TDHCA distinguishes that this fee applies to [HTC Developments Only.] This is a very helpful reference, and it would be ideal for TDHCA to use this system throughout to distinguish rules that are unique to the Tax Credit program. This would be most helpful to users who are not using Tax Credit funding.

Section 10.902(a) Appeals

Issue: Section 10.407(f) allows an appeal on right of first refusal matters, but that is not reflected in Section 10.902(a).

Proposed Change:

Insert a new subsection (9) that reads “any other matter for which an appeal is permitted under this chapter”.

Section 10.902(b) Appeals

Issue: There appears to be a grammatical problem in this sentence.

Proposed Change:

“An Applicant or Development Owner may not appeal a decision made regarding an Application ~~or~~ filed by or an issue related to another Applicant or Development Owner”

Section 10.901(d) Appeals

Issue: Thee appears to be a grammatical problem in the fourth sentence.

Proposed Change:

"Full disclosure allows the Executive Director to make a fully informed decision based on a complete analysis of the circumstances and verification of any information that may warrant a granting of the appeal in the Applicant's or Development Owner's favor"

Section 10.901(f) Appeals

Issue: This section states that the Board "may not review any information not contained in or filed with the original Application." This seems inconsistent with subsection (d), immediately above, which states ". . . additional information can be provided in accordance with any rules related to public comment before the Board."

Recommendation: Reconcile these provisions to make clear the kind of information that can be included in an appeal.

Section 10.903(2) Adherence to Obligations

Issue: There are multiple problems with subsection (2). First, this Adherence to Obligations policy should apply to all of the funding programs administered by TDHCA. Yet, subsections (A) and (B) refer to prohibiting an owner from applying in the Tax Credit program. It seems this should more broadly refer to all funding programs. Additionally, the last phrase of subsections (A) and (B) does not make sense and needs to be clarified. See the highlighted language.

> ". . . the date that the non-conforming aspect, or lack of financing, was recognized by the Department of the need for the amendment; the placed in service date; or the date the amendment is accepted by the Board"

Recommendation: Revise this provision so that it adequately accommodates all of the Department's funding programs and is consistent with other provisions of the rules relating to similar consequences, including the provisions for administrative penalties and the compliance rules.

Section 10.904 Alternative Dispute Resolution Policy

Issue: Should it be clarified whether a party must exhaust administrative appeals before pursuing ADR?

Issue: Is the "informal conference with staff" permitted in this section considered an ADR proceeding?

I am happy to respond to any questions about these comments. Thank you for your time

Comment (14)
Dennis Hoover, Hamilton Valley Management

From: Dennis Hoover
To: cameron.dorsey@tdhca.state.tx.us; Jean Latsha; Teresa Morales (teresa.morales@tdhca.state.tx.us);
cc: Gilberto De Los Santos; Benjamin Farmer; Claire Palmer; Ginger McGuire; jbrown@taahp.org;
Subject: RE: support for Public comment
Date: Monday, October 01, 2012 1:22:05 PM
Attachments: OpportunityIndex comparison.xls

Sorry, I forgot the attachment.

From: Dennis Hoover
Sent: Friday, September 28, 2012 4:50 PM
To: cameron.dorsey@tdhca.state.tx.us; 'Jean Latsha'; Teresa Morales (teresa.morales@tdhca.state.tx.us)
Cc: Gilberto De Los Santos; Benjamin Farmer; 'Claire Palmer'; Ginger McGuire; jbrown@taahp.org
Subject: support for Public comment

Cameron, Teresa and Jean,
The first sheet is the summary sheet. This shows what % of Urban Tracts by Region are over the qualifying Poverty level (15% or 35%) for Opportunity Index. It also shows at the bottom the same for the Rural for the whole state with Regions 11 & 13 broken out.

It also shows what percentage of 1st and 2nd quartiles would not qualify because of the Poverty level of the tract.

To correct the inequity between the Regions I recommend either:
The Poverty Index be deleted for Rural and all Regions have 50% or more of its tract over the Poverty level, or
The Poverty levels in Regions 2, 8, 10 and 11 be increased to the following level: (so that at least 50% of the Tracts in each Region would qualify)

Region	Metro Areas	Current Poverty Level	% of Census Tracts that qualify Under Current Policy	Proposed Poverty Level	% of Census Tracts that would qualify Under Proposed Policy
13	El Paso	35%	71%	35%	71%
11	McAllen-Brownsville-Laredo	35%	47%	37%	52%
		Discrepancy	**24%**		**19%**
1	Amarillo	15%	50%	15%	50%
2	Abilene-Wichita Falls	15%	44%	18%	52%
3	Dallas--Fort Worth	15%	62%	15%	62%
4	Longview-Tyler-Texarkana	15%	51%	15%	51%
5	Beaumont	15%	52%	15%	52%
6	Houston	15%	55%	15%	55%
7	Austin	15%	64%	15%	64%
8	Bryan-Temple-Waco	15%	36%	20%	51%
9	San Antonio	15%	51%	15%	51%
10	Corpus Christi-Victoria	15%	42%	17%	52%
12	Midland-Odessa-San Angelo	15%	51%	15%	51%
		Discrepancy	**28%**		**13%**

Dennis Hoover
President, Hamilton Valley Management
P.O. Box 190
Burnet, Texas 78611
512-756-6809 ext 212
512-756-9885 fax
830-798-4273 cell
dennishoover@hamiltonvalley.com

From: Dennis Hoover
To: Cameron Dorsey; Jean Latsha;
cc: Gilberto De Los Santos; Kim Youngquist; Ginger McGuire; Claire Palmer; Teresa Morales;
Subject: How to make Public comment
Date: Wednesday, September 26, 2012 1:39:47 PM

Cameron or Teresa,
Do I need to boil this down, make it shorter or whatever for Public Comment?
Also, on the Poverty Rate % on the Opportunity Index: How does the rounding work? In other words if a census tract is 35.08% in Region 11, how is it judged?
Thanks,

Dennis Hoover
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830-798-4273 cell
dennishoover@hamiltonvalley.com

From: Dennis Hoover
Sent: Tuesday, September 25, 2012 5:24 PM
To: 'Cameron Dorsey'; Jean Latsha
Cc: Gilberto De Los Santos; Kim Youngquist; Ginger McGuire; Claire Palmer; Benjamin Farmer; Teresa Morales
Subject: RE: Summary of Poverty Rate for Regions Metro Areas (2).xlsx

Cameron, Isn't the Poverty level determined for the entire US as a whole? If it is (and I think it is) then the upper quartile census tracts in high poverty Regions are being discriminated against because of the inclusion of the Poverty level. It seems like the Poverty level should be tossed out because it in too many cases excludes desirable areas that would be in the top two quartiles. Doesn't the quartile determination and Educational Excellence, by themselves, accomplish the purpose of the Opportunity Index?

Region 11 has a very high Poverty rate as compared to rest of the US as a whole. We're making this point because our census tract in particular is 35.1% poverty, but it's in the 2nd quartile of Edinburg, and there are census tracts in Region 11 as well as other Regions which are in the 1ST and 2nd Quartiles—but do not qualify under the poverty rate. It's a good area of town where the Housing Authority has chosen to buy land (already bought it) and build, it has Exemplary and Recognized

schools. If I understand the purpose of the Opportunity Index then this is where it is directing us to build.

For example, if every census tract in town had above 35% poverty then you could build nowhere in the whole city, even in the very best part of town. Isn't this the same point being made for dropping the Poverty level from the Rural areas, and the reason for increasing the poverty level from 15% to 35% in Regions 11 and 13? Go to the attached file called "Opportunity Index Region II combined" and go down to 35% poverty line. You will see there how many census tracts are in the 1st or 2nd quartile but above the 35% Poverty level.

Look in the sheet called "Copy of Other Regions Opportunity Index" and look at the census tract below the qualifying poverty levels. You can see how many tracts in the top two quartiles are being excluded because of the Poverty Level. What is true for Region II is also true for Region 8, somewhat for Region 9 and 10, and of course less true for the higher income areas. This discriminates against the census tracts in the lower income Regions, even though Region 11 is at 35%.

From: Cameron Dorsey [mailto:cameron.dorsey@tdhca.state.tx.us]
Sent: Tuesday, September 25, 2012 10:22 AM
To: Dennis Hoover; cameron.dorsey@tdhca.state.tx.us; Jean Latsha
Cc: Gilberto De Los Santos; Kim Youngquist; Ginger McGuire; Claire Palmer; Benjamin Farmer; Teresa Morales
Subject: RE: Summary of Poverty Rate for Regions Metro Areas (2).xlsx

Dennis,

This makes a case but it is unlikely to be one that will change staff's recommendation. Changing the poverty rate in this way all but renders that particular factor insignificant because the median income factor alone limits the number of tracts to 50% without the poverty rate used at all. That is the explicit purpose of the median income factor. The idea that we should change the poverty rate factor to allow 50% of the tracts to qualify would not be all that different from removing the poverty rate as a factor altogether. Also, I don't think it's accurate to say that this puts the sub-regions on a level playing field since it only accounts for two of the three factors. There is no way of knowing how these figures would be augmented by the school rating factor. Aside from this, I don't believe that there is an effort from staff's perspective to craft scoring criteria that result in the same

number sites qualifying for points under each of the scoring criteria within each of the sub-regions. If this were a rationale for modifying this factor then it seems the same argument could be made for a majority of the other scoring criteria. For example, we could apply a similar logic based on rent limit differences between sub-regions. The purpose of the RAF is to address these kinds of issues and differences.

We'll make sure we discuss it more internally but these are my initial thoughts in response to your question regarding whether this research makes the case.

Let me know if you have any other thoughts.

Thanks,
Cameron

.....
Cameron F. Dorsey
Director, Multifamily Finance
Texas Department of Housing and Community Affairs
Ph. 512.475.2213

From: Dennis Hoover [mailto:DennisHoover@hamiltonvalley.com]
Sent: Tuesday, September 25, 2012 9:06 AM
To: cameron.dorsey@tdhca.state.tx.us; Jean Latsha
Cc: Gilberto De Los Santos; Kim Youngquist; Ginger McGuire; Claire Palmer; Benjamin Farmer
Subject: Summary of Poverty Rate for Regions Metro Areas (2).xlsx

Cameron and Jean,
Mr. De los Santos and I are preparing a public comment on the Poverty rate. The attached chart he has prepared shows the % of census tracts that currently qualify for the Opportunity Index, in the particular regions, but only using the Urban tracts. The point being that if we want to level the playing field so that 50% of the tracts in all areas would be eligible then:
Region 2 would need their poverty level raised to 18%,
Region 8 would need their poverty level raised to 20%,
Region 10 would need their poverty level raised to 17%,
Region 11 would need their poverty level raised to 37%,

The question is, do we need to research the poverty levels in the Rural tracts also, or does this research make the case by itself?
Thanks,

Dennis Hoover
Hamilton Valley Management
512-756-6809 ext 212
512-756-9885 fax
830-798-4273 cell
dennishoover@hamiltonvalley.com

Comment (15)
Ken Smith
Revitalize South Dallas Coalition

October 2, 2012

Mr. Jesus Azanza
TAAHP
221 E. 9th Street, Ste 409
Austin, TX 78701

RE: ***RSDC's*** Public Comment to Proposed 2013 TDHCA QAP

Dear Mr. Azanza:

I am President of ***Revitalize South Dallas Coalition,*** a non-profit that champions economic development, revitalization and job creation in South Dallas, a low-income QCT. Our address is P.O. Box 153247, Dallas, Texas 75315. Our website is www.rsdc.us.

We disagree with judge Sidney Fitzwater's ruling that favors awarding tax credits to organizations and/or developers in "HOAs" (high opportunity areas) because it negates Congress's original intent. Section 42 of the Internal Revenue Code shows a clear congressional preference for assisting those with the lowest incomes; placing LIHTC projects in Qualified Census Tracts; and serving low-income tenants over extended periods of time to ensure success.

Therefore, we support TDHCA's *Motion to Alter or Amend the Judgment or Have a New Trial* that argues that the judge's opinion related to Section 42 of the IRC is misinterpreted and therefore wrong. The judge's order, in essence, rules that the only way low-income people can succeed is to move to more affluent areas – dislodging them from family and friends; diluting their voting strength; diminishing their political clout; and abandoning the institutions they have built. It advances the notion that, somehow, the majority's "ice" is "colder". And, it overlooks the fact that in many cases, these same people **built** the communities they live in; only to see them decline after an earlier period of "flight".

TDHCA is "between a rock and a hard place." It is trying to abide by the Judge's Remedial Plan, while upholding the spirit of the founding legislation. But, the two don't mix! Although we support TDHCA's *Motion to Appeal*, we do not support its 2013 QAP process that awards more "points" to projects in high income areas and in areas with exemplary schools. The unintended result is having one set of rules for North Texas and another for the rest of the state. And, the ruling hastens the abandonment of QCTs by promoting "flight" outward. This diminishes population; forces school's to close due to low enrollment; and leaves QCTs increasingly to the less desirable elements. Abandonment accelerates financial red-lining, which had already contributed to neglect, and the vicious cycle continues. These are the conditions LIHTCs were created to fight!

We urge the following:

1. If the Judge denies TDHCA's Motion to Alter the Judgment, or to have a new trial**,** TDHCA should appeal the decision and order,
2. TDHCA should file a motion requesting a stay of the Judge's order until a court of final resort determines the case,
3. TDHCA should have only 1 QAP for all of Texas, and
4. TDHCA should revise sections of its Proposed 2013 QAP, so that projects in QCTs (low-income neighborhoods) that are part of a comprehensive revitalization supported by the City have a competitive opportunity to receive an award.

Other options to improve the chances that revitalization developments will be competitive in the tax credit process include amending the 2013 QAP to include the following points:

- Federal law mandates that at least 10% of the tax credit awards each year go to non-profit sponsors. A non-profit set-aside is administered in the QAP. Since non-profits are at the heart of community revitalization, giving a preference for revitalization developments for those applications competing in the non-profit set aside might ensure that revitalization efforts by non-profits can succeed without significantly impacting the other 90% of the tax credit awards in the state.
- State law requires that TDHCA award a very substantial number of points in the competitive process for developments supported by financing from the city, county or equivalent. This scoring item could be revised so that the threshold for receiving points is at a level where the development would receive these points only if there was a major financing infusion from the local government. That way, revitalization developments that are receiving large amounts of local funding would be preferred, and those developments that are not receiving similar levels of support would not.

Thank you for considering our comments.

Sincerely,

Ken Smith, President
Revitalize South Dallas Coalition
214-770-3068 c; 214-428-4966 h
info@rsdc.us

Comment (16)
Linda Brown, Casa Linda Development Corporation

Casa Linda Development Corporation

VIA EMAIL

October 16, 2012

Ms. Jean Latsha
Manager, 9% Housing Tax Credit Program
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701-2410

RE: Recommended Language Changes to the Proposed 2013 Qualified Allocation Plan (QAP)

Dear Jean:

In response to the department's request for public comment to the proposed 2013 Qualified Allocation Plan, we offer the attached recommended changes. Thank you for the opportunity to comment and offer our thoughts to improving the QAP for next year. Should you wish to discuss or have any questions, please do not hesitate to contact either Sara Reidy at 214-941-0089 or myself.

We appreciate the staff's hard work in preparing a document for review and look forward to another successful round.

Sincerely,

Linda S. Brown
President/Partner

C: Cameron Dorsey, TDHCA Director of Multifamily Finance
Sara Reidy, Casa Linda Development Corp., EVP/Partner

2010 Kessler Parkway, Dallas, TX 75208
Phone: 214-941-0089; Fax: 1-888-811-2360

Casa Linda Development Corporation

2013 Recommended QAP Changes

11.9(2) Sponsor Characteristics. §42(m)(1)(C)(iv) (2). An application may qualify to receive points under subparagraph (A) or (B) of this paragraph. Page 11 and 12 of the Draft QAP

Why Do We Need The Change? The Draft QAP Language as written does not adequately incentivise inexperienced HUB's and HUB's but not more than 2 deals through 8609's to effectively compete. We propose the following recommended language that reflects the Board's direction to provide HUB's an opportunity to 1) enter the program and 2) further encourage HUB owned projects by incentivizing a HUB to continue to build on previous limited experience. A HUB with 3 deals completed through 8609's is considered to have gained the experience necessary to effectively compete.

Recommended Language:
(2) Sponsor Characteristics. §42(m)(1)(C) (iv) (2). An application may qualify to receive points under subparagraph (A) or (B) of this paragraph.

(A) An Application may qualify to receive up to one (1) point provided the ownership structure meets the requirement described in clause (i) **or** two (2) points provided the ownership structure meets the ownership structure in clause (ii).

i. A HUB as certified by the Texas Comptroller of Public Accounts that is unable to qualify for a TDHCA Experience Certificate and has an ownership interest and receives no less than ten percent (10%) of the developer fee and twenty percent (20%) of the cash flow.

ii. A HUB as certified by the Texas Comptroller of Public Accounts and owns 100% of the General Partnership interest and has received 8609's on one (1) but not more than two (2) housing tax credit projects through 8609's.

(6)(C)(i) Community Revitalization Plan for Developments located in a Rural Area.

Why Do We Need The Change? In rural communities, capital projects are less frequent and more likely to be further away from the development site. Therefore, we recommend the following adjustments to the language to position community development/revitalization efforts in rural areas on balance to the larger urban communities in Texas.

Recommended changes to Current Draft of QAP are highlighted in red. Page 19 in the Draft QAP.

(i) An Application may qualify for up to six (6) points if the city, county, or state has approved expansion of any of the basic infrastructure or projects to the Development Site described in subclauses (I) – (IV) of this clause, or improvements to areas within a one mile of the Development Site, unless a different distance is otherwise identified. The Applicant or Related Party cannot contribute funds for or finance the project or infrastructure. The project or infrastructure must have been completed no more than thirty-six (36) months prior to the beginning of the Application Acceptance Period or be approved and projected to be completed within twenty-four (24) months from the beginning of the Application Acceptance Period.

2010 Kessler Parkway, Dallas, TX 75208
Phone: 214-941-0089; Fax: 1-888-811-2360

Comment (17)
Bernadette Nutall, Dallas ISD

Mike Miles
Superintendent of Schools

Dallas Independent School District
Educating All Students For Success

October 31, 2012

Tim Irvine
Teresa Morales
TDHCA
P.O. Box 13941
Austin, TX 78711-3941

Dear Mr. Irvine and Ms. Morales,

My name is Bernadette Nutall, and I serve as a trustee of Dallas ISD. I represent the Fair Park/South Dallas community.

Due to blighted conditions and poor public policy decisions over the past 40 years, we have endured declining population and quality housing stock, excessive joblessness and other conditions that are symptomatic of stubborn poverty. However, throughout all this, I and the residents of the area have remained committed and worked steadfastly for a healthy, mixed-income and diverse community.

As you know, the Frazier area is part of a revitalization effort that has been in progress for quite some time, and with no conventional financing available, the Low Income Housing Tax Credits (LIHTC) are key for the revitalization to continue.

I understand the LIHTC were originally designed for areas of revitalization, in fact, according to your own Motion filed in the ICP v. TDHCA lawsuit, "Section 42 shows a clear congressional preference for assisting those with the lowest incomes, serving low-income tenants for long periods of time, and placing projects in QCTs ...Congress clearly intended that LIHTC should be used to help low-income tenants for long periods of time and to revitalize low income areas."

Therefore, I urge you to do the following:

- If the Judge denies the Motion, TDHCA should appeal the decision and Order
- File a motion requesting a stay of the judge's Order until a court of final resort determines the case
- Revise sections of the Proposed 2013 QAP, so that projects in QCTs (low-income neighborhoods) that are part of a comprehensive revitalization supported by the city have a competitive opportunity to receive an award

Respectfully,

Bernadette Nutall

Bernadette Nutall

Cc: TDHCA Board Members

3700 Ross Ave.
Dallas, TX 75204
(972) 925-3700
www.dallasisd.org

(17)

9/18 - Cameron

SCANNED

CC: TKI, JL, BD, JM

Mike Miles
Superintendent of Schools

Dallas Independent School District
Educating All Students For Success

September 10, 2012

Mr. Tim Irvine
Executive Director
TDHCA
PO Box 13941
Austin, TX 78711-3941

Dear Mr. Irvine:

My name is Bernadette Nutall, and I serve as a trustee of Dallas ISD. I represent the Fair Park/South Dallas community. I previously worked for DISD at D. C. James Elementary (now the Irma Rangel Girls Academy) at Fair Park in the Frazier neighborhood. I left DISD to found and lead Circle of Support Inc., a non-profit which for the past 10 years has supported young girls in the neighborhood both during the school year and with summer programs. We have found we must help young people both during the school year and summers to give them the best chance for success in school and in life.

In these capacities, I have a firsthand knowledge of the people, schools and other conditions in the Frazier neighborhood. I have written support letters for Frazier's Hatcher Square project and deeply believe in the process and hope for comprehensive revitalization of our neighborhood. We've made extraordinary progress, against all odds.

Due to blighted conditions and poor public policy decisions over the past 40 years, we have endured declining population and quality housing stock, excessive joblessness and other conditions that are symptomatic of stubborn poverty. However, throughout all this, I and the residents of the area have remained committed and worked steadfastly for a healthy, mixed-Income and diverse community.

We have experienced considerable success. For instance, over 100 new homes have been built in the community. There has also been the construction of a new Baylor Healthcare facility. The community is experiencing reduced crime and perhaps most importantly, improved schools. It's been a struggle and much is still needed, but we're on the right path.

We need your help to keep this going. With de-population, we need more housing – for people of all ages, ethnicities and incomes. To get the middle-class demographic to move back into the community, we must have good schools – and I am totally committed to that end – that's why I ran for and twice have been elected to the School Board.

I am familiar with FRI's work, including getting more affordable housing for our community and support for our neighborhood schools and jobs. In its proposed 2013 QAP for housing tax credit grants, I understand TDHCA has included a scoring item for

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"Education Excellence," where a project may score 3 additional points if the schools in the area are "Recognized" or "Exemplary." I share this aspiration in the longer term, and am pushing hard for this exact outcome in all of our schools. However, we're not there yet. While several of our schools currently meet this requirement, having this as part of the selection criteria would only result in denying crucial, affordable housing to our community. This compounds a growing economic development problem which is contradictory to the spirit and intent of the tax credit program. Additionally, offering these 3 extra points, which no doubt the projects in High Opportunity Areas (HOAs) will score, would basically favor projects in those HOAs.

It would be cruel and disingenuous to say we prefer good projects in low-income neighborhoods but then set unachievable hurdles that block revitalization, and instead, send the housing grants to affluent suburbs.

We've made great progress with our schools, but national data (and here as well) reveal that schools in middle and upper class communities, mainly white neighborhoods, are much more likely to be Exemplary and Recognized at this time.

It's not impossible for schools in low-income, ethnic minority neighborhoods to consistently reach this level, but it will take more time and resources. For example, Frazier Elementary earned an Exemplary rating in 2009, but was closed this year due to declining population. H. S. Thompson Elementary was rated either Recognized or Exemplary from 2007 through 2010under Principal Kamalia Cotton. The school even won a National Blue Ribbon award in 2010. The school was again rated Exemplary in 2011. However, when the Turner Courts housing project was demolished, the school was closed this year due to inadequate student population. Hopefully when Buckeye Trails is completed the school can reopen. The neighborhood high school, Madison, was poorly performing until Marion Willard was named principal 5 years ago, and she has turned the school's performance around. It has barely missed the "Recognized" category for several years running, and the graduation rate has increased steadily ever since.

Unfortunately, this issue is not just limited to the Frazier neighborhood. In other low-income neighborhoods in the Southern Sector, including those undergoing revitalization, the challenges to remaining open, while also meeting rating thresholds are significant. However, our record for continuous improvement is the key – i.e., as a result of Dallas Achieves and Dallas Commit (both multi-million dollar and multi-year commitments form DISD in partnership with parents and the business and philanthropic community) and the effort of excellent school principals and other reforms, we are making significant gains including steadily increasing academic scores and graduation rates.

You see, despite our struggle – in the Frazier neighborhood, we have demonstrated that poor children can learn. (TI has been exceptionally helpful for over 15 years in sponsoring the Margaret Cone Head Start program at Frazier so that low-income children arrive at 1st grade already reading or ready to read and learn.) Yet without affordable housing, we lose population and must close or consolidate schools. This is a vicious cycle.

I recommend the elimination of scoring related to educational excellence altogether; otherwise, I need your help at TDHCA in defining the education standards for your QAP in ways that take into consideration the realities noted above. Standards something like the following that may be certified by the school district superintendent, as I recognize these standards may be difficult to evaluate:

I would suggest that TDHCA look at the trends of a school district versus the static figure of a previous academic rating. For instance, is the performance of the schools in the affected area trending upward over a 3 to 5 year period? Is the performance of the school district improving over a similar time frame? It is also of utmost importance to look at the economic and societal issues that often affect the performance of a school. When families struggle with such daily tasks as receiving adequate health care and even basic nutrition, academics and school performance can, and often do, suffer. However, are these same challenges even present in more affluent suburban school districts?

Noting the improvement of a school and district is a better gauge of future potential and results that can be expected. As I have pointed out, DISD had schools meet exemplary status, yet still were forced to close due to non-academic related issues. These same issues cannot be addressed without the support of TDHCA's tax credit program. After all, the goal of the tax credit program is to improve the quality of a community. No better area would be better served than the Fair Park/South Dallas community.

We are the proverbial 'boots- on- the ground' or front line troops in an ever challenging battle. Academic theories that apply to affluent neighborhoods are not necessarily applicable here. This is not an excuse, but rather a practical view of the real and significant challenges we face in preparing our children for school, a life of good citizenship and productivity beyond.

I would be pleased to come to Austin and speak with you, your staff or board if that is helpful. I would also like to extend an invitation to you and your staff to come to Dallas to see first-hand what we are accomplishing and facing.

We appreciate all you are doing. It is extraordinarily important to our community.

Sincerely yours,

Bernadette Nutall

Bernadette Nutall

cc: TDHCA Board Members
Mayor Mike Rawlings
Senator Royce West
Representative Rafael Anchia
Representative Daniel Branch
Representative Eric Johnson

Comment (18)
Rafael Anchia
State Representative District 103

STATE OF TEXAS
HOUSE OF REPRESENTATIVES
DISTRICT 103

RAFAEL ANCHIA
MEMBER

October 4, 2012

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941

Dear Mr. Irvine:

I seek your support on a crucial and urgent matter relating to needed affordable housing in our urban, low-income neighborhoods in Texas. As you know, in the Inclusive Communities Project case TDHCA has filed a motion to alter or amend the judgment or have a new trial, arguing that the Judge's ruling is in error. According to your supporting brief: "Section 42 (of IRC) shows a clear congressional preference for assisting those with the lowest incomes, serving low-income tenants for long periods of time, and placing projects in Qualified Census Tracts (QCTs). . . Congress clearly intended that low income housing tax credits(LIHTCs) should be used to help low-income tenants for long periods of time and to revitalize low-income areas." For TDHCA to now give preference to projects in affluent suburbs, as required by the proposed 2013 Qualified Action Plan (QAP), would not only conflict with that argument, but also would thwart our cities' revitalization efforts, and be unfair to the residents who want to continue to reside in their communities. Of course, in principle, affordable housing should be available everywhere; but, for large cities, the crucial problem is one of scarcity of tax credits in relation to overwhelming demand, and lack of conventional financing for affordable housing in low-income neighborhoods. So, the issue is one of priorities.

As I understand it, the new Qualified Action Plan (QAP) for 2013 will be used for the scoring of the highly competitive 9% LIHTCs process throughout the state. The effect of the Remedial Plan and the Proposed 2013 QAP (as was the case with the 2012 QAP) will be to virtually curtail awards of LIHTCs to low- income areas that we, in our major Texas cities, are seeking to revitalize. Although addressing only North Texas, the Court ruling, and TDHCA's arguments against it, will have state-wide and national implications.

I respectfully urge the following:

1. If the Judge denies TDHCA's Motion to Alter the Judgment, or to have a new trial, TDHCA should appeal the decision and order;
2. TDHCA should file a motion requesting a stay of the Judge's order until a court of final resort determines the case;
3. TDHCA should have only one QAP for all of Texas, and
4. TDHCA should revise sections of its Proposed 2013 QAP, so that projects in QCTs (low-income neighborhoods) that are part of a comprehensive revitalization supported by the City have a competitive opportunity to receive an award.

CAPITOL OFFICE: POST OFFICE BOX 2910 AUSTIN, TEXAS 78768-2910 • (512)463-0746 • FAX: (512) 463-5896
DISTRICT OFFICE: 1111 W. MOCKINGBIRD LANE • SUITE 1330 • DALLAS, TEXAS 75247 • (214) 943-6081 • FAX: (214) 920-9996
RAFAEL.ANCHIA@HOUSE.STATE.TX.US

I ask that TDHCA comply with the four requests made in this letter. Citizens in low-income communities deserve the opportunity to have their neighborhoods revitalized and thriving, and since there is no conventional financing available, LIHTCs are the only hope to provide new affordable housing.

I am available to answer any questions you may have with regard to this issue. Please feel free to contact me at 214-943-6081.

Sincerely,

Rafael Anchia

Cc: J. Paul Oxer, Chair, TDHCA Board
Tom H. Gann - Vice Chair, TDHCA Board
Leslie Bingham Escareño, TDHCA Board Member
Lowell A. Keig, TDHCA Board Member
Dr. Juan Sanchez Muñoz, TDHCA Board Member
J. Mark McWatters, TDHCA Board Member

Comment (19)
Benjamin Farmer
Rural Rental Housing Association

RRHA OF TEXAS
RURAL RENTAL HOUSING ASSOCIATION OF TEXAS, INC.

October 16, 2012

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Dear Mr. Irvine:

Thank you for the opportunity to present the views of the Members of the Rural Rental Housing Association of Texas on changes to the 2013 Qualified Allocation Plan. On behalf of our more than 100 Associate Members and approximately 700+ TxRD-USDA financed Project Members who control almost 26,000 apartment units in Texas, our comments reflect our experience, as well as, our challenges building, owning, managing and rehabbing. The comments below represent the consensus of our Membership.

The Low Income Housing Tax Credits (LIHTC) program is the most successful rental housing program in decades. In 2010, half of all multifamily starts were financed by the Housing Credit according to NAHB. In rural communities, apartments with tax credits are often the only new rental housing that has been built in 20 or more years. It is often the only available source of funding for preservation, transfer and rehab of aging properties because of the underwriting challenges and the population targets of the units.

More responsibility is going to LIHTC to solve the nation's rental housing shortages and in this economic and political environment no new affordable housing programs are being created leaving the rural communities with difficult choices when they want to improve or expand their home towns.

1. Elderly. The Texas Rural Statewide market analysis identifies senior's as the stable and growing population for rural Texas, and a need for new and rehabilitated projects to offer living options for seniors that do not want to move from their rural community in later years. While younger families are moving to larger cities, the elderly population is growing in rural Texas. Elderly projects in rural areas should receive parity in scoring points with family developments because of the demand for restricted elderly in these areas.

2. 11.4 (b) and (c)(2)(A). Tax Credit Request and Award Limits. Regarding the maximum request limit, we support the draft language allowing an application request amount of 150% of the credit amount available in the sub-region. We recommend the language regarding the 30% boost in Eligible Basis read; (A) the Development is located in a Rural Area, **or the development retains existing USDA funding**. This is an important addition to catch 514 and 515 properties that may now be located in exurban areas as a result of geographical growth of the nearby large city.

417-C West Central • Temple, Texas 76501 • (254) 778-6111 • FAX (254) 778-6110
E-Mail: office@rrhatx.com

3. 11.9 (B)(2) Competitive HTC Selection Criteria/Sponsor Characteristics. For either 1 or 2 points, this requires either 3 projects with 8609's and 85% compliance score or HUB owning 51% and receiving 20% of cash flow and 10% of the developer fee. This provision freezes the applicant pool at near current participant levels, and it doesn't provide a way for potential applicants to work out of the freeze. By making it very difficult for out of state developers to score competitively, this provision also eliminates some very responsible Texas owners of 514 and 515 properties, as well as experienced and responsible out of state owners, with very few alternative funding outlets available for new construction in rural areas or for rehab of the aging rural rural portfolio. The RRHA opposes this provision in its entirety. If TDHCA wants to target and shut out "bad boys" then this provision doesn't do it.

11.9 (b)(iii) The HUB is a threshold requirement in the QAP already, and to incentivize them further is not necessary. We support the HUB inclusion for 1 point; however, we recommend the 100% aggregate calculation for an additional point be eliminated.

4. 11.9 (c)(2)(A) and (B) Rent Restrictions. Elderly, the largest growing population in rural Texas, should also receive 11 points or 8 or 9 points respectively, along with supportive housing in rural areas.

5. 11.9 (c)(4)(A-E) Opportunity Index. The Draft QAP states that rural is exempt from the poverty level requirement and only has to have acceptable elementary schools, but does not state how the application receives points, if any. Are points received and how, please clarify. In reference to the Poverty Index, in order to remove inequities in the percentage of qualifying census tracts among the regions and to assure that each region has at least 50% of the census tracts in the qualifying Poverty percentage: Raise the Poverty level as follows: Region 2 to 18%; Region 8 to 20%; Region 10 to 17%; Region 11 to 37%.

6. Opportunity Index, set-asides. RRHA further strongly recommends that the At Risk set-aside be excluded from the Opportunity Index scoring criteria. The very intent of the Opportunity Index is to create affordable housing in high opportunity areas with more jobs, better schools, etc. The intent of the At Risk set-aside is to upgrade existing affordable housing stock and assure that it remains affordable. There is no opportunity to relocate an existing property and scoring priorities will lead to decisions being made to rehab based on eligible QAP score rather than a decision based on need and deterioration of the existing property. The Bowen Study commissioned by TDHCA emphasized that, particularly in rural Texas, upgrading the existing affordable housing stock is critically important. The location of these projects is already determined and cannot be relocated simply to score competitively. A quick survey of four RRHA members' properties in current need of rehabilitation showed that out of 53 properties only 10 were in a 1st or 2nd quartile census tract.

7. 11.9 (3) Commitment of Development Funding by Unit of General Local Government. It is unclear if the term of 5 years for a construction can be paid off earlier, and we request a clarification from staff. Construction loans, if you can get one from a local government in a rural area, will be shorter than 5 years, and will likely be higher than the current AFT (.93%). We would like to see specified the ability to prepay anytime before the 5 year term.

8. 11.9 (3)(A) Please provide a calculation example of how (i-v) works in determining the population with a multiplier.

RRHA would also like to see an addition to the local funding entities in rural areas to include any entity under the authority of the city or the county. This would give rural communities the ability to seek funds from local regional organizations that actually may have money to lend, and to fulfill the intent of the provision to have a local financial stake in the project. Most rural cities will not have excess funding to lend outside of these entities.

9. 11.9 (e)(2)(B) Cost of Development per square foot. Comparing construction costs to any number at the time of application is a completely academic exercise, but asking applicants to invest in a very expensive HTC application without even a number for comparison is unfair. If this comparison must remain as a selection point criteria then **we support the TAAHP recommendation t**hat the 2011 QAP language with a cost boost of at least $3000 a unit be reinstated because it best honors the legislative intent and the language of the statutory requirement. It recognizes that we do create different types of housing in different communities that cannot be "averaged," and it does not create a 10 point "unknown" as we make decisions about what developments to pursue.

10. The definition of rural needs to be clarified and one definition needs to be selected to apply to all rural applications in the QAP. ANY 515 should be considered rural and receive the 130% boost, even if the location has become within urban or exurban areas as a result of growth. This addresses the current interpretation of the 2306.003 which staff interprets as a property in an area that is less than 50,000 population, AND is eligible for USDA funding. There are USDA financed aging projects that have become located in exurban areas as a result of geographic and population growth, still serving their intended purpose such as farmworker housing, and they are available for USDA financing. The problem is that USDA relies heavily on LIHTC to solve their transfer/rehab problems with very little preservation financing available nationally. So long as the project retains USDA financing, it should be considered rural for at-risk tax credit purposes as it is for USDA and GNMA purposes. RRHA recommends that the area needs to be less than 50,000 population and/or eligible for USDA funding, specifically the retention of a 514 or a 515 loan. The 538 program is relatively new and is generally limited to areas of 20,000 population or less (some sparsely populated counties are exceptions for the major small city) and should not present an unintended conflict of opportunity.

11. Persons with Special Needs -- the definition of Persons with Special Needs should be expanded. For example, Wounded Warriors as defined by the Wounded Warriors Act of 2008 should be added. Applicants should have the opportunity to obtain Agency approval of other categories of special needs not specifically listed at the time of Cost Certification.

12. Quantifiable Community Participation - The extra point received by an application from a Quantified Neighborhood Organization that has previously opposed a Housing Tax Credit application should be removed. There are "Super Neighborhood associations" whose boundaries cover large portions of some municipalities and who both support and oppose multiple applications. These groups or any neighborhood association's opposition of a project in

a prior year has nothing to do with their perceptions of the merits of an application in 2013 and should not have positive or negative effect on an application in 2013. This point does nothing to further the legislative intent of Quantifiable Community Participation nor reflects the merits of a particular application and should be removed.

13. 11.9(3) UGLG -- RRHA supports the ARCIT comment and believes the graduated scale of funding based on population is a good change and will resolve some of the inequities between urban and rural. However, the language is confusing and we request there be an example in the QAP showing a calculation of the amount. In addition, we request the Department expand the entities allowed to provide funding. These should include "any" entity created and still under the authority of the city or county. (this could include HFCs, EDCs, etc.)

14. 11.9(6) Community Revitalization Plan -- RRHA supports the ARCIT comment and believes that Rural communities that have created redevelopment plans should be able to use those plans in the same way as urban communities do revitalization. Both serve the needs of community in revitalization.

We request that the Department expand the criteria so that rural areas may receive the full points for having either a redevelopment or revitalization plan. We request the Department expand the definition of infrastructure to include other community-wide amenities that would improve the quality of life for residents (i.e. parks).

Thank you for the opportunity to provide the Associations' views on the draft 2013 QAP.

Sincerely,

Benjamin Farmer
President, RRHA

cc: Mr. J. Paul Oxer, Chair, TDHCA Board
Mr. Tom H. Gann, Vice Chair, TDHCA Board
Ms. Leslie Bingham Escareno, TDHCA Board Member
Dr. Juan Sanchez Munoz, TDHCA Board Member
Mr. Lowell A. Keig, TDHCA Board Member
Mr. J. Mark McWatters, TDHCA Board Member
Mr. Cameron Dorsey, Director for Multifamily Housing Programs, TDHCA
Mr. Tom Gouris, Deputy Executive Director for Housing Programs, TDHCA
Ms. Jean Latsha, Competitive Tax Credit Program Manager, TDHCA
Mr. Michael Lyttle, Director of Policy and Public Affairs, TDHCA
Ms. Teresa Morales, Multifamily Division Manager, TDHCA
Mr. Brent Stewart, Director of Real Estate Analysis, TDHCA

Comment (20)
Sarah Anderson, S. Anderson Consulting

From: Cameron Dorsey
To: Teresa Morales;
Subject: FW: QAP Sponsor Characteristics.
Date: Wednesday, September 26, 2012 4:43:05 PM

Sarah would like this to be public comment.

From: Sarah Anderson [mailto:sarah@sarahandersonconsulting.com]
Sent: Wednesday, September 26, 2012 4:08 PM
To: 'Cameron Dorsey'; 'Sarah Andre'
Cc: 'Jean Latsha'; 'Stacy Kaplowitz'; 'Alyssa Carpenter'
Subject: RE: QAP Sponsor Characteristics.

Yes, please. Thanks!

Regards,

Sarah Anderson
S. Anderson Consulting

1305 E. 6th St., #12
Austin, TX 78702
512-554-4721
fax: 512-233-2269

From: Cameron Dorsey [mailto:cameron.dorsey@tdhca.state.tx.us]
Sent: Wednesday, September 26, 2012 4:03 PM
To: Sarah Anderson; Sarah Andre
Cc: Jean Latsha; Stacy Kaplowitz; Alyssa Carpenter
Subject: RE: QAP Sponsor Characteristics.

Thanks Sarah. I suspect that if the Board wants to go in a different direction they will most certainly make a motion to that effect; although I'm not sure at this point what staff will recommend. Would you like us to include this in the official public comment?

-Cameron

From: Sarah Anderson [mailto:sarah@sarahandersonconsulting.com]
Sent: Wednesday, September 26, 2012 3:37 PM
To: 'Cameron Dorsey'; 'Sarah Andre'
Cc: 'Jean Latsha'; 'Stacy Kaplowitz'; 'Alyssa Carpenter'
Subject: RE: QAP Sponsor Characteristics.

I think we just want to be on record restating our opposition to having a scoring item that favors developers who have been in Texas for 5 to 7 years already, and to point out that the scoring item itself and the proposed changes in the Board Approved Draft are not only not reflective of the statements/direction outlined by the Board Chair, but in fact are the complete opposite of his statement's. He had envisioned a scoring item that penalized bad behavior, but was not a barrier to entry to new players with experience.

It seems that this could be a negative scoring item, much like site characteristics were. If you are good or new you are not impacted, but if you are a bad player, then you get dinged. It seems like this would also address Patricia's issues with repeat bad players. There just doesn't seem to be any reason for the Department to be putting up barriers to entry to the program if a sponsor has the experience to participate. We can understand why other Developers may want this scoring item to remain as it is, but simply can't understand why the Department would want to.

Regards,

Sarah Anderson
S. Anderson Consulting

1305 E. 6th St., #12
Austin, TX 78702
512-554-4721
fax: 512-233-2269

From: Cameron Dorsey [mailto:cameron.dorsey@tdhca.state.tx.us]
Sent: Tuesday, September 25, 2012 3:37 PM
To: Sarah Andre
Cc: Jean Latsha; Sarah Anderson; Stacy Kaplowitz; Alyssa Carpenter

Subject: RE: QAP Sponsor Characteristics.

I recall what Mr. Oxer said but this was not part of the motion. The Draft rules published in the register allow staff or the Board modify this item in the final version based on your comments if that's ultimately what staff decides to recommend or the Board decides to approve.

Are you suggesting that we have to recommend something different than what was published in the register? I'm just trying to figure out if you are expecting something specific from me, staff, or the Board or if you just wanted to make sure we were aware of what Mr. Oxer said.

-Cameron

From: Sarah Andre [mailto:sarah@s2adevelopment.com]
Sent: Tuesday, September 25, 2012 3:20 PM
To: Cameron Dorsey
Cc: Jean Latsha; Sarah Anderson; Stacy Kaplowitz; Alyssa Carpenter
Subject: Re: QAP Sponsor Characteristics.

Per my comments at the board meeting, we don't believe there should be a scoring bias for developers who have done deals in Texas. As you can see from the attached transcript, Chairman Oxer very much agreed with that. I spoke to Jean about it last week or maybe the week prior, when the transcript was not out. She was not certain that the board had provided direction, but I felt that they did, that is why I sent her the transcript in my email.

She was also open to suggestions of how to guaranty experience - some of the suggestions I made in my testimony still hold up - look at the number of years in business, the number of units developed, past compliance scores, bankruptcies, law suits etc. Oxer stated in his response to my testimony that he wanted to ding people for poor performance, not reward people for being in Texas.

Sarah Andre
S2A Development Consulting, LLC
1305 East 6th, Suite 12
Austin, Texas 78702
512/698-3369 mobile
512/233-2269 facsimile

On Sep 25, 2012, at 2:52 PM, Cameron Dorsey wrote:

Can I understand what exactly you're asking us to do?

From: Sarah Andre [mailto:sarah@s2adevelopment.com]
Sent: Tuesday, September 25, 2012 12:17 PM
To: Jean Latsha
Cc: Cameron Dorsey; Sarah Anderson; Stacy Kaplowitz; Alyssa Carpenter
Subject: QAP Sponsor Characteristics.

Hi Jean,

Thanks for your time on the phone the other day with regard to the latest draft of the QAP. Per our conversation, I have pulled out the section of the Board meeting transcript that covers comments by me and Stacy Kaplowitz of Herman and Kittle with regard to the Sponsor Characteristics.

I highlighted the start of the comments and the response by Chairman Oxer. It is very clear to me that he did not intend to have the QAP limit people without Texas 8609s from competing on a level playing field. He clearly states that he wants developers who have been problematic in Texas to be penalized - point deductions for bad behavior instead of incentives for being here. I hope you will review the attachment and agree.

Sincerely,

Sarah Andre
S2A Development Consulting, LLC
1305 East 6th, Suite 12
Austin, Texas 78702
512/698-3369 mobile
512/233-2269 facsimile

Comment (22)
Sean Brady, Rea Ventures Group, LLC

October 19, 2012

Texas Department of Housing and Community Affairs
Attention: Cameron Dorsey
P O Box 13941
Austin, Texas 78711-3941

RE: Comments on Draft 2013 Qualified Allocation Plan

Dear Mr. Dorsey:

Thank you for this opportunity to submit our comments on the draft 2013 Texas Qualified Allocation Plan (QAP) to the Texas Department of Housing and Community Affairs (TDHCA). Rea Ventures Group and its managing principal, Bill Rea, has developed over 3,560 units of multi-family affordable housing, 130 units of single-family affordable housing, and 6,460 beds of student housing across the country including several affordable developments in Texas.

Zoning. Currently, the QAP requires an applicant to submit proof that a site is appropriately zoned for its intended use at the time of credit allocation. We respectfully suggest that the QAP be revised to require an applicant to submit proof of zoning completion at the time of full application so as to avoid allocating tax credits to projects that cannot be built due to denied rezoning requests. Most states require an applicant to submit proof of zoning completion at the time of pre-application or full application in order to avoid this situation.

In the 2012 round, we were faced with this exact situation whereby a higher scoring project had in fact been denied its rezoning request by the community. Our project was next in line for funding and was appropriately zoned. Had credits been allocated to this other project whose zoning had been denied and which was requesting less credits than our own project, the remaining credits in our region would have fallen into the collapse and not left sufficient credits in our region to fund our project once that project was unable to provide proof of zoning. This situation was averted by both of our projects being passed over to fund a lower scoring non-profit set aside project. However, we bring this situation to your attention in the hope that it may be prevented in the future.

Sponsor Characteristics. While the QAP currently provides additional points for the 50 percent participation of experienced Texas developers and Texas historically underutilized businesses (HUBs), we request that TDHCA remove these competition-limiting barriers. The current Draft requires a sufficient level of experience under threshold requirements. Additionally, applicants are now required under threshold to use HUBs in the development. This point item is an incentive for the use of something that is already a threshold requirement. In its place, points could be assigned based on levels of development experience (regardless of state), or participation of non-profit developers could be encouraged through the use of points to help ensure the 10 percent non-profit requirement is achieved.

2964 Peachtree Road NW, Suite 640 ▪ Atlanta, Georgia 30305
Phone: (800) 605-7608 ▪ Fax: (404) 745-0530

We recognize that TDHCA is attempting to encourage proven Texas developers but submit that the infusion of new ideas from out of state developers is healthy to providing the highest quality housing at the lowest possible cost to limited state resources. We also understand that TDHCA seeks to support new and disadvantaged developers through awarding points to HUB participation. However, their inexperience frequently proves a burden on general partnerships and introduces unnecessary risk and cost to the viability of affordable housing projects. Mission-driven housing non profits would alternatively bring more capable members to the team while still encouraging disadvantaged developers that cannot accrue assets as a not for profit entity.

Commitment of Development Funding by Unit of General Local Government. We recognize TDHCA's intent to reward those communities most supportive of affordable housing by their willingness to put "skin in the game." However, restricting this funding solely to the municipality or county will drive affordable housing to those urban communities where sufficient resources exist to make loans or grants to support affordable housing. Economic development funds in rural areas are largely concentrated in economic development corporations that operate throughout the county. We respectfully request that TDHCA broaden the definition of allowable funding sources to include any quasi-governmental entity operating under the authorization of the city or county in which a project is located so as to realistically encourage more rural communities to partner in the development of affordable housing in their community.

Community Revitalization Plan. This scoring criteria varies widely between urban and rural areas in a way that favors urban development locations. Those rural communities that have created a redevelopment plan should be rewarded in the same way as urban communities for having the foresight to establish a development plan for future growth. Likewise, those urban communities that make investments in support of an affordable development should also be rewarded in this section. Both serve the needs of community revitalization in urban and rural areas alike. However, in rural areas additional infrastructure such as parks or streetscapes that would be of benefit to residents are not awarded points.

Rural communities should not be discouraged from adopting a redevelopment plan and urban communities should not be discouraged for investing in project-related infrastructure. We therefore respectfully request that TDHCA expand the criteria of this section so that either urban or rural areas can receive full points for having either a redevelopment plan or the extension of utilities. We also encourage TDHCA to expand the definition of infrastructure to include parks, streetscapes, and other community-wide amenities that would improve the quality of life for residents.

Cost of Development Per Square Foot. While we appreciate TDHCA's effort to stretch its resources by grading projects on a bell curve of development cost, this new category will encourage a "lowballing" effect among competitive developers that may leave funded projects with insufficient resources to build and fund reserves. Further, TDHCA already addresses this concern by the establishment of cost caps and used that metric in last year's QAP to assign points. Historical cost data may prove inaccurate this year as developers lower their costs to outcompete rivals for the decisive 10 points assigned to this category.

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Phone: (800) 605-7608 ▪ Fax: (404) 745-0530

We suggest that TDHCA remove the bell curve scoring for construction costs and return to the "not to exceed" cost caps used in last year's QAP. This metric allowed developers to have some confidence in determining whether or not they could afford to build a project. However, if TDHCA chooses to retain the bell curve cost scoring it should include these scores in the pre-application score and publish the median costs in the pre-application log to alert developers to their status as a low-scoring outlier before those developers expend the considerable funds necessary to prepare and submit a full application.

Thank you again for this opportunity to submit comments on the draft 2013 QAP. We appreciate all the hard work of TDHCA in developing quality affordable housing in Texas and are proud to be a part of the team.

Sincerely,

Sean M. Brady, LEED AP
Vice President of Development

2964 Peachtree Road NW, Suite 640 ▪ Atlanta, Georgia 30305
Phone: (800) 605-7608 ▪ Fax: (404) 745-0530

Comment (23)
Walter Moreau, Foundation Communities

From: Cameron Dorsey
To: Teresa Morales;
Subject: FW: comments on draft 2013 QAP
Date: Monday, October 01, 2012 3:44:50 PM
Attachments: image002.png

From: Walter Moreau [mailto:Walter.Moreau@foundcom.org]
Sent: Monday, October 01, 2012 3:38 PM
To: Cameron Dorsey; Jean Latsha
Cc: Tim Irvine; Tom Gouris; Brent Stewart; Jennifer Hicks
Subject: comments on draft 2013 QAP

Thank you for the open, thoughtful and wise process you have followed to develop a successful 2013 QAP. We would like to offer the following comments:

1) 'Sponsor Characteristics' needs to be reworked. Two issues: 1) If you want to give points to good, experienced developers, then the draft criteria does not measure this experience fairly, and 2) sole nonprofit projects (100% nonprofit projects that cannot by definition be a HUB and may qualify for a 50% property tax exemption) should be able to compete on a level playing field and score equivalent points as a HUB. A 100% nonprofit project should be able to get the full 'sponsor characteristic' points to avoid having too few 'nonprofit setaside' projects as necessitated by Section 42.

We recommend that 'good experience' be defined as at least two developments that have received a final clearance letter for the TDHCA final construction inspection and if they have a final compliance score that it be below a 10. The final compliance score looks at a developers total compliance experience.
Please do not utilize the initial physical inspection score (UPCS). This score system penalizes a developer for various items that are beyond their full control. The system does not allow for appeal or amendment of an initial score. The system only allows for repair work to be done, and then rather than a new inspection score, the repairs are factored into the final compliance score.
You do not have a scoring or grading system that can be used to adequately distinguish the best, experienced developers. Reliance on a single measure like the UPCS score is inadequate and inconsistent. The compliance system is primarily designed to determine material noncompliance, but the final score may be the best measure available.
We recommend that if a nonprofit organization is at least 51% (or 100%) of

the general partnership and serves 100% as the developer, then grant one point (by definition this type of sponsor cannot also get the HUB point).

2) Green building practices should be a meaningful threshold item. "Affordable" housing by definition includes affordable utility bills. Water conservation is particularly important across Texas.

We recommend adding the following language in the threshold definitions: (5) Common Amenities (A) "At least two (2) points must come from clause (xxx) for developments greater than 17 units."

3) Do not change the Supportive Housing definition and open up a 'loophole'. We respect the interest in creating a 'service enriched' housing definition, however the definition for the QAP must be carefully constructed as a more functional description of the project to prevent a regular development from claiming the scoring and underwriting distinctions of supportive housing.

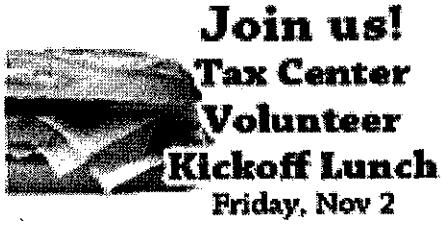
Can you clarify if supportive housing projects are considered to serve the 'general population' in the context of the Opportunity Index? Supportive housing is not specifically designed for the elderly, therefore it should be considered 'general population.' Given the policy goal to help develop more supportive housing, and the effort required to build community support for supportive housing, we believe that the scoring should be equivalent to a general population project in the opportunity index.

4) We support capping the per project limit at $1.5million given the reasonable prices paid for credits in the current market. Please do not increase the cap per project beyond 150% of the regional amount. Allowing projects in a Rural region to apply for 150% of their setaside unfairly takes funds away from Urban regions. Statute already 'over' allocates rural regions by providing for a minimum of $500,000 in credits per region. We also support the requirement of a purchase contract at the time of pre-application.

Thank you for your consideration of these comments.

We are also reviewing the nonprofit 'right of first refusal' rules and will provide comments.

Walter Moreau
Executive Director,
Foundation Communities
512-610-4016



From: Cameron Dorsey
To: Walter Moreau; Jean Latsha; Teresa Morales;
cc: Tom Gouris; Tim Irvine; Brent Stewart; Jennifer Hicks;
Subject: RE: HUB point and nonprofits
Date: Monday, October 15, 2012 10:56:09 AM
Attachments: image001.png

Hi Walter,

I knew you all would have some concerns. We really appreciate your feedback and thoughtful explanations. We are considering how this point item could impact the various types of transactions and owners, including mission driven nonprofit organizations. Our goal, as always, is to be deliberate in our actions and proposals. The discussion that was had at the Board meeting provided some general, very thoughtful guidance for staff and the development community in the drafting of any changes that may be proposed in the final version. However, there are myriad issues to consider and the Board did not intend that their thoughts limit public comment or the great ideas that might result from additional public comment. I want you all to have some comfort that staff will fully vet these ideas.

Thanks,
Cameron

.....
Cameron F. Dorsey
Director, Multifamily Finance
Texas Department of Housing and Community Affairs
Ph. 512.475.2213

From: Walter Moreau [mailto:Walter.Moreau@foundcom.org]
Sent: Monday, October 15, 2012 10:23 AM
To: Cameron Dorsey; Jean Latsha
Cc: Tom Gouris; Tim Irvine; Brent Stewart; Jennifer Hicks
Subject: HUB point and nonprofits

Cameron and Jean

We are grateful for the final outcome of the board discussion about sponsor experience. Challenging to work thru – so thank you.

The HUB point is still a real problem for us as a nonprofit. This will impact FC, New Hope, Avenue CDC, Covenant, Brownsville CDC, and any other mission driven nonprofits. It really impacts supportive housing.

We assume we have to get this point to be competitive, but it ends up costing our mission. Adding a for-profit HUB to the ownership, developer fee or cash flow, simply means we have to charge higher rents and have less funds for social services. The implications of a nonprofit developer hiring a HUB are not the same as a for profit developer. Most of the for-profit developers are able to 'partner' with a for-profit HUB without any issues (they are already a HUB, or work with their spouse).

Nonprofits have some unique issues:

a) To stay in the nonprofit setaside the HUB must be less than 50%. But worse....having the HUB own even 1% of the GP knocks out any property tax exemption. We want to remain 100% nonprofit GP so that we might be eligible for 50% property tax break. Without the tax break, we can't deep income target as much – which is what happened on Capital Studios (we had to limit the number of units for chronic homeless and 30% units so we could afford 100% taxes).

b) Typically we do LOTS of fundraising for our projects and defer developer fee as needed. We would rather invest in quality construction and green building, than maximize our developer fee. The fee is paid out of cash flow, and if necessary in year 15 we cover the fee (pay it to the partnership....and then they pay it back to us...and we are a nonprofit so it is not taxable income). If we have to pay a developer fee to a for-profit HUB, then this is real cash flowing out of the deal for something we don't need (we've been the sole developer of all of our 17 communities.) I can't really fundraise in order to pay a developer fee to a for profit HUB that we don't really need.

c) We typically dedicate cash flow to resident services! We don't want to send cash flow to a for-profit HUB. On M Station and Sierra Vista we fundraised to keep our final mortgage small so that we would have some cash flow to help offset the cost of the learning centers.

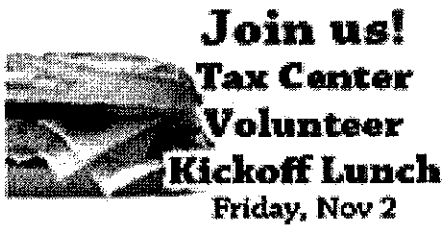
In summary, we cannot put a HUB into the transaction at 100% without taking money directly from our mission. This is not right. We support meaningful HUB involvement, but don't want it to come at the expense of lower rents and services.

Here are some ideas:

1) Allow either the HUB point OR a nonprofit that has at least 100% of the GP/developer fee/cash flow. This also allows for-profits to partner with nonprofits on mission driven projects.
2) Allow a sole nonprofit project to get the same HUB point if x% of the construction and professional services are contracted with HUBs. We contract with HUBs all the time for architecture, engineering and construction. This is a meaningful way to support HUBs
3) Allow either the HUB point or a nonprofit point, so long as the nonprofit is 100% of the GP and cash flow is dedicated to support services.

Thanks

Walter Moreau
Executive Director,
Foundation Communities
512-610-4016



Comment (24)
R.L. Bobby Bowling IV, G. Granger MacDonald, T. Justin MacDonald, Mike Sugrue, Diana McIver, Dennis Hoover

R. L. "Bobby" Bowling
President
Tropicana Building Corp.
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Dennis Hoover
President
Hamilton Valley Management
P.O. Box 190
Burnett, TX 78611

Cameron Dorsey
Tax Credit Director, TDHCA
Sent VIA E-MAIL

September 18, 2012

RE: TAX CREDIT DEVELOPMENT CAP REQUIREMENT FOR 2013 QAP

Dear Cameron,

The undersigned, as experienced Texas developers in the LIHTC program for over 12 years, wish to see the Texas QAP return to a "per deal" tax credit cap of $1.2 million.

The $1.2 million served Texas well to bring equity throughout the 26 Texas sub-regions for over a decade until the tax credit market (and actually, all financial markets) in the United States crashed in late 2008-2009. The result of the financial crash of 2008 led to tax credit pricing dropping from average highs of 99 cents per credit dollar of equity invested in Texas deals in 2007, to a staggering low of 64 cents per dollar of equity invested in Texas deals in 2009—if the deals were done at all in that time period.

The crisis led every tax credit agency in the country to award additional credits to individual deals in order to try and salvage awarded deals and make them attractive to investors. In Texas, TDHCA took formal action to release the $1.2 million capped amount of credits that a development could be issued, and raised the cap first to $1.4 million, then to $1.6 million and then, ultimately, to the $2 million limit that currently exists. As you well remember, the crisis was so bad, that the limited pool of investment dollars passed on investing in deals around the country at any price, leading Congress to enact emergency legislation creating the short-lived "Tax Credit Exchange Program (TCEP)" and the "Tax Credit Assistance Program (TCAP)."

Today, the emergency crisis in the financial sector has now passed; both the TCEP and TCAP programs have expired, and equity investment in tax credit deals around the country are again at historical averages—in the range of 85-90 cents per tax credit dollar. As a result of this "return to normalcy", we are advocating for a reversion back to the $1.2 million per deal tax credit cap. By returning to this cap,

TDHCA can ensure that the nightmare of the 2012 allocation round—where some sub-regions did not have enough money to issue credits to a single application submitted in 2012—does not occur again. Further, the $1.2 million per deal cap will lead to better geographic dispersion of tax credit developments, and will ensure that more developments around the state are awarded.

Thank you for your consideration of this request, and please re-institute the $1.2 million per-deal cap on tax credit applications for 2013.

Sincerely,

R. L. "Bobby" Bowling IV

G. Granger MacDonald

T. Justin MacDonald

Mike Sugrue

Diana McIver

Dennis Hoover

Comment (25)
Michael Daniel
Daniel & Beshara, P.C.

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October 19, 2012
email delivery

James "Beau" Eccles
Assistant Attorney General
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Beth Klusmann
Assistant Solicitor General
beth.klusmann@texasattorneygeneral.gov

OFFICE OF THE ATTORNEY GENERAL
P. O. Box 12548 (MC 059)
Austin, Texas 78711-2548

Re: *ICP v. TDHCA*, 3:08-CV-0546-D,
TDHCA proposed 2013 Qualified Allocation Plan

The proposed 2013 TDHCA QAP would violate the Judgment in *ICP v. TDHCA*, Document 194, 3:08-CV-0546-D by omitting the undesirable site features required on page 3 of the judgment and by omitting the challenge process required on page 3 of the Judgment.

Undesirable site features violation.

The Judgment states on page 3 that TDHCA must:

> D. continue to include in the QAP criteria for disqualifying proposed development sites that have undesirable features, as set forth in the Plan at 11-13, and incorporate the more robust process for identifying and addressing other potentially undesirable site features, as set forth in the Plan at 13-14; . . .

The Plan, at pages 13 - 14, lists eight negative site features that require notification and preclearance:

> a. A history of significant or recurring flooding;
> b. A hazardous waste site or a source of localized hazardous emissions, whether remediated or not;
> c. Heavy industrial use;

d. Active railways (other than commuter trains);
e. Landing strips or heliports;
f. Significant presence of blighted structures;
g. Fire hazards which will increase the fire insurance premiums for the proposed site.
h. Locally known presence of gang activity, prostitution, drug trafficking, or other significant criminal activity that rises to the level of frequent police reports.

The proposed QAP lists only the flooding, blighted structures, fire hazards and criminal activity factors. The proposed QAP omits the hazardous waste and emission factor, the heavy industrial use factor, the active railways factor and the landing strips or heliports factor. If the adopted QAP omits these factors, TDHCA will violate the Judgment.

Non-compliance with an element applicable to the 4% tax credit program

The Judgment states on page 3 that TDHCA must:

> G. provide a mechanism to challenge public comments that cause proposed developments to receive negative points, as set forth in the Plan at 19,

TDHCA's proposed Remedial Plan states on page 19 that:

> **9. Review of challenged public input.**
> Any public comment that will be considered for negative scoring of applications, or as opposition to 4% non-competitive allocations, may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local governmental entity. If any such comment is challenged, the party that made the challenge will have to declare the basis for the challenge. The party that made the comment will be given seven (7) days to provide any support for the accuracy of its assertions. All such materials and the analysis of the Department's staff will be provided to a fact finder for a review and determination. The Department's determination will be final.

Contrary to the Judgment and the TDHCA proposed Remedial Plan, the proposed QAP element on this subject is set out only for the Qualified Citizen Participation input process for the 9% program. Proposed Rule § 11.9(d)(1)(D), 37 Tex. Reg. 7419, September 21, 2012. The award of 4% tax credits in conjunction with the private activity bonds is also subject to opposition and negative scoring as set out in the Proposed Rule § 12.6(9). 37 Tex. Reg. 7427, September 21, 2012. There is no challenge process associated with public opposition to a 4% program application in the proposed QAP. If the adopted QAP omits the applicability of the challenge mechanism to the 4% tax credit applications, TDHCA will violate the Judgment.

Sincerely,
s/Michael M. Daniel

cc: Elizabeth K. Julian
Laura B. Beshara
G. Tomas Rhodus

Comment (26)
MaryAnn Russ, Dallas Housing Authority

Dallas Housing Authority
3939 N. Hampton Rd., Dallas, TX 75212 |Phone: 214.951.8300|Fax: 214.951.8800| www.dhadal.com

October 18, 2012

via Facsimile

Ms. Teresa Morales
Rule Comments
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

RE: Comments to the Draft 2013 Qualified Allocation Plan and Draft Uniform Multifamily Rules

Dear Ms. Morales:

We appreciate the opportunity to provide comments on the Draft 2013 Qualified Allocation Plan ("QAP") and the Draft Uniform Multifamily Rules ("Rules"). We understand and appreciate the considerable effort the TDHCA staff have undertaken to separate the Rules from the QAP and provide a uniform set of rules for many of TDHCA's programs. We anticipate this will benefit both TDHCA and applicants.

With the recent Court ruling in the *ICP v. TDHCA* lawsuit, we commend the Agency in its efforts to comply with the Court ruling while providing a program to benefit most Texans. The new requirements for award of an allocation of 9% tax credits will help to disperse affordable housing throughout metropolitan areas, although they will limit the program's use as a tool to revitalize inner-city neighborhoods. We are also supportive of the Agency's efforts to maintain one QAP for the entire State rather than providing a separate document specifically for Region 3.

Below are our comments regarding the Draft 2013 QAP and the Draft Rules.

§11.9(d)(3) Commitment of Development Funding by Unit of General Local Government

The Draft QAP language provides for the award of points in 9% applications for the commitment of development funding by a unit of general local government. Unlike in previous years, the language limits the entities providing local support to only city or county governments. Commitments of funding from other government instrumentalities within the jurisdiction, such as public housing authorities (PHAs) are excluded from this scoring criteria.

A PHA is a unit of local government as described in the Texas Government Code §392.006 and can provide a significant source of funding for the development of affordable housing for low-income families. This funding not only includes cash, but also project-based vouchers which can

make the housing affordable to extremely low-income families. For this reason, we encourage the TDHCA to revise this section of the draft 2013 QAP to include all units of general local government and governmental instrumentalities within the jurisdiction (particularly PHAs) in this scoring criteria as it has in past years.

Thank you for consideration of our comments. We look forward to continuing to work with you and your staff to provide quality affordable housing to low-income families.

Sincerely,

Mary Ann Russ
President and CEO

Comment (27)
Richard Knight, Frazier Revitalization, Inc.

From:	Don Williams
To:	Tim Irvine (tim.irvine@tdhca.state.tx.us);
cc:	Teresa Morales (Teresa.morales@tdhca.state.tx.us); Richard Knight (rknight@pegasustexas.com); Dorothy Hopkins;
Subject:	Public Comment to Proposed 2013 QAP
Date:	Friday, October 19, 2012 2:31:45 PM
Attachments:	image002.png image003.png image004.png

FRI

FRAZIER REVITALIZATION INC

A proud neighborhood, building its future.

October 19, 2012

Mr. Tim Irvine

Executive Director

Texas Department of Housing and Community Affairs

PO Box 13941

Austin, TX 78711-3941

RE: Public Comment to Proposed 2013 QAP

Dear Tim:

In an ideal world, there would be sufficient LIHTC to provide affordable housing in both high opportunity areas and in qualified census tracts. As we know, however, that is not the case. With the scarcity of supply and the overwhelming demand (in the North Texas Urban Region 3, for 2012 there were over $103 million in pre-applications and only $7.6 million LIHTC available) TDHCA board has to decide on priorities.

In TDHCA's Motion to Alter or Amend the Judgment or for a New Trial that was filed in the ICP Case, the Department argues that the judge's opinion of Section 42 of the IRC is wrong. The brief states: "Section 42 (of IRC) shows a clear congressional preference for assisting those with the lowest incomes, serving low-income tenants for long periods of time, and placing projects in QCTs. . . Congress clearly intended that LIHTCs should be used to help low-income tenants for long periods of time and to revitalize low-income areas." This observation makes good sense but with the judge's Order in place, you have a difficult choice either: 1) follow the judge's Order, even though you (and we) believe it is in error and your 2013 Proposed QAP reflects that approach, continuing to erroneously prefer projects in affluent suburbs, or 2) do the right thing by seeking a stay order and appealing the decisions, (as we intend to do) as well as revising the 2013 QAP. The latter course would allow TDHCA to change its Proposed 2013 QAP in ways that would bring it back in line with the intent of the enabling legislation of the Internal Revenue Code.

Therefore, we urge the following:

1. If the Judge denies TDHCA's Motion to Alter the Judgment,

or to have a new trial, TDHCA should appeal the decision and order,

2. TDHCA should file a motion requesting a stay of the Judge's order until a court of final resort determines the case,

3. TDHCA should have only 1 QAP for all of Texas, and

4. **TDHCA should revise sections of its Proposed 2013 QAP, so that projects in QCTs (low-income neighborhoods) that are part of a comprehensive revitalization supported by the City have a competitive opportunity to receive an award.**

If you proceed with the Proposed 2013 QAP, given the restrictions imposed by the Texas rule making process, we make the following recommendations, while they do not go far enough, they more comport with section 42 of the Internal Revenue Code, to help those involved in community revitalization:

The Proposed 2013 QAP introduces 3 new scoring items: Educational Excellence, Opportunity Index, and Community Revitalization Plan.

· "Educational Excellence," allows projects to receive up to three points if located within the attendance zone of a public school with an academic rating of Recognized or Exemplary by the Texas Education Agency. This appears to give an incentive to developments to be sited where low-income residents may move to take advantage of high quality schools – i.e., affluent suburbs. However, simply placing low-income families in predominately white and high-income areas does not necessarily translate into greater opportunity nor is leaving their home neighborhoods, friends, schools, churches, stores, etc. appealing to many of our low-income residents. Those who wanted to leave have already done so. A more successful strategy (and one not only permitted but

mandated by the LIHTC enabling legislation in the Internal Revenue Code) would be to encourage the development of quality affordable housing in historically neglected, but now recovering low-income neighborhoods. This is what we are trying to do in Dallas. Hence, ***this Educational Excellence scoring item should be deleted altogether or amended to reflect year over year school progress for comparable socio-economic neighborhoods to be certified by the school superintendent.*** This approach is supported by Superintendent of DISD, Mike Miles, and educational leaders ranging from Mike Moses to Linus Wright to Tom Luce and many others across Texas, who have submitted letters to TDHCA.

· "Opportunity Index," allows a project located within a census tract that has a poverty rate below 15% (i.e., affluent) to qualify to receive up to 7 points if the schools are Recognized or Exemplary.

But compared to:

· "Community Revitalization Plan," allows projects to qualify to receive up to only 6 points if located in an area covered by a community revitalization plan that meets numerous and sometimes quite challenging criteria. ***The Remedial Plan mandated by***

the Court allows 7 points. Moreover, since QCT revitalization is at the heart and soul of the enabling legislation, the Community Revitalization Plan scoring item is inadequate, and we propose that the project may qualify to receive up to 10 points.

Other options to improve the chances that revitalization developments will be competitive in the tax credit process include amending the 2013 QAP to include the following points:

· Federal law mandates that at least 10% of the tax credit awards each year go to non-profit sponsors. A non-profit set-aside is administered in the QAP. Since non-profits are at the heart of community revitalization, giving a preference for revitalization developments for those applications competing in the non-profit set aside might ensure that revitalization efforts by non-profits can succeed without significantly impacting the other 90% of the tax credit awards in the state.

· In the Sponsor Characteristics scoring section, delete the points for the Developer owner, but add additional points for applicants that are substantially owned by a non-profit.

· State law requires that TDHCA award a very substantial number of points in the competitive process for developments supported by financing

from the city, county or equivalent. This scoring item could be revised so that the threshold for receiving points is at a level where the development would receive these points only if there was a major financing infusion from the local government. That way, revitalization developments that are receiving large amounts of local funding would be preferred, and those developments that are not receiving similar levels of support would not.

In the Commitment of Development Funding scoring section, widen the range of points for the level of commitment and increase the level, i.e. $20,000 per unit could receive 15 points, $15,000 could receive 12 points, $10,000 could receive 10 points, $5,000 could receive 8 points.

Successful inner-city revitalizations across America have always begun with such federal subsidies until conventional financing and other market forces are available. The clear intent of the Reagan-era bi-partisan law is to encourage the use of LIHTCs to rebuild distressed communities. It was not the intent of Congress, nor is it sound public policy, to deny new, fit and affordable housing as part of comprehensive revitalization and renewal initiatives in our cities' blighted inner city neighborhoods, nor to force inner-city residents to move from their neighborhoods, families, friends, churches and jobs to affluent suburbs.

Citizens in our blighted inner cities deserve the opportunity to have their neighborhoods revitalized and thriving, and since there is no conventional financing available, LIHTCs are the only hope to provide new affordable housing. The LIHTC process has been allowed to be manipulated by for profit developers; they are driving the system rather than the legislation that was put in place to offer assistance to revitalization efforts.

Thank you, and feel free to call me to discuss this further.

Sincerely yours,

Richard Knight
Chairman of the Board
Frazier Revitalization, Inc.

J. McDonald Williams
Founder and Board Member
Frazier Revitalization, Inc.

Dorothy Hopkins
President and CEO
Frazier Revitalization, Inc.

Comment (28)
Rodolfo “Rudy” Ramirez, Edinburg Housing Authority

EHA

EDINBURG HOUSING AUTHORITY
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Phone: (956) 383-3839 Fax: (956) 380-6308
www.edinburgha.org

October 4, 2012

Cameron Dorsey

Texas Department of Housing and Community Affairs

221 E. 11th Street

Austin, Texas 78711

Mr. Dorsey, please consider this request for TDHCA to increase the poverty level criteria for High Opportunity Areas (HOA's) from 35% to 37% for Region 11 in order to reduce the 24% inequality between Region 11 and Region 13. By proposing the poverty level for Regions 11 and 13 at 35% as is drafted in the current QAP draft, TDHCA recognizes that these two regions are significantly different in poverty levels from the other Texas Regions, where the threshold remains at 15%. The facts show that Region 11, having Metro Areas with the highest poverty rate in the United States, has a much higher incidence of poverty than Region 13. While Region 13 has 72% of its census tracts under 35% poverty rate, Region 11 has only 48% of the census tracts that qualify under the 35% poverty level criteria—a statistically significant difference of 24%. The current QAP proposed criteria would allow even fewer than 48% of the census tracts in Region 11 to qualify under the HOA criteria due to the other two limiting factors namely, median income and recognized elementary schools. The 35% criteria would restrict the number of census tracts in Region 11 eligible under the Poverty Criteria, and some of these census tracts, while having a higher incidence of poverty, according to United States national standards, are desirable for HOA's within Region 11—and would not take anything away from other Regions in Texas.

Setting the poverty level at 37% for Region 11 would reduce the difference between Regions 11 and 13, and would clearly improve the implementation of the TDHCA Policy to encourage affordable housing in the most desirable locations in each region. The attached Excel Spread Sheets show the calculations for the changes mentioned above. By making this small, but significant change for Region 11, the eligible number of census tracts qualifying under the poverty rate criteria would increase to 53% in Region 11, roughly 18 census tracts.

An example of how this disparity is effecting a specific development is as follows. The Housing Authority of Edinburg has already bought s land in order to build tax credit apartments. This land is in a desirable area of town, in the 2nd quartile of local median income. There are Exemplary and Recognized schools that serve the site. The city is supporting the VET project financially and is helping develop this area of the city. This is the part of town where the Housing Authority wants to build and it's also where the Opportunity Index wants housing to be focused. But the fact that Edinburg has some of the highest poverty rates in the nation prevents this development from receiving the Opportunity Index points to develop this land actually in the 2nd quartile.

In laboring thru this analysis, I noticed that Regions 2, 8, and 10 are also significantly different from the other 7 Regions with regards to Poverty Rates. In fairness to all regions, I would suggest similar adjustments to the required poverty levels in these Regions.

Thank You,

Rodolfo "Rudy" Ramirez

Executive Director

Edinburg Housing Authority

(956) 383-3839

rudy@edinburgha.org

From: Rudy Ramirez
To: teresa.morales@tdhca.state.tx.us;
cc: rchristian@edinburgha.org; erodriguez@edinburgha.org;
Subject: Rule Comments on TDHCA Housing Tax Credit Program Qualified Allocation Plan
Date: Monday, October 22, 2012 1:15:15 PM

October 22, 2012

ATTN: Ms. Teresa Morales

Texas Department of Housing and Community Affairs

VIA Fax No. 512-475-0764

Re: Rule Comments on TDHCA Housing Tax Credit Program Qualified Allocation Plan

Dear Ms. Morales:

The following are my comments for consideration by TDHCA to the Housing Tax Credit Program QAP published in the September 21, 2012, Texas Register:

Section 11.4(b) Maximum Request Limit (Competitive HTC Only): TDHCA should not allow an applicant to request more than the credit amount available in a sub-region. This QAP provision to allow an applicant to request up to 150% of the credit amount available in a sub-region is not consistent with the provisions of Texas Government Code Chapter 2306 which requires TDHCA to use a formula to make regional allocations and has no provisions that allow TDHCA to allow an applicant to request more than the credit amount available in a sub-region. Additionally, the QAP prohibits awards to an applicant if there are not sufficient funds within the sub-region to fully award the application that then places the application in the rural or statewide collapse.

Section 11.5(3)(D) At-Risk Set-Aside: There are at-risk developments that have existing rental assistance with rents lower than the tax credits rents and may not be financially feasible unless they are allowed to eliminate a portion of that benefit. For example, the existing rental assistance may be within the tax credits rents for units at 30% AMGI and the development should be required to retain the rental assistance for those units but be allowed to eliminate the existing rental assistance on the other units who will retain their affordability within the HTC income and rent restrictions. This provisions should provide " . . . unless regulatory or financial barriers necessitate elimination of a portion of that benefit for the Development."

Section 11.9(b)(2) Sponsor Characteristics: Housing Authorities have extensive experience in providing affordable housing as developers, owners, and managers of Public Housing and Contract Administrators of HUD rental assistance contracts under Section 8 of the National Housing Act (Voucher Program). Many Texas Housing Authorities have as much as 75 years administering the Public Housing Program and 45 years administering the Section 8 Program. TDHCA needs to recognize this experience by awarding participation by Housing Authorities the maximum points under Sponsor Characteristics.

Section 11.9(b)(2)(A) Sponsor Characteristics: Should include provisions awarding 1

point for a Housing Authority that has at least 51 percent ownership interest in the General

Partner, materially participates in the Development and operation of the Development

throughout the compliance period, and will receive at least 80 percent of the cash flow from

operations and at least 25 percent of the developer fee.

Section 11.9(b)(2)(B) Sponsor Characteristics: Should include provisions awarding 3

points for a Housing Authority that that is rated by HUD as a High Performer or 2 points if

rated by HUD as a Standard Performer and has at least 51 percent ownership interest in the

General Partner, materially participates in the Development and operation of the

Development throughout the compliance period, and will receive at least 80 percent of the

cash flow from operations and at least 25 percent of the developer fee.

Section 11.9(d)(3) Commitment of Development Funding by Unit Of General Local Government: TDHCA proposes to restrict the awards points for funding from only a City or County. In prior years these points were allowed for funding by a "Unit of General Local Government" such as a Housing Authority. There is no basis for TDHCA to now exclude consideration for funding by any Unit of Local Government limit the award of points to only funding by a City or County.

Additionally, TDHCA proposes to penalize participation by a government instrumentality such as a Public Facility Corporation PFC) created under Chapter 303 of the Texas Local Government Code that was adopted by the Texas Legislature so that local governments such a City, County, Housing Authority or other Units of Local Government can carry out activities with their instrumentalities such as a PFC. There are many HTC developments in Texas sponsored by Units of Local Government using their instrumentality PFCs/ TDHCA needs to remove from the QAP all proposed restrictions on instrumentalities.

Section 11.9(e)(4)(A)(i) Leveraging of Private, State, and Federal Resources: Needs to include leveraging of funding from the Public Housing Program Capital Fund, Project Based Vouchers, and Section 8 Vouchers to assist families with their relocation.

Rodolfo "Rudy" Ramirez, Executive Director

Edinburg Housing Authority

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Never look down on anybody unless you're helping them up.

~ The Reverend Jesse Jackson

Comment (29)
Stan Waterhouse, Housing Authority of the City of El Paso

Housing Authority of the City of El Paso

October 12, 2012

Mr. J. Paul Oxer, Chairman
Mr. Tim Irvine, Executive Director
Texas Department of Housing and Community Affairs (TDHCA)
P.O. Box 13941
Austin, TX 78711-3941

Re: Texas Housing Authorities

Dear Gentlemen,

At the October 9, 2012, TDHCA Board meeting Chairman Oxer inquired as to the legal basis for Housing Authorities. This letter explains the status of Texas housing authorities as governmental entities and the relationship between a housing authority and the city or county that authorized it.

1. The nature of a housing authority. A housing authority is a *"public body corporate and politic"*[1] A housing authority is also a *"unit of local government and the functions of a housing authority are essential governmental functions and not propriety functions"*.[2]

Texas law establishes a municipal housing authority in each municipality and a county housing authority in each county[3]. However, a housing authority may not transact business until either the governing body of the municipality or the county commissioners' court declares by resolution that there is a need for an authority.[4] Once a housing authority is created, it operates independently.[5] For example, housing authorities have the power of eminent domain[6] and may issue bonds.[7]

2. The relationship of a housing authority to a city or county. The commissioners of a municipal housing authority are appointed by the presiding officer of the governing body of the municipality[8], who is usually the mayor of the city. A housing authority commissioner may not, however, be an officer or employee of the municipality.[9] Similar

[1] Texas Local Gov't Code §392.011(b) & §392.012(b)
[2] Texas Local Gov't Code §392.006
[3] Texas Local Gov't Code §392.012
[4] Texas Local Gov't Code §392.011(c) & §392.012(c)
[5] See e.g. Texas Local Gov't Code, Subchapter D. Powers and Duties of a Housing Authority, §392.0051-392.067
[6] Texas Local Gov't Code §392.061
[7] Texas Local Gov't Code §392.081
[8] Texas Local Gov't Code § 392.031
[9] Texas Local Gov't Code §392.031(b)

provisions provide for the appointment of commissioners of a county housing authority by the county commissioners court.[10]

The facts are as follows:

- PHA's are units of local government,
- Municipal housing authorities are created by cities,
- Municipal housing authority commissioners are appointed by the mayor,
- Statute prohibits municipal officers from serving as PHA commissioners.

These facts create a continuing and strong connection between the city and a municipal housing authority. Additionally, the Texas Attorney General has written that *"Texas case law and opinions of this office have concluded that a municipal housing authority is a division of the city that created it. Similarly, this office has concluded that a county housing authority is a division of the creating county."*[11]

For these reasons, §11.9(d)(3) of the Draft 2013 Qualified Allocation Plan (QAP) should recognize that a financial contribution by a PHA to a Housing Tax Credit project is equivalent to a contribution by a city or a county.

Sincerely,

Stan Waterhouse
Chief Operating Office

[10] Texas Local Gov't Code §392.032
[11] Texas Attorney General Opinion DM-426 (November 25, 1996), *citations omitted*

Austin Public Hearing

Comment (30)
San Antonio Housing Authority, El Paso Housing Authority, Fort Worth Housing Authority, Houston Housing Authority

Comment (31)
Ryan Hettig, Hettig/Kahn Holding, Inc.

Comment (32)
Michael Hartman, Tejas Housing Group

Comment (33)
Tim Lang, Tejas Housing Group

Comment (34)
Deborah Sherrill & Gary Allsup
Corpus Christi Housing Authority

Comment (35)
Lisa Stephens, Sagebrook Development

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

2012 STATE OF TEXAS CONSOLIDATED

PUBLIC HEARING

10:20 a.m.
Wednesday,
October 10, 2012

Room 172
Stephen F. Austin Bldg
1700 N. Congress
Austin, Texas

BEFORE:

ELIZABETH YEVICH, Director
Housing Resource Center

ON THE RECORD REPORTING
(512) 450-0342

I N D E X

P R O C E E D I N G S

MS. YEVICH: Good morning, and welcome to the 2012 State of Texas Consolidated Public Hearing here in Austin on Wednesday, October 10.

These hearings are an opportunity to comment on a portion of the Texas Department of Housing and Community Affairs, the Texas Department of Agriculture, and the Texas Department of State Health Services annual policy, rule, and planning documents as well as other documents at TDHCA, Texas Department of Housing and Community Affairs.

All the documents are available on TDHCA's website.

If you have not already done so, please fill out a sign-in sheet, and if you plan to speak, we ask that you fill out a witness affirmation form and, also, if you plan to speak, I would ask that you sit at one of these tables here because the microphones are located there for the court reporter.

And, also, as reminder, this is a hearing. We are here to accept public comment but we will not be able to respond to questions about the rules or documents at this time.

So the comment period for the 2013 State of Texas Consolidated One-Year Action Plan, and all the other documents here today, is September 21 to October 22. Any comment received at this public hearing will be considered official public comment for these documents here today.

So the first thing up is the One-Year Action Plan Draft and TDHCA coordinates this with the Texas Department of Agriculture and the

Department of State Health Services. It covers four different program areas, which are Housing Opportunities for Persons with AIDS, known as HOPWA, coordinated by the Department of State Health Services; the Community Development Block Grant, known as CDBG, coordinated by TDA, Department of Agriculture; and here in TDHCA we have the Emergency Solutions Grant program -- that was formerly known as Emergency Shelters Grant program; and we also have the Home Investment Partnership, known as HOME.

The plan includes a one-year action plan and additional information on meeting underserved needs, fostering and maintaining affordable housing, lead-based paint hazard mitigation, reducing poverty-level households, developing institutional structure, and coordination of housing and services.

The Community Development Block Grant program. The primary objective of CDBG is to develop viable communities providing decent housing, suitable living environments, and expanding economic opportunities, principally for persons of low to moderate income.

Under the Texas CDBG program, assistance is available to nonentitlement general-purpose units of local government, including cities and counties that are not participating, or designated as eligible to participate, in the entitlement portion of this federal program.

Is there anyone here to comment on this CDBG program?

(No response.)

MS. YEVICH: Hearing none, we will move over to the HOME program. The Home Investments Partnerships program, referred to as

HOME, awards funding to various entities for the purpose of providing safe, decent affordable housing across the state of Texas.

To provide this kind of support to communities, HUD awards an annual allocation of approximately $24 million to TDHCA. Under the HOME program, TDHCA awards funds to applicants for the administration of the following activities: the Home Ownership Assistance Program, which provides down-payment and closing-cost assistance for eligible households; the Home Owner Rehabilitation Program which provides funds to eligible homeowners for rehabilitation or reconstruction of single-family homes; Tenant-Based Rental Assistance, TBRA, which provides rental subsidies which may include security deposits to eligible tenants for a period of up to 24 months; and the Rental Housing Development Programs which provides funds to build, acquire, and/or rehabilitate affordable multifamily housing.

Is there anyone here to comment on the HOME action program?

(No response.)

MS. YEVICH: Hearing none, we will move to the Emergency Solutions Grant, as I mentioned, formerly known as the Emergency Shelter Grants Program. It's a competitive grant fund that awards funds to private nonprofit organization, cities and counties in the state of Texas to provide the services necessary to help persons that are at risk of homelessness or homeless quickly regain stability in permanent housing.

Is there anyone here to comment on the ESG one-year action plan?

(No response.)

MS. YEVICH: Hearing none, we will move over to the Housing Opportunities for Persons with AIDS Program, known as HOPWA. The Texas Department of State Health Services, DSHS, addresses the housing needs of people with HIV and AIDS through the HOPWA program, which provides the following: emergency housing assistance in the form of short-term rent, mortgage, and utility payments; tenant-based rental assistance, which enables low-income individuals to pay rent and utilities until there is no longer a need; supportive services, which provides case management, basic telephone assistance, and smoke detectors; and permanent housing placement, which allows assistance for reasonable security deposits, related application fees, and credit checks.

If you have questions regarding HOPWA, DSHS can be reached at area code 512-533-3000.

Is there anyone here to comment on the HOPWA action plan?

(No response.)

MS. YEVICH: Hearing none, we will move over to the Housing Tax Credit Qualified Allocation Plan. This document establishes the 2013 Rules for the Housing Tax Credit Program. The Housing Tax Credit Program uses federal tax credits to finance the development of high-quality rental housing for income-eligible households and is available statewide.

The draft QAP includes policy recommendations and administrative changes to improve the Housing Tax Credit Program and maintains compliance with all statutory and code requirements.

And I believe we have several speakers lined up for the QAP. I believe Mr. Ryan Hettig is first.

Comment (31)

MR. HETTIG: Hello, I'm Ryan Hettig with Hettig/Kahn Holding, Inc. I wanted to speak regarding the 2012-2013 Qualified Allocation Plan, specifically Section 11.4(c)(1) and (2) regarding the 30 percent boost. We would request that the language revert back to what it was last year, allowing for developments that receive local jurisdictional funds, CDBG funds or HOME funds, up to at least $2000 per unit to receive the boost. Otherwise, you could have developments in revitalization areas that are not in QCTs that would we need that boost that would not be able to get it.

MS. YEVICH: Thank you.

Next, I believe we have Nancy Shepard. Are you here to comment on the QAP?

MS. SHEPARD: Yes.

MS. YEVICH: Okay.

MS. SHEPARD: Actually I have something to read in the record.

MS. YEVICH: Certainly.

MS. SHEPARD: I'll try to summarize and then I'll just give it to her if that's okay.

MS. YEVICH: That's perfect.

Comment (30). Additional letter located immediately following the end of this transcript.

MS. SHEPARD: And then I can email.

But my name's Nancy Shepard. I'm with the San Antonio Housing Authority and, basically, ourselves, along with El Paso, Houston and

Fort Worth have all been having calls so this is on behalf -- read into the record on all those housing authorities.

The few comments they wanted was, first, on the preapplication requirement regarding notification of recipients in ETJs, it is their recommendation that this should not be added as a requirement. Basically, ETJs have no jurisdiction over the proposed developments in the areas and there are wide variances among how ETJs are managed across the state. So we feel tax credit development should only be required to fulfill the requirements in the respective ETJs if they apply.

The second is competitive housing tax credit criteria regarding development funding by unit of general local governments that would exclude housing authority allocations. An application can receive up to 13 points for a commitment of development funding from a city or county in which the development is proposed to be located. Housing authorities are established by resolution of the elected officials in their communities.

While the boards are appointed by the mayor, they also serve at the pleasure of the mayor and are, in fact, instrumentalities with quasi-governmental roles. So because of that, replacement housing factor funds, public housing operating subsidy, and sectioning vouchers should qualify as potential sources of funding.

Next point -- on the community revitalization plan, applications would qualify for six points if development site is located in an area covered by a community revitalization plan that meets certain criteria, including the plan being adopted by municipality or county in which it is proposed.

We would recommend, in lieu of that language, that you look at using multiple overlapping planning efforts that are already in cities. For example, in San Antonio we have a transit orient development plan, an Eastside revitalization plan, a San Antonio 2020 that's the mayor's initiative.

The list goes on, but basically, we're asking that you look at that that already exists in cities to be recognized as a community revitalization effort -- projects that are within a broader federal program initiative, such as Choice Neighborhoods, Hope VI, or sustainable community efforts; also removing points earned for size of a budget, small initiatives can transform areas if they're planned carefully and also leveraged.

And also we would suggest that you replace your points earned for scope of the plan, and we listed some that could be an impact instead of just budget, maybe using environmental remediation, transportation, education, safety, workforce, development, housing, and health. And then we gave points to -- if you had a certain amount of those elements you'd get three points; some you'd get two points.

So that's what we would suggest be replaced as opposed to the just budget. We are preparing proposed language which we'll submit at a later date.

The next issue is on the cost of development per square foot. Currently, it says you would qualify up to ten points for this item based on building cost per square footage relative to the mean cost per square foot for a similar development size.

Our recommendation is that cost should be reflective of local

conditions, and while the previous average cost per square foot was disconcerting to staff in underwriting, it is the only way for several factors to be taken into consideration for applications, and we recommend that it remain as it was previously.

Next is on the undesirable sight features. Developments within a proximity to certain undesirable features are considered uneligible -- the feature, such as the junkyards and railroads. We would recommend that the railroad feature be eliminated from this list of ineligible activities, that it should not be considered a negative.

As in previous developments there are many ways in which to attenuate noise levels. Undesirable sight features that have been mitigated through US Department of Housing and Urban Development, HUD, should be exempt.

On the undesirable features, 300 feet to a thousand feet as required to disclose in preapplication, the issue here is the section is vague. We have concern that it will increase challenges for development in those areas that can result in an improvement in a community. We recommend you initiate a waiver process and once Board approves, it should not be challengeable.

On tie breakers, this factors in -- right now where the factors would define that applications ranking higher in the opportunity index number would be first and those located the greatest distance from the nearest housing would be second.

What we would recommend in its place is the ranking based on

the higher opportunity index number should be removed. If it's not removed, then we would recommend that you apply that only to Region 3 and use the distance from the nearest housing tax credit assistant development for all others.

And we'd also like them to look at the potential of tax credits that are undertaking in phases and maybe look at tie breakers that should apply to the completion of a development phase.

And, lastly, on the Dallas lawsuit, the issue here is to boost initiatives for affordable housing development located in areas with good schools and low poverty rates. This reform will allow TDHCA to challenge opposition at lost cost housing from neighborhood groups.

We recommend ruling and reform should only be applied to the Dallas area and region and not be implemented statewide and that you could use previously approved 2011-2012 QAP for all remaining regions throughout the state.

Thank you.

MS. YEVICH: Thank you, Ms. Shepard.

The next person who's signed up to speak is Walter Moreau. Is Walter ready?

Comment (23). Additional letter located behind #23.

MR. MOREAU: I'm Walter Moreau, the director of Foundation Communities. I have a wide-ranging number of comments. The supportive housing definition, we're in favor of not changing that. I know there is interest from some folks to do a special-needs housing, or a service-enriched housing definition.

We want to make sure that the definition doesn't functionally change and therefore create a loophole for regular projects that somehow could claim the benefits of the supportive housing definition.

On the community revitalization plan, I guess we disagree with the PHA. We think that if you're going to give six points to that plan, that needs to be a really substantive plan. The minute you start to weaken that, it becomes something that everybody's going to try to go for, try to work their city council to pass a plan to get -- it could become essential that you have to play that game and create a plan for your area to get your project funded.

One idea that comes to mind for the public housing authorities, but I don't know if this works statutorily, is can they compete in the at-risk set-aside if they're revitalizing an older property that really is a risk. I just don't know definitionally if that is something you can do because of statutory definition of at risk.

We're very grateful for the outcome yesterday and recommendation from staff and board to just not have the experience be a part of sponsor characteristics for points this year, given the problems with that; however, we're really still challenged by the HUB point.

We're a nonprofit charity. Essentially what I have to do is pay a HUB to partner with us with goes against all the fund-raising that we do. So we want to stay 100 percent of the general partner so that we can be property tax exempt, or 50 percent exempt, which is really important for supportive housing. So I can't let the HUB be part of the general partner.

We've developed 17 properties. We've never partnered; we've

always been our sole developer. So giving a HUB 10, or 40, or 80, or 100 percent of the developer fee doesn't make sense. We often have to defer a lot of our fee to be paid out over time, or even at the end of 15 years we pay it to ourselves, but if there's a HUB that's a for-profit, then there's a tax hit. It's very complicated.

And then, finally, on the cash flow, we don't typically have a lot of cash flow and any cash flow we've got, if we keep our debt low, we funnel right back into learning centers, case management, substance abuse counseling programs; but now to get the HUB point, I've got to divert cash flow to pay a for profit. So you're making us as a nonprofit charity pay a for-profit HUB.

Our recommendation would be that under sponsor characteristics you get a point if you're a partner with a HUB and it adds up to 100 percent, or a nonprofit that adds up to 100 percent, or you're 100 percent nonprofit. New Hope Housing, Covenant Communities, Brownsville CDC, Third Ward, Avenue CDC. We are true nonprofit charitable organizations.

We don't want to be forced into the box where we've got to give up developer fees, cash flow, or even ownership of the deal just to be able to compete and have a HUB. We do contract with HUBs substantially and maybe that's another alternative to gain that same point, that if the Board's goal is to create incentives to work with HUBs, we can do that, and we do do that in meaningful ways.

I think the final comment -- and it may be not a QAP comment; it may be in the threshold rules where for points in the QAP for amenities. We

really believe in green building; we think that's an essential part of the affordable housing definition. Water conservation's extremely important across the state.

Our recommendation is that at least two of the threshold points come from the menu of green items that's already there.

That's it.

MS. YEVICH: Thank you, Mr. Moreau.

The next I have is Michelle Hartman.

MR. HARTMAN: Michael Hartman.

MS. YEVICH: I'm so sorry.

Michael Hartman, are you here to speak on the QAP?

MR. HARTMAN: Yes.

MS. YEVICH: Okay.

Comment (32)

MR. HARTMAN: Michael Hartman, Tejas Housing Group. My first comment probably is no longer applicable after yesterday but just in case that the Board and staff does not decide to take out the two points for the Texas experience, there is a conflict between that and the nonprofit set-aside in the fact that to qualify for the nonprofit set-aside, the nonprofit has to have greater than 50 percent in the GP, and to get the two points for sponsor characteristics, the qualifying general partner has to have at least 50 percent, which means that somebody who's competing in the nonprofit set-aside would not be able to get those two points.

I don't believe that was the intent when the rule was written, and hopefully after yesterday that's no longer applicable. But in case it still is,

I think that's something that needs to be rectified so that the nonprofits can compete effectively.

The second thing that I was asking about was part of the preapplication threshold criteria is that we have to put in an community revitalization plan that we anticipating using for points -- the way it is written for points under community revitalization for rural, you don't really have a plan so if there could just be some clarification.

Are you asking us to put in all the documents that would be used to qualify for the points at preapp, or are we putting them in at application and it's only the plan that you want to see because in rural you're not going to have a plan per se when you submit for the points under community revitalization.

The next thing that I wanted to comment about is I do understand under point reductions under item number 1 that we have excluded certain items from the -- there is a thing that says that if you ask for points and you don't get them that not only do you lose the points but you get penalized a point.

And because we've changed the scoring criteria so much, instead of just limiting certain items to be excluded from that, I think we should remove the whole thing and see how this works the first year, because it is a very substantive change from what was done in prior years, and see how it ends up in the end.

My final comment is not really on the QAP. It's more on the threshold and it echoes what somebody said before. Under undesirable area

features, we talk about undesirable features. I think we need some better clarification on them because -- for instance, a history of significant or recurring flooding. Okay. What's significant; what is recurring? I mean, that's open to a lot of subjectivity.

Fire hazards that could impact the fire insurance premiums for the proposed development. I don't know. I don't know what fire hazards exactly we mean there.

And then under (d), locally known presence of gang activity, prostitution, or other significant criminal activity that rises to the level of frequent police reports. I mean, in some cities, frequent police reports might be if you have one a month. In other cities, it might be less than one an hour might be considered frequent.

Again, it's very subjective. I think it's going to lead to a lot of challenges. And I don't know if we can tighten it up or do we not have this in there because it's so subjective, so I'll leave that for another day.

Thank you.

MS. YEVICH: Thank you, Mr. Hartman.

The next speaker I have is Tim Lang.

Comment (33) →

MR. LANG: Good morning. My name is Tim Lang. I'm with the Tejas Housing Group and I want to speak on the economically distressed areas portion of the QAP.

I think that some clarification is going to be necessary. Looking at the Texas Water Development Board's web site and their economically distressed areas program, I found two distinct and different definitions for what

an economically distressed area is.

One was based on the median income for an area; another one had to do with the availability and the financial ability for an area to provide water and sewer service. So I think that some clarification -- if both of those definitions will be acceptable or if one or the other. There should be some additional clarification there.

Also, there were two different areas regarding qualification outside of the definition and there are some areas that are available to receive assistance through this program and then there are areas that have actually received assistance through this program. And, again, I think that we need to determine if it's going to be one, the other, or both that will be acceptable.

And finally, we should also, I think, implement the time period, how far back we're going to go to accept. Is it within five years, two years, one year, current -- whatever time frame the Department decides. I think that we need a little bit of guidance as far as the time frame that's going to be acceptable to qualify for those points.

That's all I have. Thank you.

MS. YEVICH: Thank you, Mr. Lang.

I have no more witness affirmation forms but I know that there's other people that want to speak.

If you could identify yourself and who you're with. Thank you.

Comment (34). Additional letter located immediately following the end of this transcript.

MS. SHERRILL: Good morning. My name is Deborah Sherrill. I am with the Corpus Christi Housing Authority. I actually have a few comments so bear with me.

The most important comment -- or actually, there's two of them that I think are pretty important. The Commitment of Development Funding by Unit of General Local Government -- that whole section, I believe, is unfair to housing authorities, and the reason why I state this is because in order for a housing authority to self-develop, they have to create their own entity. They have to create their partnership or their general partner; therefore, they become a related party.

So how can a housing authority self-develop if the related part is not accepted? So that's my first comment. That same section also states that the funding source also can be a combination of things, and one of the items is vouchers. Well, the vouchers come from the local housing authority but yet they can't be the related party to the applicant. Okay?

Second comment was a comment that was already made: Can public housing authorities compete in the at-risk set-aside? That's another comment that we'd like to see if possibly someday that can happen.

And then the third comment that I have is regarding experience certificate. I know back in 2004 when we first started this, the housing authority's experience certificate was issued to the housing authority and not an individual. And I'd like to see if we could go back to doing that because the housing authorities' CEOs come and go, and if they're the ones who are carrying the experience certificate, people like myself, who's not a CEO, who does everything in the tax credit world, cannot get an experience certificate because I'm not the CEO.

So that's another issue that I've been kind of questioning for the

last couple of years. So those are really my comments at this time and I thank you for your time.

MS. YEVICH: Do we have anyone else here?

(Pause.)

MS. YEVICH: Okay. She'll bring the microphone.

Comment (35). Comment also provided at October 9 Board Meeting.

MS. STEPHENS: Good morning. I'm Lisa Stephens and I wanted to speak on the sponsor characteristics, particularly the 100 percent participation by a HUB, and I'd like to suggest that that participation level first be looked at at 75 percent instead of 100 percent. 100 percent is a very steep threshold and a bar to hit.

Alternatively, I'd like to suggest that perhaps that HUB participation be allowed to be achieved with multiple HUB entities instead of limiting it to one HUB entity. The intent behind having the HUB is to provide experience and capacity-building for HUB entities. So to limit it to one HUB entity with 100 percent is not as meaningful and does not provide as much capacity-building as utilizing multiple HUBs within your development.

And I understand that you don't want 15 HUBs, but perhaps limit it to three or four HUBs that could participate in the development and therefore qualify under the 100 percent participation. Thank you.

MS. YEVICH: Thank you, Ms. Stephens.

Are you representing an organization or are you here for yourself?

MS. STEPHENS: I'm with Sagebrook Development.

MS. YEVICH: Okay. Thank you.

Do we have anyone else here to speak on the Qualified Allocation Plan?

(No response.)

MS. YEVICH: Okay. Hearing none, we'll move to the Multifamily Housing Revenue Bond Program Rules. This document establishes the 2013 rules for the Multifamily Housing Revenue Bond Program. This program issues tax-exempt and taxable bonds to fund loans to nonprofit and for-profit developers.

Is there anyone here to speak on the Multifamily Housing Revenue Bond Rules?

(No response.)

MS. YEVICH: Hearing none, we'll move over to the Uniform Multifamily Rules. TDHCA's governing board approved organizational changes on April 12 of this year, of which a key component was the consolidation of the multifamily program activities in the Multifamily Finance Division to establish consistency and efficiency among all the multifamily programs. This rule establishes the general requirements associated in making an award of multifamily development funding.

The rule provides general information regarding the Department's multifamily funding and includes an expanded section on definitions, which now includes those definitions that were previously in the following rules: Qualified Allocation Plan, Home Multifamily Program Rule, Real Estate Analysis Rule, and Compliance Administration Qualified Contract.

Is there anyone here to speak on the Uniform Multifamily

Rules?

(Pause.)

MS. YEVICH: Thank you. Mr. Moreau?

MR. MOREAU: Walter Moreau with Foundation Communities. Correct me if I'm wrong -- I think these rules contain the right of first refusal language changes?

MS. YEVICH: I am getting an affirmative from the person who works in Multifamily, yes.

MR. MOREAU: Okay. I've talked with staff some already about a couple of issues. One, there needs to be some language added that makes it absolutely clear that the LURA takes precedence over anything that might be contradictory in the rules.

Every year the LURA language and the way the ROFR, the right of first refusal, was written was slightly different. Some reference the minimum sales price; some are for 90 days; some are for two years; some reference the fair market value, and there may be situations you can't contemplate in the rules where you really have to go back to the plain reading in black and white of the LURA. I think Tom and Kerry both agree that was something that they would take a look at.

The rules also say that if an owner picks a nonprofit to sell at whatever the price is and then the nonprofit subsequently can't close, then they're released from their right of first refusal to the nonprofit, and I think that's a huge loophole. So a project owner could pick a friendly nonprofit that has no chance of closing and then they get released from that.

One thought is that there be -- that 90-day period allows backup offers so that if there is another nonprofit or two at the same price and terms that can close, an owner can't gain the right of first refusal.

There's not provision -- in some of the ROFRs the property has to be sold equal to the minimum purchase price but we're looking at a situation now where than minimum sales price may actually be more than the property's worth and so there's no provision in the rules.

I think at that point if there are no offers in 90 days from any nonprofit at that price, you've met the requirement of the ROFR and they could sell for probably less but it wasn't clear that there was a mechanism for that to happen.

Finally, most of the ROFRs are written so that if there are multiple nonprofit offers TDHCA has the right to determine what basis they will use to choose which nonprofit gets to buy the property. The rules are written now to basically punt that decision and give it to the project owner and let the project owner, in a non-public way, using whatever basis they want.

I think that's problematic. I think that any decision on a nonprofit should be something that the TDHCA Board is done in public. It has to be done through the transfer process.

I want to give some more thought and propose some language to a fair way that a nonprofit that has a track record, that does services, that has a good history -- TDHCA may not want to just defer that entire right to the project owner. That's all.

And I'll try to -- I'm working on formulating alternative language

that could be put into the rules.

MS. YEVICH: Certainly. Thank you, Walter.

Is there anyone else here to speak on the Uniform Multifamily Rules? And I recognize some of you mentioned that earlier in your QAP and that will be incorporated under realized when these are addressed.

Anyone else here for Uniform Multifamily Rules?

(No response.)

MS. YEVICH: The next item is the Real Estate Analysis Rules which this year is actually under the Uniform Multifamily Rules.

So is there anyone here specifically to speak on the Real Estate Analysis Rules?

MS. YEVICH: Hearing none, is there anyone else who would like to comment at this hearing?

(No response.)

MS. YEVICH: I wanted to remind everybody that all of the documents today are out for public comment until October 26. There's a handout up here with information on where you can email additional comments to the direct email address that pertains to whichever plan or document you're referring to.

And my name is Elizabeth Yevich. I'm director of the Housing Resource Center and I want to thank everybody for attending. And with that, this meeting is concluded. Thank you.

(Whereupon, at 11:00 a.m., the hearing was concluded.)

C E R T I F I C A T E

IN RE: 2012 State of Texas Consolidated Public Hearing

LOCATION: Austin, Texas

DATE: October 10, 2012

I do hereby certify that the foregoing pages, numbers 1 through 24, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Penny Bynum before the Texas Department of Housing & Community Affairs.

10/11/2012
(Transcriber) (Date)

On the Record Reporting
3307 Northland, Suite 315
Austin, Texas 78731

Comment (30)

2012 – 2013 QAP Comments

October 9, 2012

The following comments to the QAP represent the agreements made among four large housing authorities: SAHA, El Paso, Houston and Fort Worth. These comments are being read into the record on their behalf.

The current draft of the QAP includes several significant changes from the previous plan. Those of particular concern to the Public Housing Authorities are as follows:

- **Pre-Application Requirements; Notification Recipients.**

  As proposed, there is a notification of a Development requirement for projects located in an Extra Territorial Jurisdiction (ETJ) of a city to be sent to city officials (with districts adjacent to the Development).

  We believe this should not be added as a requirement as the ETJ has no jurisdiction over the proposed development area and there is wide variance among how the ETJ's are managed across the state. Tax Credit developments should only be required to fulfill the requirements in their respective ETJ's, if they apply. To require it as part of the tax credit process creates an unneeded burden and requirement on these developments.

  Competitive HTC Selection Criteria and Commitment of Development Funding by Unit of General Local Government would exclude Housing Authority Allocations. An application may receive up to thirteen points for a commitment of Development funding from the city or county in which the Development is proposed to be located. **Housing Authorities are established by resolution of the elected officials in each of their communities**. While the boards are appointed by the Mayor, they also serve at the pleasure of the Mayor and are, in fact, instrumentalities with quasi-governmental roles. Because of this,

  > Replacement Housing Factor Funds, Public Housing Operating subsidy and Section 8 vouchers should qualify as potential sources of funding,

- **Competitive HTC Selection Criteria; Community Revitalization Plan.**
  Applications may qualify for six points if the Development site is located in an area covered by a community revitalization plan and that meets certain criteria including the plan being adopted by the municipality or county in which the Development is proposed.

We request that in lieu of revitalization plans as defined in the proposed QAP, that there would be an allowance for:

- multiple overlapping planning efforts (San Antonio examples: transit oriented development plan, Eastside Revitalization, SA2020, Westside Revitalization, Inner city Reinvestment/Infill Policy- ICRIP and Tax Increment Reinvestment Zone - TIRZ) to be recognized as a "Community Revitalization Plan" provided at least one of those efforts has been adopted by City Council,
- Projects that are within a broader federal program initative, such as the CHOICE Neighborhoods, HOPE VI or Sustainable Communities efforts.
- Removing points earned for size of budget; small initiatives can be transformative if carefully planned and leveraged,
- Replace with points earned for scope of plan. Elements of scope are listed are: environmental remediation, transportation, education, safety, work force development, housing and health. Projects that address 3 elements receive 2 points; 5 elements receive 4 points; 7 elements receive 6 points.

  We are preparing proposed language which will be submitted at a later date for your consideration.

- **Cost of Development per Square Foot.** An application may qualify for up to ten points for this item based on the Building Costs per square footage relative to the mean cost per square foot for all similar development types.

  We Recommend:

  - Costs should be reflective of local conditions and, while the previous average cost per square foot was disconcerting to staff in underwriting, it is only one of several factors to take into consideration for the applications. We recommend that it remain as it was previously.

- **Undesirable Site Features.** Developments within proximity to certain undesirable features are considered ineligible. These features are within 300 feet of junkyards, railroads, heavy industrial uses, sold waste sites and overhead high voltage transmission lines.

We Recommend:

- The railroad feature should be eliminated as it should not be considered a negative. As in previous developments there are many ways in which to attenuate noise levels.
- Undesirable site features that have been mitigated through the U.S. Department of Housing and Urban Development (HUD) should be exempted.

- **<u>Undesirable Area Features</u>**. Development sites located 301 feet to 1,000 feet of "Undesirable Site Features" are required to disclose information on the pre-application.

  Issue: Section is vague and will increase challenges for development in these areas that result in an improvement to the community,

  We Recommend:

  - Initiate a waiver process and, once Board approves, it should not be challengeable.

- **<u>Tie Breaker Factors</u>**

  Issue: Factors the Department will utilize in the event there are Competitive HTC applications that receive the same number of points in any given set-aside category, rural or urban regional allocation, or rural or state collapse. The factors that will define the tie-breaker are:

  - Applications ranking higher on the Opportunity Index number
  - Applications proposed to be located the greatest distance from the nearest Housing Tax Credit assisted development.

  We Recommend

  - Ranking based on higher Opportunity Index number should be removed.
  - If not removed, then it should be applied to Dallas (Region 3 only) and use distance from nearest Housing Tax Credit assisted development for all others.
  - Since many tax credit projects are undertaken in phases, the tie breaker should apply to the completion of a development phase.

- **<u>Dallas Lawsuit decision</u>**

  Issue: The decision to boost incentives for affordable housing development located in areas with good schools and low income poverty rates. The reforms will allow TDHCA to challenge opposition to low-cost housing from neighborhood groups.

  We Recommend

  Ruling and reforms should only be applied to the Dallas area/region and not be implemented statewide. Use previously approved 2011-2012 QAP for all of the remaining regions throughout the State.

SAHA

The path to a visionary future starts here

PLAN. BUILD. LIVE.

October 22, 2012

Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

Re: Comments on Draft Qualified Allocation Plan (QAP)

Dear Mr. Irvine:

The San Antonio Housing Authority (SAHA) considers the federal housing tax credit (HTC) program one of the most crucial tools in the development of affordable rental housing. In September, the Texas Department of Housing and Community Affairs (TDHCA) approved a discussion draft of a comprehensive document that will govern all the multifamily development activity. This current draft includes several significant changes from the previous plan.

SAHA submits the following comments to the current 2013 QAP draft:

1. **Competitive HTC Selection Criteria and Commitment of Development Funding by Unit of General Local Government would exclude Housing Authority Allocations.** An application may receive up to thirteen points for a commitment of development funding from the city or county in which the development is proposed to be located. Housing Authorities are established by resolution of the elected officials in each of their communities. Specifically, SAHA's Board is appointed by the Mayor; they serve at the pleasure of the Mayor and are, in fact, instrumentalities with quasi-governmental roles. Because of this,

    - Replacement Housing Factor Funds, Public Housing Operating subsidy and Section 8 vouchers should qualify as potential sources of funding.

2. **Pre-Application Requirements; Notification Recipients.** As proposed, there is a notification of a Development requirement for projects located in an Extra Territorial Jurisdiction (ETJ) of a city to be sent to city officials (with districts adjacent to the Development):

    We believe this should not be added as a requirement as the ETJ has no jurisdiction over the proposed development area and there is wide variance among how the ETJ's are managed across the state. Tax Credit developments should only be required to fulfill the requirements in their respective ETJ's, if they apply. To require it as part of the tax credit process creates an unneeded burden and requirement on these developments.

3. **Competitive HTC Selection Criteria; Community Revitalization Plan.** Applications may qualify for six points if the Development site is located in an area covered by a community revitalization plan and that meets certain criteria including the plan being adopted by the municipality or county in which the Development is proposed.

We request that in lieu of revitalization plans as defined in the proposed QAP, that there would be an allowance for:

- Multiple overlapping planning efforts to be recognized as a "Community Revitalization Plan," provided at least one of those efforts has been adopted by City Council (San Antonio examples: transit oriented development plan, Eastside Revitalization, SA2020, Westside Revitalization, Inner city Reinvestment/Infill Policy- ICRIP and Tax Increment Reinvestment Zone - TIRZ).
- Projects that are within a broader federal program initiative, such as the CHOICE Neighborhoods, HOPE VI or Sustainable Communities efforts.

Additionally, we request removing points earned for size of budget, as small initiatives can be transformative if carefully planned and leveraged. We recommend replacing with points earned for the scope of plan, with scope elements including: environmental remediation, transportation, education, safety, work force development, housing and health. Projects that address 3 elements receive 2 points; 5 elements receive 4 points; 7 elements receive 6 points.

4. **Cost of Development per Square Foot.** An application may qualify for up to ten points for this item based on the Building Costs per square footage relative to the mean cost per square foot for all similar development types. We recommend that it remain as it was previously. Costs should be reflective of local conditions and, while the previous average cost per square foot was disconcerting to staff in underwriting, it is only one of several factors to take into consideration for the applications.

5. **Undesirable Site Features.** Developments within proximity to certain undesirable features are considered ineligible. These features are within 300 feet of junkyards, railroads, heavy industrial uses, solid waste sites and overhead high voltage transmission lines. We recommend:

- The railroad feature should be eliminated as it should not be considered a negative. As in previous developments there are many ways in which to attenuate noise levels.
- Undesirable site features that have been mitigated through the U.S. Department of Housing and Urban Development (HUD) should be exempted.

6. Undesirable Area Features. Development sites located 301 feet to 1,000 feet of "Undesirable Site Features" are required to disclose information on the pre-application. This section is vague and will increase challenges for development in these areas that result in an improvement to the community. We recommend initiating a waiver process and, once Board approves, it should not be challengeable.

7. Tie Breaker Factors. Factors the Department will utilize in the event there are Competitive HTC applications that receive the same number of points in any given set-aside category, rural or urban regional allocation, or rural or state collapse. The factors that will define the tie-breaker are: (1) applications ranking higher on the Opportunity Index number and (2) applications proposed to be located the greatest distance from the nearest Housing Tax Credit assisted development.

We recommend ranking based on higher Opportunity Index number should be removed. If not removed, then it should be applied to Dallas (Region 3 only) and use distance from nearest Housing Tax Credit assisted development for all others. Since many tax credit projects are undertaken in phases, the tie breaker should apply to the completion of a development phase.

We appreciate your consideration of SAHA's comments, as we continue to provide affordable housing that is well integrated into the fabric of neighborhoods and serves as a foundation to improve lives and advance resident independence.

Sincerely,

Lourdes Castro Ramírez
President and CEO

CORPUS CHRISTI HOUSING AUTHORITY
3701 Ayers Street
Corpus Christi, Texas 78415

Gary Allsup
President & Chief Executive Officer

Office: 361-889-3300
Fax: 361-889-3370

34

Comment (34)

October 22, 2012

ATTN: Ms. Teresa Morales
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

VIA Fax No. 512-475-0764

Re: Rule Comments on TDHCA Housing Tax Credit Program Qualified Allocation Plan

Dear Ms. Morales:

The following are my comments for consideration by TDHCA to the Housing Tax Credit Program QAP published in the September 21, 2012, Texas Register:

Section 11.4(b) Maximum Request Limit (Competitive HTC Only): TDHCA should not allow an applicant to request more than the credit amount available in a sub-region. This QAP provision to allow an applicant to request up to 150% of the credit amount available in a sub-region is not consistent with the provisions of Texas Government Code Chapter 2306 which requires TDHCA to use a formula to make regional allocations and has no provisions that allow TDHCA to allow an applicant to request more than the credit amount available in a sub-region. Additionally, the QAP prohibits awards to an applicant if there are not sufficient funds within the sub-region to fully award the application that then places the application in the rural or statewide collapse. ✓

Section 11.5(3)(D) At-Risk Set-Aside: There are at-risk developments that have existing rental assistance with rents lower than the tax credits rents and may not be financially feasible unless they are allowed to eliminate a portion of that benefit. For example, the existing rental assistance may be within the tax credits rents for units at 30% AMGI and the development should be required to retain the rental assistance for those units but be allowed to eliminate the existing rental assistance on the other units who will retain their affordability within the HTC income and rent restrictions. This provisions should provide "... unless regulatory or financial barriers necessitate elimination of a portion of that benefit for the Development." ✓

Section 11.9(b)(2) Sponsor Characteristics: Housing Authorities have extensive experience in providing affordable housing as developers, owners, and managers of Public Housing and Contract Administrators of HUD rental assistance contracts under Section 8 of the National Housing Act (Voucher Program). Many Texas Housing Authorities have as much as 75 years administering the Public Housing Program and 45 years administering the Section 8 Program. TDHCA needs to recognize this experience by awarding participation by Housing Authorities the maximum points under Sponsor Characteristics. ✓

Section 11.9(b)(2)(A) Sponsor Characteristics: Should include provisions awarding 1 point for a Housing Authority that has at least 51 percent ownership interest in the General Partner, materially participates in the Development and operation of the Development throughout the compliance period, and will receive at least 80 percent of the cash flow from operations and at least 25 percent of the developer fee.

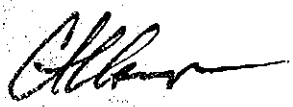
Section 11.9(b)(2)(B) Sponsor Characteristics: Should include provisions awarding 3 points for a Housing Authority that that is rated by HUD as a High Performer or 2 points if rated by HUD as a Standard Performer and has at least 51 percent ownership interest in the General Partner, materially participates in the Development and operation of the Development throughout the compliance period, and will receive at least 80 percent of the cash flow from operations and at least 25 percent of the developer fee.

Section 11.9(d)(3) Commitment of Development Funding by Unit Of General Local Government: TDHCA proposes to restrict the awards points for funding from only a City or County. In prior years these points were allowed for funding by a "Unit of General Local Government" such as a Housing Authority. There is no basis for TDHCA to now exclude consideration for funding by any Unit of Local Government limit the award of points to only funding by a City or County.

Additionally, TDHCA proposes to penalize participation by a government instrumentality such as a Public Facility Corporation PFC) created under Chapter 303 of the Texas Local Government Code that was adopted by the Texas Legislature so that local governments such a City, County, Housing Authority or other Units of Local Government can carry out activities with their instrumentalities such as a PFC. There are many HTC developments in Texas sponsored by Units of Local Government using their instrumentality PFCs. TDHCA needs to remove from the QAP all proposed restrictions on instrumentalities.

Section 11.9(e)(4)(A)(i) Leveraging of Private, State, and Federal Resources: Needs to include leveraging of funding from the Public Housing Program Capital Fund, Project Based Vouchers, and Section 8 Vouchers to assist families with their relocation.

Sincerely,



Gary Allsup

Comment (36)
Hal Fairbanks, HRI Properties

HRI PROPERTIES

October 22, 2012

Mr. J. Paul Oxer, Chairman and Board Members of the
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: 2013 Draft Uniform Multifamily Rules and QAP (9.6.12 Release Date)

Dear Chairman Oxer and Members of the TDHCA Board

Our Company, HRI Properties, is a public/private partnership developer that has a mission to serve cities and has an extensive track record in the adaptive reuse of historic buildings. Over the last few years we have been working with a number of municipalities in Texas as well as historic preservation and downtown development groups to propose QAP comments, to make development of downtown affordable & mixed-income housing projects easier and to increase opportunities to leverage Low Income Housing Tax Credits ("LIHTC") with Historic Tax Credits and funding from governmental, non-profit & for-profit private sector sponsors. We support the comments recently submitted by Ms. Donna Rickenbacker of Marque Real Estate Consultants, as well as those submitted by the City of San Antonio and the City of Houston.
Additionally, below is a list of the specific changes HRI Properties strongly endorses related to the current draft Uniform Multifamily Rules & QAP.

A. Chapter 10 of the Texas Administrative Code - Uniform Multifamily Rules:

Subchapter B – Site and Development Requirements and Restrictions.

§10.101. (a)(3) Undesirable Site Features (relating to Site and Development Requirements and Restrictions). We recommend the following changes to subparagraph (B) of this paragraph:

"(B) Developments located adjacent to or within 300 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone, or the railroad in question is commuter or light rail or unless the Development Site will comply with applicable site acceptability standards set forth in 24 CFR Part 51, Subpart B – Noise Abatement and Control."

§10.101. (b)(1)(A) General Ineligibility Criteria The scope of the public use requirements was clarified in Housing and Economic Recovery Act of 2008. The Act specifically states that a project does not fail to meet the public use requirement solely because of occupancy restrictions or preferences that favor tenants (i) with special needs, (ii) who are members of a

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specified group under a State program, such as the Texas State Affordable Housing Corporation's Single Family Programs for Professional Educators (teachers) and Texas Heroes (first responders), or (iii) who are involved in artistic or literary activities. The TDHCA should affirm federal law and work in concert with the efforts of other State housing agencies. Supporting HTC housing developments for special needs populations and groups specified under Federal and State programs will encourage leveraging of the State's limited LIHTC allocations with both for profit and non-profit private sector resources. The QAP should be unambiguous in this regard. We recommend the following changes to this subparagraph:

"(v) A Development seeking Housing Tax Credits that is reasonably believed by staff to clearly not meet the general public use requirement under Treasury Regulation §1.42-9 unless Applicant has obtained a private letter ruling that the proposed development is permitted, however HTC Developments serving special needs populations or specified groups as authorized under §3004 (g) of the Housing and Economic Recovery Act of 2008, including Professional Educators or Texas Heroes as defined by the Texas State Affordable Housing Corporation's Single Family Programs, shall be deemed to meet the public use requirement; "or"

§10.101. (b)(5) Common Amenities (relating to Development Requirements and Restrictions). Inner city urban HTC projects usually involve zero-lot line or other land availability & cost constraints that would make the provision of many of the common amenities listed in this section, particularly outdoor amenities, infeasible, or difficult at best. However, proximity to employment centers and public amenities creates a high demand for downtown affordable housing. We therefore recommend the following changes to subparagraph (A) of this paragraph:

"(A) All Developments must provide sufficient common amenities as described in subparagraph (C) of this paragraph to qualify for at least the minimum number of points with urban zero lot line Developments required to qualify for only 50% of the required points, required in accordance with:"

We also recommend the addition of the following clarifications & amenities in subparagraph (C) of this paragraph:

"(i) Full perimeter fencing (may include building walls in Urban Developments) (2points)"
"(xvi) Dog Park area that is fully enclosed and intended for tenant owned dogs to run off leash or a dog wash station with plumbing for hot & cold water connections and tub drainage (requires that the Development allow dogs) (1 point)"
"(xxxi) Rooftop viewing deck (2 points)"
"(xxxii) High ceilings (> 10' avg.) in common areas (1 point)"

§10.101. (b)(6)(B) Unit Amenities (relating to Development Requirements and Restrictions). We recommend the following changes to this subparagraph to take into consideration an adjustment in required amenities when considering an Adaptive Reuse Development especially those that involve historic preservation of older buildings:

"Rehabilitation Developments will start with a base score of (3 points), and Supportive Housing and Adaptive Reuse Developments will start with a base score of (5 points)"
"(viii) Thirty (30) year shingle or metal roofing or flat roof equivalent (.5 point)"

B. Chapter 11 of the Texas Administrative Code – Qualified Allocation Plan:

§11.9(b)(2) Sponsor Characteristics (relating to Competitive HTC Selection Criteria). The words "in Texas" should be removed from subparagraph (A) and (B) of this paragraph. We agree with Ms. Rickenbacker's comments that the program should only require that Applicants and/or developers have experience in affordable housing, none of which is in material noncompliance. Competition and variety of thought and product is good for the program and should not be discouraged. This scoring category should be limited to incentivizing through points participation in the program by inexperienced parties through HUB participation. It is also critical if we are truly trying to promote and support HUB participation in this program that the HUB not be a *"Related Party"* to the Applicant.

§11.9(c)(7) Tenant Populations with Special Housing Needs This section of the QAP should clearly include special needs groups for which Federal law specifically authorizes occupancy restrictions or preferences. We recommend the following change:

"For purposes of this scoring item, Persons with Special Needs is defined as persons with alcohol and/or drug addictions, Colonia residents, persons with Disabilities, victims of domestic violence, persons with HIV/AIDS, homeless populations, groups covered by the clarification of the General Public Use Requirement in §3004 (g) of the Housing and Economic Recovery Act of 2008 and migrant farm workers."

We also suggest significantly increasing the minimum percentage commitment to serving Persons with Special Needs as required for points under this scoring item. Under the Americans with Disabilities Act Developments must design at least 5% of their units to accommodate persons with disabilities, so agreeing to set aside at least 5% of a Developments unit is not really a stretch. We believe the percentage should be at least 20% or higher in order to qualify for these points.

§11.9(e)(2) Cost of Development per Square Foot In order to avoid blacklisting inner city adaptive reuse projects, including historic preservation projects that qualify for Historic Tax Credits that offset a Development's cost, we recommend the following changes to this subparagraph:

"(less any structured parking cost that is not included in Eligible Basis or the amount of federal historic tax credits for which the Development is eligible)"
"(A) Each Application will be categorized as:
(i) Qualified Elderly and Elevator Served Development, Adaptive Reuse Developments, more than 75 percent single family design, and Supportive Housing Developments; or
(ii) All other Applications proposing New Construction or Reconstruction; or
(iii) All other Applications proposing Rehabilitation; or
(iv) All other Applications proposing both Adaptive Reuse and Elevator Served Development or Development using federal historic tax credit financing."

§11.9(e)(5) Extended Affordability or Historic Preservation The heading here says it all. An Applicant cannot get points for both Extended Affordability *and* Historic Preservation under the current draft. Although both features are presumably desirable enough for the TDHCA to incentivize, they are unrelated and are certainly not mutually exclusive. By pairing Historic Preservation as an either/or item, in which any Applicant can choose the alternative, Historic

Preservation is effectively denied any points relative to other Applications, which seems to be a direct conflict with the Housing and Economic Recovery Act of 2008's requirements for preferential consideration of Historic Preservation projects in the allocation of LIHTCs. Historic Preservation is in important public objective and such projects should receive stand alone points. Accordingly, we recommend that in the heading and at the end of subparagraph (A) the word "or" be changed to "and/or", and that the points available under the scoring item be changed from "two (2) points" to "up to four (4) points".

We appreciate your consideration of these comments and your ongoing efforts to support the development of quality affordable housing across the State.

Sincerely,

Hal Fairbanks
Vice President of Acquisitions

Cc: Tim Irvine
Cameron Dorsey
Teresa Morales
Jean Latsha

Comment (37)
Morgan Little & John A. Miterko
Texas Coalition of Veterans Organizations

37

October 22, 2012

Texas Department of Housing and Community Affairs
Ms. Teresa Morales
P.O. Box 13941
Austin, Texas 78711-3941

- via facsimile (512) 475-0764 -

On behalf of its 36 member veteran service organizations, which represent over 600,000 veterans, the Texas Coalition of Veterans Organizations (TCVO) appreciates the opportunity to provide comments on the proposed addition to the Texas Administrative Code concerning the Housing Tax Credit Program Qualified Allocation Plan (10 TAC, Chapter 11, §§11.1 - 11.10).

The Housing Tax Credit Program Qualified Allocation Plan was the subject of considerable discussion by the Texas Coordinating Council for Veteran Services, which was established as the result of legislation passed by the 82nd Legislature in order to coordinate the activities of state agencies that assist Veterans, servicemembers, and their families; coordinate outreach efforts that ensure that Veterans, servicemembers, and their families are made aware of services; and facilitate collaborative relationships among state, federal, and local agencies and private organizations to identify and address issues affecting Veterans, servicemembers, and their families.

The Texas Coordinating Council for Veteran Services recently released its final first report, which determined that Veterans' need for housing justifies their inclusion in the Low-Income Housing Tax Credits Program and recommended "the inclusion of language in the rules governing the Low Income Housing Tax Credit (LIHTC) program that will provide for clear opportunities for eligible Veterans to obtain LIHTC assisted housing."

We support this recommendation and request that the Texas Department of Housing and Community Affairs examine the proposed rule to make Veterans a specific and integral part of it. One way this could be accomplished was noted in the report: require a percentage of low income units to be held for special populations, particularly Veterans, for a certain period prior to being offered to all eligible tenants.

We also urge the Texas Department of Housing and Community Affairs to review tenant services throughout its rules to ensure that they address needs and services related to Veterans.

general rule

Thank you so much for considering our comments. Please do not hesitate to contact me if you have any questions or need additional information.

Sincerely,

Morgan Little
Chair
Texas Coalition of Veterans Organizations

John A Miterko
Legislative Liaison
Texas Coalition of Veterans Organizations

cc: Timothy Irvine, Executive Director, Texas Department of Housing and Community Affairs

Thomas Palladino, Executive Director, Texas Veterans Commission

Senator Leticia Van de Putte, Chair, Senate Committee on Veterans Affairs and Military Installations

Representative Joe Pickett, Chair, House Committee on Defense and Veterans Affairs

Representative Sylvester Turner, Vice Chair, House Committee on Appropriations

Comment (38)
Wayne Pollard, Tarrant County Housing Authority

(38)

TARRANT COUNTY

HOUSING ASSISTANCE OFFICE

Wayne Pollard
Director of Housing

Telephone: (817) 531-7640
Fax: (817) 212-3052

October 22, 2012

ATTN: Ms. Teresa Morales
Texas Department of Housing and Community Affairs
VIA Fax No. 512-475-0764

Re: Rule Comments on TDHCA Housing Tax Credit Program Qualified Allocation Plan

Dear Ms. Morales:

The following are my comments for consideration by TDHCA to the Housing Tax Credit Program QAP published in the September 21, 2012, Texas Register:

Section 11.4(b) Maximum Request Limit (Competitive HTC Only): TDHCA should not allow an applicant to request more than the credit amount available in a sub-region. This QAP provision to allow an applicant to request up to 150% of the credit amount available in a sub-region is not consistent with the provisions of Texas Government Code Chapter 2306 which requires TDHCA to use a formula to make regional allocations and has no provisions that allow TDHCA to allow an applicant to request more than the credit amount available in a sub-region. Additionally, the QAP prohibits awards to an applicant if there are not sufficient funds within the sub-region to fully award the application that then places the application in the rural or statewide collapse. ✓

Section 11.5(3)(D) At-Risk Set-Aside: There are at-risk developments that have existing rental assistance with rents lower than the tax credits rents and may not be financially feasible unless they are allowed to eliminate a portion of that benefit. For example, the existing rental assistance may be within the tax credits rents for units at 30% AMGI and the development should be required to retain the rental assistance for those units but be allowed to eliminate the existing rental assistance on the other units who will retain their affordability within the HTC income and rent restrictions. This provisions should provide " . . . unless regulatory or financial barriers necessitate elimination of a portion of that benefit for the Development." ✓

Section 11.9(b)(2) Sponsor Characteristics: Housing Authorities have extensive experience in providing affordable housing as developers, owners, and managers of Public Housing and Contract Administrators of HUD rental assistance contracts under Section 8 of the National Housing Act (Voucher Program). Many Texas Housing Authorities have as much as 75 years administering the Public Housing Program and 45 years administering the Section 8 Program. TDHCA needs to [redacted] this experience by awarding participation by Housing Authorities the maximum points under [redacted] Characteristics. ✓

Section 11.9(b)(2)(A) Sponsor Characteristics: Should include provisions awarding 1 point for a Housing Authority that has at least 51 percent ownership interest in the General Partner, materially participates in the Development and operation of the Development throughout the compliance period, and will receive at least 80 percent of the cash flow from operations and at least 25 percent of the developer fee.

Section 11.9(b)(2)(B) Sponsor Characteristics: Should include provisions awarding 3 points for a Housing Authority that that is rated by HUD as a High Performer or 2 points if rated by HUD as a Standard Performer and has at least 51 percent ownership interest in the General Partner, materially participates in the Development and operation of the Development throughout the compliance period, and will receive at least 80 percent of the cash flow from operations and at least 25 percent of the developer fee.

Section 11.9(d)(3) Commitment of Development Funding by Unit Of General Local Government: TDHCA proposes to restrict the awards points for funding from only a City or County. In prior years these points were allowed for funding by a "Unit of General Local Government" such as a Housing Authority. There is no basis for TDHCA to now exclude consideration for funding by any Unit of Local Government limit the award of points to only funding by a City or County.
Additionally, TDHCA proposes to penalize participation by a government instrumentality such as a Public Facility Corporation PFC) created under Chapter 303 of the Texas Local Government Code that was adopted by the Texas Legislature so that local governments such a City, County, Housing Authority or other Units of Local Government can carry out activities with their instrumentalities such as a PFC. There are many HTC developments in Texas sponsored by Units of Local Government using their instrumentality PFCs/ TDHCA needs to remove from the QAP all proposed restrictions on instrumentalities.

Section 11.9(e)(4)(A)(i) Leveraging of Private, State, and Federal Resources: Needs to include leveraging of funding from the Public Housing Program Capital Fund, Project Based Vouchers and Section 8 Vouchers to assist families with their relocation.

Wayne E. Pollard, Jr.

10/22/12
Date

2100 Circle Drive * Suite 200 * Fort Worth, Texas 76119

Comment (39)
Mary Vela, Alamo Housing Authority

(39)

ALAMO HOUSING AUTHORITY

309 N. 9th St.
ALAMO, TX 78516

TELEPHONE (956) 787-2352
FAX (956) 781-8886

October 22, 2012

ATTN: Ms. Teresa Morales
Texas Department of Housing and Community Affairs
VIA Fax No. 512-475-0764

Re: Rule Comments on TDHCA Housing Tax Credit Program Qualified Allocation Plan

Dear Ms. Morales:

The following are the Alamo Housing Authority's comments for consideration by TDHCA to the Housing Tax Credit Program QAP, published in the September 21, 2012 Texas Register:

Section 11.4(b) Maximum Request Limit (Competitive HTC Only): TDHCA should not allow an applicant to request more than the credit amount available in a sub-region. This QAP provision to allow an applicant to request up to 150% of the credit amount available in a sub-region is not consistent with the provisions of Texas Government Code Chapter 2306 which requires TDHCA to use a formula to make regional allocations and has no provisions that allow TDHCA to allow an applicant to request more than the credit amount available in a sub-region. Additionally, the QAP prohibits awards to an applicant if there none sufficient funds within the sub-region, which then places the application in the rural or statewide collapse.

Section 11.5(3)(D) At-Risk Set-Aside: There are at-risk developments that have existing rental assistance, with rents lower than the tax credits rents and may not be financially feasible, unless they are allowed to eliminate a portion of that benefit. For example, the existing rental assistance may be within the tax credit rents for units at 30% AMGI and the development should be required to retain the rental assistance for those units; however, be allowed to eliminate the existing rental assistance on the other units that will retain their affordability within the HTC income and rent restrictions. These provisions should provide " . . . unless regulatory or financial barriers necessitate elimination of a portion of that benefit for the Development."

Section 11.9(b) (2) Sponsor Characteristics: Housing Authorities have extensive experience in providing affordable housing as developers, owners, and managers of Public Housing and Contract Administrators of HUD rental assistance contracts under the Section 8 of the National Housing Act (Voucher Program). Many Texas Housing Authorities have as much as 75 years experience administering the Public Housing Program and 45 years administering the Section 8 Program. TDHCA needs to recognize this experience by awarding participation by Housing Authorities the maximum points under Sponsor Characteristics.

Section 11.9(b) (2) (A) Sponsor Characteristics: Should include provisions awarding 1-point to a Housing Authority that has at least 51 percent ownership interest as General Partner, that materially participates in the development and operations of the development, throughout the compliance period, that will receive at least 80 percent of the cash flow from operations, and at least 25 percent of the developer fee.

Section 11.9(b) (2) (B) Sponsor Characteristics: Should include provisions awarding 3-Points to a Housing Authority that is rated by HUD as a High Performer or 2 points if Rated Standard Performer.

Section 11.9(d) (3) Commitment of Development Funding by Unit of General Local Government: TDHCA proposes to restrict the awards points for funding from only a City or County. In prior years, these points allowed for funding by a "Unit of General Local Government" such as a Housing Authority. There is no basis, for TDHCA to exclude consideration of funding to any Unit of Local Government, limiting the award of points to funding a City or County.

Additionally, TDHCA proposes to penalize participation by a government instrumentality such as a Public Facility Corporation PFC) created under Chapter 303 of the Texas Local Government Code that was adopted by the Texas Legislature, so that local governments such as a City, County, Housing Authority or other Units of Local Government can carry out activities with their instrumentalities as such. There are many HTC developments in Texas sponsored by Units of Local Government using their instrumentality's PFC;TDHCA needs to remove from the QAP the proposed restrictions on instrumentalities.

Section 11.9(e) (4) (A) (I) Leveraging of Private, State, and Federal Resources: Needs to include leveraging of funding from the Public Housing Program Capital Fund, Project Based Vouchers, and Section 8 Vouchers to assist families with their relocation.

Respectfully,

Mary Vela
Executive Director

Comment (40)
Alice Menendez, HK Capital Management

Alice Menendez, HK Capital Mgmt (40)

I would like to register a comment regarding the Revitalization Plan scoring element. Limiting revitalization plan points to sites targeted for CDBG-Disaster Recovery funding unnecessarily penalizes viable, beneficial rehabilitation projects which are outside of these target areas. There are many locally-recognized plans for revitalization, including one for the Gulfton neighborhood where I work, which was funded by the Department of Education, for example, which address the need for quality affordable housing, which are not linked to the CDBG-DR process. Additionally, my impression is that the CDBG-DR funding recipients in Houston will not be determined in time for these awards to be considered in this 9% LIHTC application cycle.

I would encourage TDHCA to broaden this scoring element to include other types of revitalization plans which are recognized by the City or relevant authority.

I understand that this scoring element is closely tied to the lawsuit Civil Action No. 3:08-CV-0546-D with the Inclusive Communities Project. I hope that this can be resolved in such a way that projects (particularly if they are not new construction) in difficult to develop areas, which do not have a high concentration of tax credit developments, and which have revitalization plans unconnected to CDBG-DR funds will remain competitive with developments in High Opportunity Areas.

Comment (41)
Ron Kowal, Housing Authority of the City of Austin &
The Austin Affordable Housing Corporation

From: JEN JOYCE
To: teresa.morales@tdhca.state.tx.us;
Subject: QAP Public Comment
Date: Monday, October 22, 2012 3:44:27 PM

Hi Teresa, here is the comment I referred to earlier. Would you mind confirming that you received this? Also, as we discussed, for the record, please record this comment as coming from Ron Kowal (signature below), on behalf of HACA and AAHC. Thanks so much! – Jen

Ms. Morales,

On behalf of the Housing Authority of the City of Austin ("HACA") and the Austin Affordable Housing Corporation ("AAHC"), I hereby submit the following comments to the draft 2013 Qualified Allocation Plan, §11.5(3)(D), regarding the At-Risk Set-Aside.

Pursuant to §11.5(3)(D), the redevelopment of public housing qualifies for At-Risk designation where "no less than 25 percent of the proposed Units must be public housing units" in the final project. While HACA and AAHC understands that some of the language in this section regarding the At-Risk set-aside is required by statute, we ask that the TDHCA Board use its discretion so that the proposed language is modified to read that, "no less than 25 percent of the proposed Units must be public housing units or units assisted by a project-based rental subsidy agreement with a term of at least 15 years."

We believe that the 25% benchmark standard is appropriate as written; however, restricting the designation to, "public housing units" fails to include units subsidized via a project-based rental assistance contract, which is the direction of national housing policy with the U.S. Department of Housing and Urban Development ("HUD"). Due to financial and budgetary constraints, HUD must identify other funding sources to preserve and improve aging properties, as it can no longer continue to subsidize Public Housing Authorities ("PHAs") at previous levels. Under the current public housing financing model, PHAs cannot access private debt. Through current HUD programs and initiatives, such as the Rental Assistance Demonstration and the Choice Neighborhood Initiative, HUD encourages the conversion of existing public housing units to units covered by a long-term, project-based rental assistance contract. These new initiatives are based on HUD's recognition that the lack of federal funding will make maintaining the current public housing structure untenable, and that future funding must be focused on tenant rental subsidy, and not the funding of public housing authority entities or physical assets. The conversion of the assistance from public housing to project-based rental assistance enables PHAs and owners to access private debt and equity to address immediate and long-term capital needs. At their core, these initiatives focus on the preservation and improvement of "at-risk" public housing properties, without additional federal subsidy funding. We believe our proposed language is in line with current HUD policy, and the spirit of the At-Risk set-aside when enacted under §2306. Our proposed language would marry HUD's concept of preserving public housing properties by accessing private debt and equity, with TDHCA's priority of preserving at-risk public housing units.

Ron Kowal

Vice-President, Asset Management/Housing Development

Austin Affordable Housing Corporation

A subsidiary of The Housing Authority City of Austin

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"75 years of Empowering Families and Fostering Community"

P Please consider the environment before printing this e-mail.

Comment (42)
David Liette, Miller Valentine Group

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October 22, 2012

Mr. J. Paul Oxner, Chairman and
Board Members of the
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, Texas 78701

Re: 2013 Qualified Allocation Plan

Dear Chairman Oxner and Members of the TDHCA Governing Board,

In regards to the board approved draft of the 2013 QAP, we ask that you consider revising the following scoring items. We appreciate the open process as well as the ability for applicants to comment on the allocation plan and feel that the following changes will help to provide high-quality affordable housing in areas of the greatest need.

Sponsor Characteristics – While we are in agreement that there should be a level of experience in affordable housing required to gain this point, we do not agree that the experience requirement should be limited to just development experience in the state of Texas. This scoring item discourages competition and does not recognize the benefit gained from allowing experienced, out-of-state developers, with a proven track record of successfully operating LIHTC properties, to compete on a level playing field. The LIHTC program benefits when an objective process is used to award the highest quality developments in areas of the greatest need. If the intent of this scoring item is to incentivize high-quality developers, with a proven track record of success, we recommend increasing the 8609 requirement to fifty (50) properties and deleting the requirement for these properties to be located in Texas. This change would ensure that only highly experienced development groups would qualify for these points.

In addition, if it is the intent of the department to incentivize experienced development groups to partner with Historically Underutilized Businesses, maximum points should be reasonably achievable for out-of-state development companies that elect to partner with inexperienced HUBs. Allowing only in-state development groups

to maximize these points discourages competition and in no way creates a better affordable housing program or better housing options for low-income residents.

Points for Quantifiable Community Participation – As it currently stands, developments that received opposition in previous rounds but have now gained support are eligible to receive two additional points. This scoring item will obviously benefit only a select number of applicants and does not create a fair and level playing field. Furthermore, in no way does this scoring item work to achieve the objective of creating high-quality housing in areas with the greatest need.

Community Revitalization Plan - The points currently associated with this scoring item do not take into consideration the population of the city in which the revitalization plan is located. Larger urban cities, such as Houston and Dallas, have sufficient budgets to qualify for maximum points under this item. Smaller cities will not be able to receive these points due to budgetary constraints. This in turn will cause most developers to target revitalization areas in large cities. Consequently, these areas are typically located in QCTs and other low-income areas. We believe that this will result in a high number of awards in QCTS and therefore not meet the objectives citied in the remedial plan. This will also not contribute to achieving TDHCAs goal of placing high-quality housing in High Opportunity Areas, as defined in the QAP.

Cost of Development Per Square Foot – The previous requirement of having hard cost caps allows applicants to have a clear understanding of the cost requirement before beginning the costly process of producing an application. We recommend that this scoring item remain consistent with the scoring requirements of the 2012 QAP.

Thank you for taking the time to review our comments. Miller Valentine is dedicated to creating high-quality, affordable housing in the areas of Texas with the greatest need. We appreciate your consideration and look forward to working with you in the future.

Best regards,

David R. Liette, Partner
President
MV Residential Development

cc: Tim Irvine, Executive Director
Cameron Dorsey, Director of Housing Tax Credits

Comment (43)
David Mark Koogler, Mark-Dana Corporation

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October 22, 2012

Texas Department of Housing and
Community Affairs
221 East 11th Street
Austin, Texas 78701-2410
Attn.: TDHCA Board Members
TDHCA Staff

Re: Comments to 2013 Multifamily Program Rules - Qualified Allocation Plan (collectively the "QAP") Approved by the Governing Board of the Texas Department of Housing and Community Affairs ("TDHCA") For Public Comment At Its September 6, 2012 Board Meeting

Ladies and Gentlemen,

We appreciate the opportunity to provide comments to the proposed 2013 QAP.

We have reviewed the proposed QAP, attended the TDHCA QAP Workgroup Session in Austin, and the September 6, 2012 and October 9, 2012 THDCA Board meetings.

We have participated in developing the TAAHP consensus comments that have been and are being delivered to you and we support those comments. We are not repeating the TAAHP consensus comments in this letter unless we have additional points to make with respect to a particular comment.

We have the following additional questions / comments that we would like to bring to your attention.

1. General Comments

We strongly believe that the HTC program should promote good quality safe affordable housing with an emphasis on affordable. The current 2012 QAP and the proposed 2013 QAP have provisions that increase the cost of affordable housing unnecessarily, such as:

- requiring a minimum rehabilitation amount of $25,000 per unit (§10.101(b)(3));
- requiring an increased number of required amenities for larger projects and for rehab projects (§10.101(b)(5));
- requiring numerous tenant services (§11.9(c)(3));

- requiring a detailed civil engineering feasibility study which requires the civil engineer to review items that can be reviewed less expensively by the developer or others (such as the environmental site assessment and soils report) (§10.205(5)); and
- requiring sites to be within 1 mile (2 miles for Rural) of 6 amenities (§10.101(a)(2)). This requirement increases the cost of the land and increases the likelihood of neighborhood opposition.

2. Specific Questions/Comments

Our comments follow in the order of the particular section of the QAP:

§10.3(a)(56) Definition of Historically Underutilized Businesses (HUB):
Please make sure that limited liability companies are included. (The definition mentions Corporations, Sole Proprietorship, Partnership, or Joint Venture (which are capitalized terms, but we did not see a definition), but not limited liability company.)

§10.101(b)(4)(J) Mandatory Development Amenities:
Item (J) of Mandatory Development Amenities requires all developments to have "Energy-Star lighting in all Units which may include compact fluorescent bulbs." Please provide that LED light bulbs are acceptable as well.

§10.101(b)(5) Common Amenities:
Developments must provide a certain number of common amenities depending on the ranges of the number of Units in the development. We recommend adjusting the range for clause (iii) to be 41 to 80 Units (to more closely relate to the maximum number of Units permitted for Rural Developments) and adjusting clause (iv) to be 81 to 99 Units.

§10.204(5) Experience Requirement:
The experience requirement provision appears to have not changed from the 2012 QAP, however clause (A)(i) of Section 10.204(5) permits the use of "an experience certificate issued by the Department in the past two (2) years." In 2012 that meant that experience certificates issued in 2011 and 2010 were acceptable but in 2012 the same language will mean that experience certificates would need to be issued in 2011 or 2012 to be acceptable and experience certificates issued in 2010 will no longer be acceptable. We request that clause (A)(i) be written to read "an experience certificate issued by the Department in 2010, 2011, or 2012."

§10.204(7)(E)(i) Operating and Development Cost Documentation (Site Work costs):
In prior QAPs a detailed cost break down of site work costs prepared by a Third Party engineer was only required if site work costs exceeded $9,000 per Unit. The proposed 2013 QAP requires that a Third Party engineer prepare a detailed cost breakdown of projected Site Work costs in all circumstances where there are Site Work costs. It has been our experience that Third Party engineers do not typically determine cost estimates for site work costs. Requiring a Third Party engineer to certify to all estimated Site Work costs will increase the cost of preparing the HTC application further. Please only require Third Party engineer certification of Site Work costs for costs exceeding a threshold such as $15,000 per Unit (which is the threshold set forth in the 2013 QAP for requiring a CPA letter for allocating Site Work costs).

§10.205(5) Civil Engineer Feasibility Study:
As we noted last year, requiring a civil engineer feasibility study increases the cost of submitting an application significantly. Much of this work has to be re-done when complete construction plans are drawn. We feel it is inappropriate to ask all applicants to incur these costs at the application stage when a small percentage of applications will actually be awarded credits. Many of the items required to be included in the civil engineer feasibility study are items that should be the function of the developer and are not items that the civil engineer typically performs.

If you do not delete the requirement of a civil engineer feasibility study, please consider narrowing the scope of the study to reduce the time and cost of the study and to make clear that it is a preliminary study (as this provision is currently drafted, it reads as if a full and final study is required). If the civil engineering feasibility study is not deleted in its entirety, we request that you remove the following from the scope of the study:

- Survey
- Delete the following from the preliminary site plan: topography (unless, topography is generally available from online databases (at no additional cost)), water and waste water utility distribution, and retaining walls.
- Review of the Environmental Site Assessment.
- Review of the Geotechnical Report/Study
- Topography review (unless, topography is generally available from online databases (at no additional cost))
- Electric, Gas, and Telephone Service Summary
- Zoning/Site Development Ordinances
- Building Permit Process Summary, Fees and Timing (civil engineers sometimes work on site work permits, but do not usually work on building permits)

§10.402(h) Construction Status Report:
What is the purpose of submitting these reports? We believe that investors and lenders will want the partnership and construction loan documents kept confidential. We also note that the copy of the construction contract required to be delivered quarterly under clause (3) should probably be moved to clause (2) and only be required to be delivered at the time the construction loan documentation is delivered. Also, please note that construction lenders accept AIA G702 and G703 (or equivalent) forms that are not certified by the architect of record from time to time, especially near the end of construction when items covered by the draw may not need to be verified by the architect. Therefore we request that clause (3) be revised to remove the requirement of certification by the architect.

§11.9(b)(2) Sponsor Characteristics:
We request that the provisions under Sponsor Characteristics requiring Texas Housing Tax Credit experience be removed. As has been discussed at the past two TDHCA Board meetings, the Housing Tax Credit allocation process should be open to competition for in-State and out-of-State developers.

§11.9(d)(3) Commitment of Development Funding by Unit of General Local Government:
This provision requires that the Unit of Local Government be a city or county. Instrumentalities of a city or county will not qualify for points unless such instrumentalities are first awarding funds to the city or county for their administration or at least 60% of the governing board of the instrumentality is city council members or county commissioners, as applicable.

- As currently worded, this provision does not appear to include Economic Development Corporations (ECD) as a unit of local government. We are not sure that an ECD can first award the funds to the city. Also, it appears that ECDs may not have at least 60% of their governing board be city council members. For more information on ECDs please visit the Comptroller's web site: http://www.texasahead.org/tax_programs/typeab/. Also, see Annex A attached to this letter for excerpts from the Comptroller's web site describing how cities can form EDCs and who may be appointed to serve on their governing boards.
- We request that ECDs qualify as a Unit of Local Government.
- It appears arbitrary to require that an instrumentality have 60% of their governing board be city council members or county commissioners in order to qualify as a unit of local government under this section. We recommend that an instrumentality qualify as a unit of local government if its governing board is appointed by the city or county. An instrumentality's governing board may change from time to time, resulting in a situation in which the ECD would qualify under the this section of the QAP on one day and not on the next because a board member leaves, dies, resigns or is otherwise replaced.

We also note that HOME and CDBG funds administered by the State of Texas cannot be utilized for points under this scoring item. We are concerned that by permitting the use of HOME and CDBG funds from participating jurisdictions (PJs) but not from the State (non-PJs), only those areas in each Region that have PJ funds will attract applications for Housing Tax Credits.

We support TAAHPs recommendation that the award of such funds be required to occur no later than Commitment Notice (rather than August 1).

With respect to the determination of points under this provision, we request that the factor be determined based on a population of 250,000 (e.g. a factor of 0.06 in funding per Low Income Unit and $15,000 in funding per Low Income Unit, and so on for each of the point categories).

§11.9(d)(6) Community Revitalization Plan:
We suggest that Developments in Rural Areas be able to obtain six points if they can meet the criteria under subsections (A) or (B) of this section. Also, with respect to subsection (C), please consider increasing the time periods from 12 months to 24 months. It can take quite a while for projects of the type included in subsection (C) to be completed and the Development itself will more than likely not be completed within the currently required 12 month period. Also, please consider deleting the one (1) mile requirement for the construction of a new fire or police station and only require that the Development Site be in their service area. Finally, please consider including emergency care centers in clause (IV) relating to hospitals or expansion of hospitals.

§11.9(e)(2) Cost of Development per Square Foot:
We support TAAHP's recommendation with respect to this provision. If TDHCA decides not to follow TAAHP's recommendation and continue with this as proposed, please consider separating Qualified Elderly and Elevator Served Developments, more than 75% single family design, and Supportive Housing Developments into three separate categories under clause (A).

§11.9(e)(4) Leveraging of Private, State, and Federal Resources:
Has TDHCA Staff studied the impact of this proposed provision? It would be interesting to see how this new provision would have impacted the 2012 HTC applications. We suggest increasing each of the percentages by 0.75 (e.g. percentage in clause (ii) would change to 7.75 percent).

We appreciate the opportunity to provide comments to the QAP and hope that you will consider and make the changes that we have discussed. If you have any questions about our comments, please let us know.

Sincerely,

David Mark Koogler
President

ANNEX A

Type A and B Economic Development Corporations Overview

The Development Corporation Act of 1979 gives cities the ability to finance new and expanded business enterprises in their local communities through economic development corporations (EDCs). Chapters 501, 504, and 505 of the Local Government Code outline the characteristics of Type A and Type B EDCs, authorize cities to adopt a sales tax to fund the corporations and define projects EDCs are allowed to undertake.

Establishing the Corporation

Development Corporations

For both Type A and Type B, the Development Corporation Act requires cities to establish a corporation to administer the sales and use tax funds. The corporation must file a certificate of formation with the Secretary of State. The articles of incorporation must state that the corporation is governed by the Development Corporation Act of 1979 found in Chapters 501-505 of the Local Government Code.

Board of Directors

The boards of directors of both Type A and Type B EDCs serve at the pleasure of the city council and may be removed and replaced at any time and without cause. All funding agreements approved by an EDC must also be approved by the city council.
The composition of a corporation's board of directors and the length of a member's term differ between Type A and Type B.

Under Type A

The city council must appoint a board of directors with at least five members to serve terms up to six years. The statute does not specify qualifications for Type A corporation board members.

Under Type B

The city council must appoint a board of seven directors — up to four of whom can be employees or officers of the city or city council members — to serve two-year terms. If the city's population is 20,000 or more, the directors must be residents of the city. For cities with fewer than 20,000 residents, directors must be residents of the county in which the majority of the city is located, or reside within 10 miles of the city and in a county which borders the county in which a majority of the city is located.

Comment (44)
Donna Rickenbacker, Marque Real Estate Consultants

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October 21, 2012

Mr. J. Paul Oxer, Chairman and
Board Members of the
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: 2013 Draft Uniform Multifamily Rules and QAP (9.6.12 Release Date)

Dear Chairman Oxer and Members of the TDHCA Governing Board:

We would like to submit the following comments and recommended changes to the 2013 Draft of the Uniform Multifamily Rules and QAP approved by the TDHCA Governing Board on September 6, 2012 (Draft). Marque supports all recommendations of TAAHP submitted to the Department by letter dated October 19, 2012. The comments in this letter represent additional suggested changes not covered by TAAHP and will only touch on TAAHP recommendations to the extent of any supplemental comments to certain provisions covered in their letter for consideration by TDHCA.

A. Chapter 10 of the Texas Administrative Code - Uniform Multifamily Rules:

1. **Subchapter B – Site and Development Requirements and Restrictions.**

a. **§10.101. (a)(3) Undesirable Site Features** (relating to Site and Development Requirements and Restrictions). We recommend the following changes to subparagraph (B) of this paragraph:

"(B) Developments located adjacent to or within 300 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone, or the railroad in question is commuter or light rail or unless the Development Site will comply with applicable site acceptability standards set forth in 24 CFR Part 51, Subpart B – Noise Abatement and Control."

b. **§10.101. (b)(5) Common Amenities** (relating to Development Requirements and Restrictions). These amenities are not associated with any selection criteria points and are applicable to competitive and bond financed transactions. The Applicant must provide sufficient common amenities based on the number of units in the proposed Development. However, these amenities do not take into consideration the location of the site or the proposed Development type. It is impossible to comply with the number of amenities required if proposing a zero or minimum lot line Development common in downtown and city center areas of our state. We recommend the following changes to subparagraph (A) of this paragraph:

"(A) All Developments must provide sufficient common amenities as described in subparagraph (C) of this paragraph to qualify for at least the minimum number of points with zero lot line Developments required to qualify for only 50% of the required points, required in accordance with:"

c. **§10.101. (b)(6)(B) Unit Amenities** (relating to Development Requirements and Restrictions). We recommend the following changes to this subparagraph to take into consideration an adjustment in required amenities when considering an Adaptive Reuse Development especially those that involve historic preservation of older buildings:

"Rehabilitation Developments will start with a base score of (3 points), and Supportive Housing and Adaptive Reuse Developments will start with a base score of (5 points)."

2. **Subchapter C – Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules.**

a. **§10.208. Forms and Templates.** This section includes the 2013 Electronic Application Filing Agreement, Templates and other Application certifications and forms to be used in the Uniform Application. We recommend removing this Section from the Uniform Multifamily Rules. These forms and templates are not rules and any changes made to these documents will require Board approval.

B. Chapter 11 of the Texas Administrative Code – Qualified Allocation Plan:

1. **§11.8(b)(1)(B) Pre-Application Threshold Criteria** (relating to Pre-Application Requirements). We recommend that the funding request be an *"approximate"* request. The Applicant will not have the benefit of all Third Party Reports and other information by Pre-Application necessary to make a final tax credit determination.

2. **§11.8(b)(1)(E) Pre-Application Threshold Criteria** (relating to Pre-Application Requirements). We recommend that the Total Number of Units being proposed be an *"approximate"* number of total Units. Again, the Applicant may not know at Pre-Application the exact number of Units it plans to develop. There needs to be some ability to adjust the total number of Units between Pre-Application and Application.

3. **§11.9(b)(2) Sponsor Characteristics** (relating to Competitive HTC Selection Criteria). We recommend removing from this scoring category any requirement to have Texas based experience. The program should require that Applicants and/or developers have experience in affordable housing none of which is in material noncompliance. Competition and variety of thought and product is good for the program and should not be discouraged. This scoring category should be limited to incentivizing through points participation in the program by inexperienced parties through HUB participation. It is also critical if we are truly trying to promote and support HUB participation in this program that the HUB not be a *"Related Party"* to the Applicant.

4. **§11.9(c)(2)(B) Rent Levels of Tenants** (relating to Criteria to Serve and Support Texans Most in Need). We recommend the following change to this subparagraph to make it consistent with §11.9(c)(1) Income Levels of Tenants. Without the following adjustment, Urban sites in Regions 11 and 13 (by way

of example) would be required to provide the same deep rent skewing as the MSAs of our largest Texas cities:

"(B) At least 10 percent of all low income Units at 30 percent or less of AMGI, or for a Development located in a Rural Area or in the non-MSAs of Dallas, Fort Worth, Houston, San Antonio or Austin 7.5 percent of all low income Units at 30 percent or less of AMGI (9 points)."

5. **§11.9(d)(2)(A) Community Input other than Quantifiable Community Participation** (relating to Criteria Promoting Community Support and Engagement). We recommend that TDHCA remove letters of opposition to count against letters of support from a community or civic organization. To the best of our knowledge there is no statutory or remedial plan requirement for this provision. The provision imposes an additional barrier to working in NIMBY areas of our state which in a lot of instances are HOAs and the mechanism would impede HOA development in conflict with the remedial plan.

6. **§11.9(d)(3) Commitment of Development Funding by Unit of General Local Government** (relating to Criteria Promoting Community Support and Engagement). This is a statutorily imposed scoring category and worth under the 2013 Draft QAP up to 13 points. For all practical purposes, if the Applicant does not receive these points then its application will not be competitive. As currently drafted, the use of HOME Investment Partnership Program or Community Development Block Grant funds administered by the State of Texas cannot be utilized for points under this scoring item. This prevents non-Participating Jurisdictions (non-PJ) from using these funds to qualify for these points putting many Non-PJ Urban areas at a tremendous disadvantage, many of which are in underserved HOAs with good schools exactly where the court order remedial plan is mandating that the program locate the housing. These smaller Urban cities and counties can't afford to make direct loans to affordable housing developments in the amounts proposed in order to maximize points in this scoring category, nor is it fair to require them to do so simply because their entitlement funds are administered by TDHCA. Please find as **Attachment I**, our recommended changes to this scoring item that supports the following:

a. Allowing entitlement funds administered by TDHCA to be utilized for points under this scoring item. This change will give an Applicant proposing a Development in a Non-PJ area a better chance of competing against proposed Developments in the larger Urban cities of Houston, Dallas, Ft. Worth, San Antonio and Austin that are allowed to utilize their HOME and CDBG funds as a qualifying funding source in this scoring item; and

b. Adjusting the scaling of points to encourage the leveraging of non-CDBG and HOME funding sources in the transaction. This follows the Department's desire to see more "local" participation in the transaction, and incentivizes those Applicants that have secured "non-traditional" sources of funds.

Although, not reflected in **Attachment I**, we also recommend that TDHCA adjust the amount of funding necessary to maximize the points. The funding amount is based on population. Under the current rules, a community of 100,000 or greater in population would be required to provide a loan in the amount of $15,000 per HTC unit which for a 120-unit development would mean a commitment of $1,800,000. This is an unfair funding requirement imposed on a medium sized Urban area of 100,000 in population that is

located and competing for tax credits in the same sub-region as one of the larger Urban cities of Houston, Dallas, Ft. Worth, San Antonio and Austin. We recommend moving the breakpoint from 100,000 to 250,000 in population, by changing the funding factor as follows:

(i) $15,000 = .06;
(ii) $10,000 = .04;
(iii) $5,000 = .02;
(iv) $1,000 = .004; and
(v) $500 = .002.

7. **§11.9(d)(6) Community Revitalization Plan** (relating to Criteria Promoting Community Support and Engagement). Please find as **Attachment II**, our recommended changes to this scoring item that supports the following:

a. Recognition that cities have several defined areas where they are incentivizing revitalization and redevelopment activities. The changes provide flexibility to allow the city to certify to an area that may not be defined as a "community revitalization plan" but has boundaries and where the city is or plans to spend significant resources to accomplish a defined purpose.

b. The points are based on where the project is located instead of a budget amount proposed to be used within the plan area. Points based on budgets are problematic when considering the size of the city and the revitalization efforts and type of funding to be used in a particular area.

8. **§11.9(e)(3) Pre-Application Participation** (relating to Criteria Promoting the Efficient Use of Limited Resources and Applicant Accountability). We recommend the *removal* of subparagraph (3)(A), which prevents the Applicant from qualifying for Pre-Application points if the total number of Units increases by more than 10 percent from Pre-Application to Application. The Applicant should not be penalized if after they complete their due diligence and receive final reports and funding decisions from Units of General Local Government they elect to increase the Total Units by more than 10 percent. Please be advised that re-notification is required if the number of units increase by more than 10 percent pursuant to §10.203 (Public Notifications of the Uniform Multifamily Rules) so all interested parties will be made aware of the election.

9. **§11.9(e)(4) Levering of Private, State, and Federal Resources** (relating to Criteria Promoting the Efficient Use of Limited Resources and Applicant Accountability). We recommend the following change to subparagraph (A)(i) of this paragraph:

"The Development leverages CDBG Disaster Recovery, HOPE VI, or Choice Neighborhoods funding, or is located in a Rural area or non MSA areas of Houston, Dallas, Ft. Worth, San Antonio and Austin, and the Housing Tax Credit Funding Request is less than 8 percent of the Total Housing Development Costs (3 points); or."

The levering required to achieve the maximum points in this scoring item is very difficult to achieve in Rural and non-MSA areas and will simply cause the Applicant to reduce the quality of the Development compromising the sustainability of the housing.

We appreciate the Board's consideration of these comments and recommended changes to the 2013 Rules and QAP. Thank you very much for all of the hard work that you do for the affordable housing program in Texas.

Sincerely,

Donna Rickenbacker

Donna Rickenbacker

cc: Tim Irvine, Executive Director
Cameron Dorsey, Director of Housing Tax Credits

Attachment I

(3) Commitment of Development Funding by Unit of General Local Government. (§2306.6710(b)(1)(E)). An Application may receive up to thirteen (13) points for a commitment of Development funding from the city or county in which the Development is proposed to be located. Development funding from instrumentalities of a city or county will not qualify for points under this scoring item unless such instrumentalities are first awarding such funds to the city or county for their administration or at least 60 percent of the governing board of the instrumentality is city council members from the city in which the Development will be located (for Developments located in a city) or county commissioners from the county in which the Development will be located (for Developments not located in a city). A government instrumentality may not be a Related Party to the Applicant. Development funding must be provided in the form of a construction and/or permanent loan with an interest rate no higher than the Applicable Federal Rate (AFR) and term of at least 5 years, a grant, an in-kind contribution, a contribution which will support the Development, such as vouchers, or combination thereof. Funds cannot have been provided to the Unit of General Local Government by the Applicant or a Related Party. ~~HOME Investment Partnership Program or Community Development Block Grant funds administered by the State of Texas cannot be utilized for points under this scoring item.~~ The Applicant must provide evidence in the Application that an application or request for the development funds has been submitted in the form of an acknowledgement from the applicable city or county. The acknowledgement must also state that a decision with regard to the awards of such funding will occur no later than August 1. A firm commitment of funds is required by Commitment or the points will be lost (except for Applicants electing the point under subparagraph (~~B~~C) of this paragraph).

(A) Applications will qualify for points based on the amount of funds at the levels described in clauses (i) – (v) of this subparagraph. For the purpose of this calculation, the Department will use the population of the Place from which the Development's Rural or Urban Area designation is derived. For developments located outside a census designated place, the Department will use the population of the nearest place.

(i) ~~twelve (12~~Ten (10) points for a commitment by a Unit of General Local Government of the lesser of the population of the Place multiplied by a factor of 0.15 in funding per Low Income Unit and $15,000 in funding per Low Income Unit;

(ii) ~~eleven (11~~Nine (9) points for a commitment by a Unit of General Local Government of the lesser of the population of the Place multiplied by a factor of 0.10 in funding per Low Income Unit and $10,000 in funding per Low Income Unit;

(iii) ~~ten (10~~eight (8) points for a commitment by a Unit of General Local Government of the lesser of population of the Place multiplied by a factor of 0.05 in funding per Low Income Unit and $5,000 in funding per Low Income Unit;

(iv) ~~nine (9~~seven (7) points for a commitment by a Unit of General Local Government of the lesser of the population of the Place multiplied by a factor of 0.025 in funding per Low Income Unit and ~~-~~$1,000 in funding per Low Income Unit; or

(v) ~~eight (8~~six (6) points for a commitment by a Unit of General Local Government of the lesser of the
population of the Place multiplied by a factor of 0.01 in funding per Low Income Unit and $500 in funding per Low Income Unit.

~~(B~~(B) Two (2) points may be added to the points in subparagraph (A) of this paragraph if at least 10% of the total Development funding is derived from non-HOME Investment Partnership Program or Community Development Block Grant funds.

(C) One (1) point may be added to the points in subparagraph (A) of this paragraph if the Applicant provides a firm commitment for funds in the form of a resolution from the Unit of General Local Government in the Application.

Attachment II

(6) Community Revitalization Plan.

(A) For Developments located in an Urban Area of Region 3.

(i) An Application may qualify to receive up to six (6) points if the proposed Development is located in an area covered by a community revitalization plan and that meets the criteria described in subclauses (I) – (VII) of this clause:

(I) The community revitalization plan must have been adopted by the municipality or county in which the Development is proposed to be located.

(II) The adopting municipality or county must have performed, in a process providing for public input, an assessment of the factors in need of being addressed as a part of such community revitalization plan. Factors to be considered may include:

(-a-) adverse environmental conditions, natural or manmade, that are material in nature and are inconsistent with the general quality of life in typical average income neighborhoods. By way of example, such conditions might include significant and recurring flooding, presence of hazardous waste sites or ongoing localized emissions not under appropriate remediation, nearby heavy industrial uses, or uses presenting significant safety or noise concerns such as major thoroughfares, nearby active railways (other than commuter trains), or landing strips; significant and widespread (e.g., not localized to a small number of businesses or other buildings) rodent or vermin infestation acknowledged to present health risks requiring a concerted effort; or fire hazards;

(-b-) presence of blighted structures;

(-c-) presence of inadequate transportation;

(-d-) lack of accessibility to and/or presence of inadequate health care facilities, law enforcement and fire fighting facilities, social and recreational facilities, and other public facilities comparable to those typically found in neighborhoods containing comparable but unassisted housing;

(-e-) the presence of significant crime;

(-f-) the presence, condition, and performance of public education; ~~or~~

(-g-) the presence of local business providing employment opportunities;

(-h-) any other factors that the municipality or county has targeted and committed resources to address within a defined area.

(III) A municipality is not required to identify and address all of the factors identified in clause (i) of this subparagraph, but it must set forth in its plan those factors that it has identified and determined it will address.

(IV) The adopting municipality or county must have based its plan on the findings of the foregoing assessment and must have afforded the public an opportunity to provide input and comment on the proposed plan and the factors that it would address. To the extent that issues identified require coordination with other authorities, jurisdictions, or the like, such as school boards or hospitals, the adopting municipality should include coordination with such bodies in its plan and, to the extent feasible, secure their cooperation.

(V) The adopted plan, taken as a whole, must be a plan that can reasonably be expected to revitalize the community and address in a substantive and meaningful way the material factors identified. ~~The adopted plan~~

must specifically address how the providing of affordable rental housing fits into the overall plan and is a necessary component thereof.

(VI) The adopted plan must describe the planned sources and uses of funds to accomplish its purposes.

(VII) To be eligible for points under this item, the community revitalization plan must already be in place as of the Pre-Application Final Delivery Date pursuant to §11.2 of this chapter evidenced by a certification that:

(-a-) the plan was duly adopted with the required public comment processes followed;

(-b-) the funding and activity under the plan has already commenced; and

(-c-) the adopting municipality or county has no reason to believe that the overall funding for the full and timely implementation of the plan will be unavailable.

(ii) Points will be awarded based on:

(I) Applications will receive six (6) points will be awarded if the proposed Development covered by the community revitalization plan hasis located in a total budgetQualified Census Tract; or projected economic value of $6,000,000 or greater;

(II) Applications will receive fourFour (4) points ifwill be awarded if the proposed Development covered by the community revitalization plan hasis not located in a total budget or projected economic value of at $4,000,000; orQualified Census Tract.

(III) Applications will receive two (2) points if the community revitalization plan has a total budget or projected economic value of at least $2,000,000.

(iii) At the time of the tax credit award the site and neighborhood of any Development must conform to the Department's rules regarding unacceptable sites.

(iv) It is recognized that municipalities and counties will need to devote time and effort to adopt a concerted revitalization plan that complies with the requirements of this scoring item. Therefore, for purposes of the 2013 Application Round only, the Department's Board may, in a public meeting, determine whether a revitalization plan substantively and meaningfully satisfies a revitalization effort, notwithstanding one or more of the factors in this subparagraph not having been satisfied. Such pre-clearance shall be prompted by a request from the Applicant pursuant to the waiver provisions in §10.207 of this title (relating to Waiver of Rules for Applications).

(B) For Developments located in Urban Areas outside of Region 3.

(i) An Application may qualify for up to six (6) points for meeting the criteria under subparagraph (A) of this paragraph (with the exception of being located in Region 3); or

(ii) An Application will qualify for six (6) points if the city or county has an existing plan for Community Development Block Grant – Disaster Relief Program (CDBG-DR) or Community Development Block Grant or HOME Investment Partnership Entitlement (CDBG or HOME Entitlement) funds that includes and meets the requirements of subclauses (I) – (V) of this clause. In order to qualify for points, the Development Site must be located in the targeta targeted area defined in the plan, and the Application must have a commitment of CDBG-DRthe applicable funds and receive a HUD Site and Neighborhood Clearance with HUD review and approval of such clearancefrom the municipality or county:

(I) the plan defines specific target areas for redevelopment ofthat includes housing that do not encompass the entire jurisdiction;

(II) the plan affirmatively addresses Fair Housing;

~~(III) the plan is subject to administration in a manner consistent with the findings of an Analysis of Impediments approved or accepted by HUD within the last three (3) calendar years;~~

~~(IV~~ (III) the plan is in place prior to the Pre-Application Final Delivery Date; and

(V) the plan (in its entirety) and a letter from a local governmental official with specific knowledge and oversight of implementing the plan are included in the pre-application.

Comment (45)
Eric Johnson
State Representative District 100

ERIC JOHNSON

DISTRICT 100
HOUSE OF REPRESENTATIVES

CAPITOL OFFICE:
P.O. BOX 2910
AUSTIN, TEXAS 78768-2910
(512) 463-0586 OFFICE
(512) 463-8147 FAX

DISTRICT OFFICE:
1409 S. LAMAR ST., SUITE 9
DALLAS, TEXAS 75215
(214) 565-5663 OFFICE
(214) 565-5668 FAX

October 15, 2012

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941

Dear Mr. Irvine:

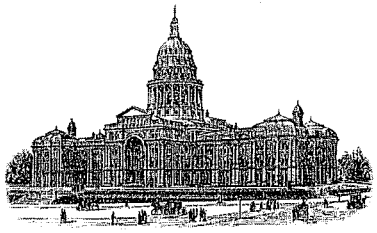
I believe the purpose of the *Low-Income Housing Tax Credit (LIHTC)* program is to provide low-income neighborhoods with the means to help revitalize their communities, particularly when conventional financing and affordable housing are not available.

I seek your continued support on this critical and urgent matter. Affordable housing in our urban, low-income neighborhoods is desperately needed.

I understand that the Inclusive Communities Project sued the Texas Department of Housing and Community Affairs (TDHCA) citing "disparate impact" under the Fair Housing Act due to a concentration of LIHTC having been awarded to projects in Qualified Census Tracts [QCT] and not enough in more affluent, High Opportunity Areas. As you know, the Federal courts' ruling that the TDHCA implement a proposed remedial plan in Dallas and surrounding counties will virtually curtail awards of LIHTC to inner-city neighborhoods.

It's my understanding that the TDHCA believes this ruling misconstrues Federal enabling law IRC §42, which requires preference be given to projects in low-income neighborhoods under revitalization, and the Fair Housing Act. I support that position.

Additionally, I support the TDHCA's Motion to alter or amend the recent judgment or if necessary, encourage you to seek a new trial, arguing that the Judge's ruling is in error: *"Section 42 of the Act shows a clear Congressional preference for assisting those with the lowest incomes, serving low-income tenants for the longest periods of time, and placing projects in QCTs .... Congress clearly intended that LIHTCs should be used to help low-income tenants for long periods of time and to revitalize low-income areas."*



COMMITTEES:
APPROPRIATIONS • HIGHER EDUCATION
JOINT OVERSIGHT COMMITTEE ON HIGHER EDUCATION GOVERNANCE, EXCELLENCE & TRANSPARENCY

For the TDHCA to now prefer projects in affluent suburbs would be discriminatory, thwart our communities' revitalization efforts, and would be unfair to residents wanting to continue to reside in their neighborhoods of choice. In furtherance of the court ruling, the TDHCA has proposed a new Qualified Action Plan (QAP) for 2013, which will be used for the scoring of the highly competitive LIHTC process throughout the state. The impact of the Remedial Plan and the Proposed QAP for 2012 has resulted in no projects in the North Texas QCT receiving an award (except for the Dallas Central Business District).

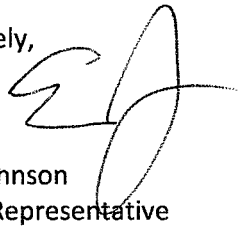
In collaboration with other community groups and State Representatives, I respectfully urge the following:

1. If the Judge denies the TDHCA's Motion to Alter the Judgment, or to have a new trial, TDHCA should appeal the decision and order;
2. TDHCA should file a motion requesting a Stay of the Judge's order until which time a court of final resort determines the case;
3. TDHCA should have only one QAP for the entire State of Texas, and
4. TDHCA should revise sections of its proposed 2013 QAP, so that projects in low-income neighborhoods that are part of a comprehensive revitalization supported by the City have a competitive opportunity to receive an award.

Low-income communities and their residents deserve the opportunity to have their neighborhoods revitalized into vital, thriving, vibrant communities. There is no conventional financing available and the LIHTC is our only hope to provide new affordable housing.

Please don't hesitate to contact me if you have any questions, or if I can provide any additional information on this issue.

Sincerely,



Eric Johnson
State Representative
District 100

cc:

Teresa Morales

Comment (46)
Bill Fisher, Sonoma Housing Advisors, LLC

From: Cameron Dorsey
To: Teresa Morales;
Subject: FW: QAP comments for the public comment period
Date: Monday, October 22, 2012 8:26:12 AM

From: Bill Fisher [mailto:bill.fisher@sonomaadvisors.com]
Sent: Sunday, October 21, 2012 2:29 PM
To: cameron.dorsey@tdhca.state.tx.us
Cc: jean.latsha@tdhca.state.tx.us
Subject: QAP comments for the public comment period

1. 11.7 B 1 (I) and 11.9.6. A Community Revitalization plans in pre app and full application: The revitalization plans you suggest are not allowed and should not be allowed under the approved remediation order in the ICP case. The Judge specifically left this out of his order (rejection of Frazier intervention) and stated his reasons why he left it out. For region 3, it will simply cause HTC to go to areas that created the fair housing issues raised in the case in lieu of them going to a more appropriate and impactful development in an opportunity area. This whole approach seems to be designed to give the credits to Frazier Court, which is clearly not agreed to in the remediation order and his fully served by HTC developments in that area. Those types of developments are not responsive to the needs of the community for affordable housing in HOA's (high opportunity areas). It is just projects like Frazier Court that work as 4% tax exempt bond transactions because they have subsidy and are in a boost area already. With community funds and low cost land and private contributions and funds from grants and other non-profit resources all help further these developments in the 4% round not the 9% round. I predict you will double up your problem with non-concentration by allowing 9% credit to some of these development site while addition 4% deal get done South of the Trinity River anyway. With the involvement of the federal court here we can no longer gamble with our fair housing compliance, particularly in region 3. What is the plan if the Judge does not allow it when he rules on the appeal you filed with him? Bad policy for the 9% round; good policy for the 4% projects.

2. 11.9.2 Sponsor Characteristics: HUD ownership must be protected

and rewarded as you suggest in the current version of the QAP. I fully support any and all preferences for sponsors with TEXAS experience. We get tons of HOME COOKING in other states. To be compliant here, all a newer out of state developer needs is to partner with an experienced Texas developer, likely a not for profit, so they get all these points anyway. It prevents hit and run development from out of state companies. It is also in the interest of Texans to have local or experienced folks to rely upon for compliance with our rules.

3. 4. Opportunity index: The register left out a Not I think here in the first paragraph. "..but the elementary school can NOT have a below acceptable rating". The NOT may be in your document.

4. 6. Under served criteria: As was discussed in comments to the Board, we have to have a proximity to the Colonias not the Colonias today to make this meaningful. I support a 1mile radius from a Colonia designated area.

5. d (1) B QCP: Technical assistance should specifically allow a referral of the community group by a developer to a pro bono legal source who can help insure they comply with the QAP requirements to insure their comments are scored and meaningful. Lone star legal aid or any other pro bono legal source where they do not get paid by the developer or affiliates and they do not also represent anyone on the development team should be encouraged and specifically articulated in this section of the QAP.

6. For the record, the combination of No neighborhood organization points with 4 points for Input other than QCP, exclusively when there is not organization equaling the standard points for the QCP from an established community organization is not compliant with the Statue and constitutes a work around of the requirement of the enabling legislation. It cannot combined score anywhere above the highest available score not mandated by the legislative waterfall of descending scoring criteria. See request for AG opinion by Rene O..

7. 3 Commitment of Development funding by UGLG: The HOME funds administered by TDHCA for NON Pj's are our HOME funds. They serve our non PJ areas of the State. You, TDHCA, are the closes unit of local

government to which these areas qualify for HOME funds. Those are non PJ HOME resources and MUST count as they have for 10 years as funding under this criteria. To count Brownsville HOME and not Cameron Counties non PJ HOME funds as a commitment here cuts out large areas of many regions without good cause. It is bad policy as proposed. Our NON PJ HOME must count for points like anyone's HOME investment money. Your policy reason is you want to use more TDHCA HOME in bond deals but they only work for the investors in Dallas, Houston, Austin and San Antonio MSA areas where the rents are high enough to support the reduction in equity in a 4% transaction. To focus the HOME funds in just these large MSA's is bad policy and not consistent with entire service region approach mandated by the legislator when allocating HOME resources. HFC's are a primary resource for funding affordable housing in many communities around the State. They have developed resources over the years in their HFC's to further fair housing and affordable housing in their jurisdictions. Funds from HFC's must count for this purpose without further political requirements.

8. 3. Same as 7 above: Interest rates related to AFR are impractical and we will be taking not adding resources to leverage 9% HTC. I suggest the interest rate be allowed to float or be fixed and the benchmark be Prime minus 1% as an acceptable below market interest rate benchmark. I further suggest that there is no difference to projections permanent capital stack from either 3 or 5 year loans. For many HFC's loan, which also must count for a contribution from the UGLG, and that a term of 3 years is more workable in the practical timeline of a HTC development. The permanent capital stack has to be in place for the long term stability of the development well before 5 years. So the 3 year timeline minimum is best. You could consider in the future awarding points related to the length of time the funding is in place. Rewarding permanent 15-17 year capital stacks over shorter terms like 3-5 years. HFC's are a primary resource for funding affordable housing in many communities around the State. They have developed resources over the years in their HFC's to further fair housing and affordable housing in their jurisdictions. Their funds must count for this purpose without further political requirements.

9. 11.9.6 A: Bad policy and not consistent with the remediation order. Use this approach once you get approval from the Court, not before. I

support county CDBG DR funding in a plan as worthy but we cannot dictate what they ache in their plans. If the community is putting resources compliant with the HUD and GLO contract requirements that is all that should be needed to score these points. You must have these funds in hand at commitment notice deadline or you lose these points and the pre applications points. We are dictating their plan requirements too late in the CDBG DR processes to hold them to your criteria. These are long delayed funds and we need more not less flexibility to leverage them in these transactions. I ask you to strike B (ii) (I) and (V). Do long as the funds are timely committed and come through the GOC, HUD and GLO approved contract we should get all these points.

10. e (2) Cost of development per SF: I support the cost per SF rule you propose so long as we do not underwrite them to low cost levels. If marshal and swift underwriting says $80 per SF and the applicant tried to get by with $75 per SF we cannot allow that deal to go forward. I am supporting the 5% of the underwriters estimate for this determination. So if you go low on construction costs you can jeopardize your allocation. Costs have gone up in Texas by at least 10% in the last year due to the current boom in market MF. Do not fund or reward un-realistically low costs.

11. 7 Development Size points for $500K or less credit request for at least 50 HTC units: Good policy, consider giving this more weight, say an additional 5 points not 1 point. Please increase this to 5 points in the final version of the QAP. We will get a lot more projects built and lot more housing done with this approach. Try it; you will like it.

Comments from you board book review sheet, October 9, 2012:

1. Stop deviating from the RAF and keep them capped at the regions max award. 150% robs credits from other regions. We should try a year or two just staying with the 100% rules.

2. CDBG DR, 30% boost is good.

3. Leave HUB and TX Experience per my comments #2 above

4. HOA or Opportunity Index is fine as proposed

5. Colonia's underserve at 2500-5280 feet is good policy and makes practical sense.

6. Cost per SF: you are good with my comments on kicking out too low cost deals in underwriting, see #10 above

7. Leveraging: PHA using their own sources for extra points is not good policy. Keep your proposed policy. You must allow full points for TDHCA HOME funds in a qualifying NON PJ. Bad policy to do otherwise, see #9 above.

8. Development size should count on the HTC units not total units so I support the change to 50 units of HTC. Reward this and the $500K request or lower cap with 5 not 1 point.

9. As discussed in the board meeting on the 9th. If you make a good faith attempt and have good reason to believe you meet the criteria for the points at pre application or application you should not be penalized. But if you took points you clearly did not qualify for and hoped TDHCA missed it them a deduction seems like a reasonable deterrent to this application practice. If that is how it will be applied I support the current version.

I know staff is trying hard to turn a ship that needs to be turned for a lot of reasons. But we must encourage and score good practices. Equally we should discourage and not count for points bad practices or policies, current or past.

Please incorporate the proposed changes into the final board approval draft for the November 2012 meeting.

So it on the record, The Board is not using good policy by not allowing for forward commitments at all. For next year, we should allow this up to a % of

each year's cap, say 15% and establish criteria for them being done for specific reasons or circumstances. One circumstance or criteria we can use is comply with the fair housing act, which has not been our strength in the past.

If these comments need to be sent to someone specific in the department to be considered please let me know or just forward them to the right person.

Thank you

Bill

James R. (Bill) Fisher
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5430 LBJ Freeway, Suite 1200
Dallas, TX 75240
972-663-9368 Office
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Comment (47)
Stuart Shaw, Bonner Carrington

BONNER CARRINGTON

Chapter 10 – Uniform Multifamily Rules Comments (see attached pages for direct reference in rules published by the Department)

- 10.101 a 2 - Mandatory Site Characteristics - The department needs to expand to a 2 mile radius for Urban and 3 miles for Rural.

Please remove this requirement for Bond projects especially if the TDHCA is not the issuer. Let the local issuer, lenders and investors decide whether or not the market has amenities that are close by that could serve the community. There exist plenty of good bond project locations between urban and rural areas for instance, that would not qualify but are commercially and residential satisfactory or good sites.

The Department should allow multiple points for multiple amenities that fall into the same category. If there are multiple amenities near by that fall into the same category they are still amenities and therefore multiple points should be allowed.

Please add additional options or a mechanism for the Applicant to request approval for amenities that are not on the list.

- 10.101 a 3 - Please add an option for sound mitigation. Also add an option to address proximity to junk yards by measuring from the nearest residential building to the junk yard to allow for places where, for example, an entry could be within 300 feet of a junk yard, but the residential buildings are much farther away. The junk yard provision needs to be added because there could revitalization areas that have junk yards present. Another option to measuring the distance from the junk yard mitigation methods could be used (fences, landscaping, etc).

- 10.101 a 4 - Please remove this requirement or provide a better definition to the features that would render a site undesirable. There is too much subjectivity, especially in item D, and this should be removed. Almost any site could have a situation where this rule could be applied without further definition. After weighing options we believe this item should be removed from all other regions except Region 3. In region 3 please provide concise definition or method of determining how this item would be applied and how to mitigate features that may be considered negative. This is contradictory for revitalization areas as well.

- 10.101 b 6 B - Unit Amenities - reduce requirements for bond deals to 6 points or provide more options to arrive at the 7 points.

901 MOPAC EXPRESSWAY SOUTH BARTON OAKS PLAZA BUILDING IV SUITE 180 AUSTIN, TEXAS 78746
T: 512-220-8000 F: 512-329-9002

- 10. 101 b 7 Tenant Supportive Services - Add "or other services as may be approved by the Department."

- 10.204 (4) - Create a clear policy on how to request a verification for Urban or Rural.

- 10.208 Public Notification Template -
Remove the word low-income and replace with "low-income to moderate-income." This is basic marketing and honesty.

This needs to be changed because most communities have a negative reaction to the word low-income. The people that live in many HTC communities fall into the moderate-income range and we need to accurately portray that in the notifications that are sent out.

Chapter 11 – Qualified Allocation Plan Comments (see attached pages for direct reference in rules published by the Department)

- 11.4 4 b - Maximum Request Limit - Please increase the award amount per application to $2,000,000. In order for communities to be sustainable, over long periods of time, developers need to be able to develop larger communities. It's quality not quantity of communities and larger communities are more effective to manage.

- 11.7 1 - Tie-breaker one favors General Population. We recommend ranking application by Median Household income and award based on highest Median Household Income. In this scenario there would never be a need for the second tie-breaker. Ranking by MHI gives all applications an equal opportunity to compete.

- 11.8 b 1 I - Pre-App Submission - please move the requirement for submission of the revitalization plan to the full application deadline date for the 2013 round to give municipalities time to comply with the current requirements for a revitalization zone.

- 11.8 b 2 B i and ii Sponsor Characteristics - Please clarify the rule. Do these two items together mean that an Applicant can receive 3 points for having 5 existing tax credit developments or at least 3 existing tax credit developments?

- 11.8 b 4 - We recommend that there should be additional categories for points. For example, add a category that would allow any Development that does not serve General Population (elderly or supportive) in the top two quartiles of MHI that have an exemplary or recognized elementary school (4 points). As it stands right now the points awarded for the second quartile for non General Population communities is not equitable.

- 11.9 c 6 - Underserved Area - Instead of saying never on items C & D change the time limit to not having an award in the last 5 years.

Also, allow for two points for any Target Population instead of favoring General.

- 11.9 d 1 C Points for QCP - remove the two bonus points for groups that previously opposed a transaction. If this point item is kept the effect could cause the program problems in the future. There is an opportunity for developers to encourage groups to oppose competitors' applications so that they may reapply in the area of opposition the next year.

This rule encourages opposition and frankly our industry does not need to encourage local groups to oppose applications. In order to accommodate the requirements of the Remedial Plan please limit the bonus scoring to Region 3 only.

- 11.9 d 3 Commitment of Development Funding by UGLG - Please allow TDHCA HOME funds to count towards this item. Otherwise it unfairly penalizes Developments in Non-PJs or do not allow HOME funds to count towards this item from any jurisdiction.

- 11.9 e 2 Cost Per Square Foot - Please return to the method used in the 2012 QAP. This is too big of a variable for developers considering how much money and time goes into an application. Really the new norm will be applications that center around the $80 PSF which encourages a race the bottom in terms of quality of units built.

- 11.9 e 5 Leveraging of Private, State and Federal Resources - Please increase item ii to 10% and item 3 to 11%. The very nature of this scoring item is going to force developers to underwrite more debt. The Department should be encouraging long term viability and not encourage Applicants to pursue riskier Developments.

- 11.10 5 - Please remove the ability to challenge this item. This is too subjective and open to frivolous challenges.

Chapter 12 - Multifamily Housing Revenue Bond Rules Comments (see attached pages for direct reference in rules published by the Department)

- 12.5 7 - Pre-Application Threshold Requirements - Please remove this as a requirement for bond deals or, at the very least, increase the area two 2 miles for Urban and 3 Miles for Rural.

Chapter 10 Comments - October 22, 2012

Summary of Comments on Uniform Multifamily Rules (Board approved Draft) (PDF)

Page: 15

Subchapter B – Site and Development Requirements and Restrictions

§10.101. Site and Development Requirements and Restrictions.

(a) Site Requirements and Restrictions. The purpose of this section is to identify specific restrictions related to a Development Site seeking multifamily funding or assistance from the Department.

(1) Floodplain. New Construction or Reconstruction Developments located within the one-hundred (100) year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site so that all finished ground floor elevations are at least one foot above the floodplain and parking and drive areas are no lower than six inches below the floodplain, subject to more stringent local requirements. If no FEMA Flood Insurance Rate Maps are available for the proposed Development Site, flood zone documentation must be provided from the local government with jurisdiction identifying the one-hundred (100) year floodplain. Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from the U.S. Department of Housing and Urban Development (HUD) or U.S. Department of Agriculture (USDA) are exempt from this requirement. However, where existing and ongoing federal assistance is not applicable such Rehabilitation (excluding Reconstruction) Developments will be allowed in the one-hundred (100) year floodplain provided the Unit of General Local Government has undertaken and can substantiate sufficient mitigation efforts and such documentation is submitted in the Application or the existing structures meet the requirements that are applicable for New Construction or Reconstruction Developments.

(2) Mandatory Site Characteristics. Developments Sites must be located within a one mile radius (two-mile radius for Developments located in a Rural Area) of at least six (6) services. Only one service of each type listed in subparagraphs (A) - (R) of this paragraph will count towards the number of services required. A map must be included identifying the Development Site and the location of the services by name. All services must exist or, if under construction, must be under active construction, post pad (e.g. framing the structure) by the date the Application is submitted:

(A) full service grocery store;

(B) pharmacy;

(C) convenience store/mini-market;

(D) department or retail merchandise store;

(E) bank/credit union;

(F) restaurant (including fast food);

(G) indoor public recreation facilities, such as civic centers, community centers, and libraries;

(H) outdoor public recreation facilities such as parks, golf courses, and swimming pools;

(I) medical offices (physician, dentistry, optometry) or hospital/medical clinic;

(J) public schools (only eligible for Developments that are not Qualified Elderly Developments);

(K) senior center;

(L) religious institutions;

(M) day care services (must be licensed - only eligible for Developments that are not Qualified Elderly Developments);

(N) post office;

(O) city hall;

(P) county courthouse;

(Q) fire station; or

Author: ccbump Subject: Highlight Date: 10/21/12 9:09:04 PM

10.101 a 2 - Mandatory Site Characteristics - The department needs to expand to a 2 mile radius for Urban and 3 miles for Rural.

Please remove this requirement for Bond projects especially if the TDHCA is not the issuer. Let the local issuer, lenders and investors decide whether or not the market has amenities that are close by that could serve the community. There exist plenty of good bond project locations between urban and rural areas for instance, that would not qualify but are commercially and residential satisfactory or good sites.

The Department should allow multiple points for multiple amenities that fall into the same category. If there are multiple amenities near by that fall into the same category they are still amenities and therefore multiple points should be allowed.

Please add additional options or a mechanism for the Applicant to request approval for amenities that are not on the list.

(R) police station.

(3) Undesirable Site Features. Development Sites with the undesirable features identified in subparagraphs (A) - (G) of this paragraph will be considered ineligible. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD or USDA are exempt. For purposes of this requirement, the term 'adjacent' means sharing a boundary with the Development Site. The distances are to be measured from the nearest boundary of the Development Site to the boundary of the undesirable feature. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph, staff may request a determination from the Board as to whether such feature is unacceptable.

(A) Developments located adjacent to or within 300 feet of junkyards;

(B) Developments located adjacent to or within 300 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail;

(C) Developments located adjacent to or within 300 feet of heavy industrial uses such as manufacturing plants, refinery blast zones, etc.;

(D) Developments located adjacent to or within 300 feet of a solid waste or sanitary landfills;

(E) Developments in which the buildings are located within the easement of any overhead high voltage transmission line or inside the engineered fall distance of any support structure for high voltage transmission lines, radio antennae, satellite towers, etc. This does not apply to local service electric lines and poles;

(F) Developments in which the buildings are located within the accident zones or clear zones for commercial or military airports; or

(G) Developments located adjacent to or within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined as stated in Local Government Code, §243.002.

(4) Undesirable Area Features. If the Development Site is located between 301 feet – 1,000 feet of any of the undesirable area features in subparagraphs (A) – (D) of this paragraph then the Applicant must disclose the presence of such feature to the Department. The standard to be applied in making a determination under this paragraph is whether the undesirable area feature is of a nature that would not be typical in a neighborhood that would qualify under the Opportunity Index pursuant to §11.9(c)(4) of this title (relating to Competitive HTC selection Criteria). For a Housing Tax Credit Application the Applicant is required to disclose the presence of such feature at the time the pre-application (as applicable) is submitted to the Department so as to expedite the review of such information. For all other types of Applications, and for those Housing Tax Credit Applicants who did not submit a pre-application, the Applicant is required to disclose the presence of such feature at the time the Application is submitted to the Department. Disclosure of such features affords the Applicant the opportunity to obtain pre-clearance of a particular Site from the Department in accordance with §10.207 of this chapter (relating to Waiver of Rules for Applications). Non-disclosure of such information may result in the Department's withholding or denial of pre-clearance. Denial or withholding of pre-clearance deems the Site ineligible and is grounds for termination of the Application. Should Department staff withhold or deny pre-clearance, Applicants may appeal the decision to the Board pursuant to §10.902 of this chapter (relating to Appeals Process. (§2306.0321; §2306.6715)). Should the Board uphold staff's decision or initially withhold or deny pre-clearance, the resulting determination of site ineligibility and termination of the Application cannot be appealed. The Board's decision cannot be appealed.

(A) A history of significant or recurring flooding;

(B) Significant presence of blighted structures;

(C) Fire hazards that could impact the fire insurance premiums for the proposed Development; or

Author: ccbump Subject: Highlight Date: 10/21/12 9:14:27 PM
10.101 a 3 - Please add an option for sound mitigation. Also add an option to address proximity to junk yards by measuring from the nearest residential building to the junk yard to allow for places where, for example, an entry could be within 300 feet of a junk yard, but the residential buildings are much farther away. The junk yard provision needs to be added because there could revitalization areas that have junk yards present. Another option to measuring the distance from the junk yard mitigation methods could be used (fences, landscaping, etc).

Author: ccbump Subject: Highlight Date: 10/21/12 9:14:57 PM
10.101 a 4 - Please remove this requirement or provide a better definition to the features that would render a site undesirable. There is too much subjectivity, especially in item D, and this should be removed. Almost any site could have a situation where this rule could be applied without further definition. After weighing options we believe this item should be removed from all other regions except Region 3. In region 3 please provide concise definition or method of determining how this item would be applied and how to mitigate features that may be considered negative. This is contradictory for revitalization areas as well.

Author: ccbump Subject: Highlight Date: 10/19/12 11:45:27 AM
10.101 b 6 B - Unit Amenities - reduce requirements for bond deals to 6 points or provide more options to arrive at the 7 points.

Rehabilitation, etc.) as provided in the most recent version of the Enterprise Green Communities Criteria found at http://www.greencommunitiesonline.org.

(III) LEED (4 points). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a LEED Certification, regardless of the rating level achieved (i.e. Certified, Silver, Gold or Platinum).

(IV) National Green Building Standard (NAHB Green) (4 points). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NAHB Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(6) **Unit Requirements**.

(A) **Unit Sizes**. Developments proposing New Construction or Reconstruction will be required to meet the minimum sizes of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with any selection criteria. Developments proposing Rehabilitation (excluding Reconstruction) or Supportive Housing Developments will not be subject to the requirements of this subparagraph.

(i) five hundred (500) square feet for an Efficiency Unit;

(ii) six hundred (600) square feet for a one Bedroom Unit;

(iii) eight hundred (800) square feet for a two Bedroom Unit;

(iv) one thousand (1,000) square feet for a three Bedroom Unit; and

(v) one thousand, two-hundred (1,200) square feet for a four Bedroom Unit;

(B) **Unit Amenities**. Housing Tax Credit Applications may select amenities for scoring under this section but must maintain the points associated with those amenities by maintaining the amenity selected or providing substitute amenities with equal or higher point values. Tax Exempt Bond Developments must include enough amenities to meet a minimum of (7 points). Applications not funded with Housing Tax Credits (e.g. HOME Program) must include enough amenities to meet a minimum of (4 points). The amenity shall be for every Unit at no extra charge to the tenant. The points selected at Application and corresponding list of amenities will be required to be identified in the LURA, and the points selected at Application must be maintained throughout the Compliance Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of (3 points) and Supportive Housing Developments will start with a base score of (5 points).

(i) Covered entries (0.5 point);

(ii) Nine foot ceilings in living room and all bedrooms (at minimum) (0.5 point);

(iii) Microwave ovens (0.5 point);

(iv) Self-cleaning or continuous cleaning ovens (0.5 point);

(v) Refrigerator with icemaker (0.5 point);

(vi) Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the property site (0.5 point);

(vii) Laundry equipment (washers and dryers) for each individual Unit including a front loading washer and dryer in required UFAS compliant Units (1.5 points);

(viii) Thirty (30) year shingle or metal roofing (0.5 point);

(ix) Covered patios or covered balconies (0.5 point);

(x) Covered parking (including garages) of at least one covered space per Unit (1 point);

(xi) 100 percent masonry on exterior (1.5 points) (Applicants may not select this item if clause (xii) of this subparagraph is selected);

(xii) Greater than 75 percent masonry on exterior (0.5 point) (Applicants may not select this item if clause (xi) of this subparagraph is selected);

(xiii) R-15 Walls / R-30 Ceilings (rating of wall/ceiling system) (1.5 points);

(xiv) 14 SEER HVAC (or greater) or evaporative coolers in dry climates for New Construction, Adaptive Reuse, and Reconstruction or radiant barrier in the attic for Rehabilitation (excluding Reconstruction) (1.5 points);

(xv) High Speed Internet service to all Units (1 point).

(7) **Tenant Supportive Services**. The supportive services include those listed in subparagraphs (A) – (T) of this paragraph. Tax Exempt Bond Developments must select a minimum of (8 points); Applications not funded with Housing Tax Credits (e.g. HOME Program or other Direct Loans) must include enough amenities to meet a minimum of (4 points). The points selected and complete list of supportive services will be included in the LURA and the timeframe by which services are offered must be in accordance with §10.614 of this chapter (relating to Monitoring for Social Services) and maintained throughout the Compliance Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. No fees may be charged to the tenants for any of the services and there must be adequate space for the intended services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item.

(A) joint use library center, as evidenced by a written agreement with the local school district (2 points);

(B) weekday character building program (shall include at least on a monthly basis a curriculum based character building presentation on relevant topics, for example teen dating violence, drug prevention, teambuilding, internet dangers, stranger danger, etc. (2 points);

(C) daily transportation such as bus passes, cab vouchers, specialized van on-site (4 points);

(D) Food pantry/common household items accessible to residents at least on a monthly basis (1 point);

(E) GED preparation classes (shall include an instructor providing on-site coursework and exam) (1 point);

(F) English as a second language classes (shall include an instructor providing on-site coursework and exam) (1 point);

(G) quarterly financial planning courses (i.e. homebuyer education, credit counseling, investing advice, retirement plans, etc.). Courses must be offered through an on-site instructor; a CD-Rom course is not acceptable (1 point);

(H) annual health fair (1 point);

(I) quarterly health and nutritional courses (1 point);

(J) organized team sports programs or youth programs offered by the Development (1 point);

(K) scholastic tutoring (shall include weekday homework help or other focus on academics) (3 points);

(L) Notary Public Services during regular business hours (§2306.6710(b)(3)) (1 point);

(M) weekly exercise classes (2 points);

(N) twice monthly arts, crafts and other recreational activities such as Book Clubs and creative writing classes (2 points);

(O) annual income tax preparation (offered by an income tax prep service) (1 point);

Author: ccbump Subject: Highlight Date: 10/19/12 11:45:22 AM
10. 101 b 7 Tenant Supportive Services -

Add "or other services as may be approved by the Department."

(3) Contents of Notification. The notification must include, at a minimum, all information described in subparagraphs (A) – (F) of this paragraph:

(A) the Applicant's name, address, individual contact name and phone number;

(B) the Development name, address, city and county;

(C) a statement indicating the program(s) to which the Applicant is applying with the Texas Department of Housing and Community Affairs;

(D) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse or Rehabilitation;

(E) the type of Development being proposed (single family homes, duplex, apartments, townhomes, high-rise etc.); and

(F) the total number of Units proposed and total number of low-income Units proposed.

§10.204. Required Documentation for Application Submission.

The purpose of this section is to identify the documentation that is required at the time of Application submission unless specifically indicated or otherwise required by Department rule. If any of the documentation indicated below is not resolved, clarified or corrected to the satisfaction of the Department through either original Application submission or the Administrative Deficiency process, the Application will be terminated. Unless stated otherwise, all documentation identified in this section must not be dated more than six (6) months prior to the close of the Application Acceptance Period or the date of Application submission as applicable to the program. The Application may include documentation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, Development Site, or Development.

(1) Certification of Development Owner. This form, included in §10.208 of this chapter (relating to Forms and Templates), must be executed by the Development Owner and addresses the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification. Applicants are encouraged to read the certification carefully as it contains certain construction and Development specifications that each Development must meet.

(2) Certification of Principal. This form, included in §10.208 of this chapter, must be executed by all Principals and identifies the various criteria relating to eligibility requirements associated with multifamily funding from the Department.

(3) Architect Certification Form. This form, included in §10.208 of this chapter, must be executed by the Development engineer, an accredited architect or Department-approved Third Party accessibility specialist. (§2306.6722 and §2306.6730)

(4) Designation as Rural or Urban. Each Application must identify whether the Development Site is located in an Urban Area or Rural Area of a Uniform State Service Region. The Department shall make available a list of places meeting the requirements of Texas Government Code, §2306.004(28-a)(A) and (B) for designation as a Rural Area and those that are an Urban Area in the Site Demographics Characteristics Report. Notwithstanding the foregoing, an Applicant proposing a Development in a place listed as urban by the Department may be designated as located in a Rural Area if the municipality has less than 50,000 persons, as reflected in Site Demographics and Characteristics Report, and a letter or other documentation from USDA is submitted in the Application that indicates the Site is located in an area eligible for funding from USDA in accordance with Texas Government Code, §2306.004(28-a)(C). For any Development not located within the boundaries of a municipality, the applicable designation is that of the closest municipality or place.

(5) Experience Requirement. Evidence that meets the criteria as stated in subparagraph (A) of this paragraph must be provided in the Application. Experience of multiple parties may not be aggregated to meet this requirement.

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Author: rachel Subject: Highlight Date: 10/19/12 11:45:12 AM
10.204 (4) - create a clear policy on how to request a verification for Urban or Rural.

Public Notifications Template

[To be used as a template for meeting the requirements of §11.8(b)(2)(B) of the Qualified Allocation Plan, §12.5 of the Multifamily Housing Revenue Bond Rules as certified the Certification of Notifications at Pre-Application and §10.203(2), as certified in the Certification of Notifications at Application.]

[Date]
[Appropriate Individual/entity pursuant to §§11.8(b)(2)(B)(i) through (viii) and 10.203(2)(A) through (H) of the Multifamily General Rules]
[Address]
[City, State, Zip]

Dear **[xxxxxx]**,

[Applicant Name] is making an application for [Name all TDHCA Programs the application is for] with the Texas Department of Housing and Community Affairs for the **[Development name, address, city, and county]**. This **[New Construction/Reconstruction/Adaptive Reuse or Rehabilitation]** is an **[apartment, single family, townhome, high rise, duplex, scattered site, etc.]** community comprised of approximately **[#]** units of which **[% of total]** will be for low-income tenants.

There will be a public hearing to receive public comment on the proposed development. Information regarding the date, time, and location of that hearing will be disseminated at least 30 days prior to the hearing date on the Department's website.

Sincerely,

[Representative of the Applicant Name]
[Title]
[Name, Address, email, fax and telephone number if not on letterhead]

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Author: ccbump Subject: Highlight Date: 10/21/12 9:18:43 PM
10.208 Public Notification Template -

Remove the word low-income and replace with "low-income to moderate-income." This is basic marketing and honesty.

This needs to be changed because most communities have a negative reaction to the word low-income. The people that live in many HTC communities fall into the moderate-income range and we need to accurately portray that in the notifications that are sent out.

Chapter 11 Comments - October 22, 2012

(G) that the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under paragraph (1)(A) of this subsection. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual.

(3) Where a specific source of funding is referenced in paragraph (2)(A) - (D) of this subsection, a commitment or resolution documenting a commitment of the funds must be provided in the Application or prior to the Resolutions Delivery Date (for Tax Exempt Bond Developments the resolution must be submitted no later than 14 days prior to the Board meeting where the tax credits will be considered).

(d) Limitations on Developments in Certain Census Tracts. An Application that proposes the New Construction or Adaptive Reuse of a Development proposed to be located in a census tract that has more than 30 percent Housing Tax Credit Units per total households as established by the U.S. Census Bureau for the most recent Decennial Census shall be considered ineligible unless:

(1) the Development is in a Place whose population is less than 100,000; or

(2) the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and submits to the Department a resolution referencing this rule.

(e) Additional Phase. Applications proposing an additional phase of an existing tax credit Development serving the same Target Population, or Applications proposing Developments that are adjacent to an existing tax credit Development serving the same Target Population, or Applications that are proposing a Development serving the same Target Population on a contiguous site to another Application awarded in the same program year, shall be considered ineligible unless the other Developments or phase(s) of the Development have been completed and have maintained occupancy of at least 90 percent for a minimum six (6) month period as reflected in the submitted rent roll.

§11.4. Tax Credit Request and Award Limits.

(a) Credit Amount (Competitive HTC Only). (§2306.6711(b)) The Board may not allocate to an Applicant, Developer, Affiliate or Guarantor (unless the Guarantor is also the General Contractor, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an amount greater than $3 million in a single Application Round. All entities that share a Principal are Affiliates. For purposes of determining the $3 million limitation, a Person is not deemed to be an Applicant, Developer, Affiliate or Guarantor solely because it:

(1) raises or provides equity;

(2) provides "qualified commercial financing;"

(3) is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services; or

(4) receives fees as a Development Consultant or Developer that do not exceed 10 percent of the Developer Fee (or 20 percent for Qualified Nonprofit Developments) to be paid or $150,000, whichever is greater.

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150 percent of the credit amount available in the sub-region based on estimates released by the Department on December 1, or $1,500,000, whichever is less, or $2,000,000 for Applications under the At-Risk Set-Aside. The Department will consider the amount in the Funding Request of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant's request to the maximum allowable under this subsection if exceeded. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than $2 million in a single Application Round. (§2306.6711(b))

Summary of Comments on Qualified Allocation Plan (Board approved Draft) (PDF)

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Author: ccbump Subject: Highlight Date: 10/21/12 9:04:00 PM
11.4 4 b - Maximum Request Limit -

Please increase the award amount per application to $2,000,000. In order for communities to be sustainable, over long periods of time, developers need to be able to develop larger communities. It's quality not quantity of communitiesi and larger communities are more effective to manage.

(F) Contingent Qualified Nonprofit Set-Aside Step (Step 6). If an insufficient number of Applications participating in the Nonprofit Set-Aside are selected after implementing the criteria described in subparagraphs (A) – (F) of this paragraph to meet the requirements of the 10 percent Nonprofit Set-Aside, action must be taken to modify the criteria described in subparagraphs (A) – (F) of this paragraph to ensure the set-aside requirements are met. Therefore, the criteria described in subparagraphs (C) – (F) of this paragraph will be repeated after selection of the highest scoring Application(s) under the Nonprofit Set-Aside statewide are selected to meet the minimum requirements of the Nonprofit Set-Aside. This step may cause some lower scoring Applications in a sub-region to be selected instead of a higher scoring Application not participating in the Nonprofit Set-Aside.

(4) Waiting List. The Applications that do not receive an award by July 31 and remain active and eligible will be recommended for placement on the waiting list. Applications on the waiting list are selected for an award when the remaining balance of tax credits is sufficient to award the next Application on the waiting list. The waiting list is not static. The allocation process will be used in determining the Application to award. For example, if credits are returned, those credits will first be made available in the set-aside or sub-region from which they were originally awarded. This means that the first Application on the waiting list is in part contingent on the nature of the credits that became available for award. (§2306.6710(a) - (f); §2306.111)

§11.7. Tie Breaker Factors. In the event there are Competitive HTC Applications that receive the same number of points in any given set-aside category, rural regional allocation or urban regional allocation, or rural or state collapse, the Department will utilize the factors in this section, in the order they are presented, to determine which Development will receive preference in consideration for an award. The tie breaker factors are not intended to specifically address a tie between equally underserved sub-regions in the rural or statewide collapse.

(1) Applications ranking higher on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.

(2) Applications proposed to be located the greatest distance from the nearest Housing Tax Credit assisted Development.

§11.8. Pre-Application Requirements (Competitive HTC Only).

(a) General Submission Requirements. The pre-application process allows Applicants interested in pursuing an Application to assess potential competition across the thirteen (13) state service regions, sub-regions and set-asides. Based on an understanding of the potential competition they can make a more informed decision whether they wish to proceed to prepare and submit an Application. A complete pre-application is a pre-application that meets all of the Department's criteria, as outlined in subsections (a) and (b) of this section, with all required information and exhibits provided pursuant to the Multifamily Programs Procedures Manual.

(1) The pre-application must be submitted, along with the required pre-application fee as described in §10.901 of this chapter (relating to Fee Schedule), no later than the Pre-application Final Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits). If such pre-application and corresponding fee are not submitted on or before this deadline the Applicant will be deemed to have not made a pre-application.

(2) The pre-application shall consist of one (1) CD-R containing a PDF copy and Excel copy to the Department in the form of a single file and individually bookmarked as presented in the order as required in the Multifamily Programs Procedures Manual.

(3) Only one pre-application may be submitted by an Applicant for each Development Site.

(4) Department review at this stage is limited, and not all issues of eligibility and threshold are reviewed or addressed at pre-application. Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. While the pre-application is more limited in scope than an Application, pre-applications are subject to the same limitations,

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Author: ccbump Subject: Highlight Date: 10/19/12 3:31:28 PM
11.7 1 - Tie-breaker one favors General Population. We recommend ranking application by Median Household income and award based on highest Median Household Income. In this scenario there would never be a need for the second tie-breaker. Ranking by MHI gives all applications an equal opportunity to compete.

restrictions, or causes for disqualification or termination as a full Application, and pre-applications will thus be subject to the same consequences for violation, including but not limited to loss of points and termination of the pre-application.

(b) Pre-Application Threshold Criteria. Pursuant to Texas Government Code, §2306.6704(c) pre-applications will be rejected unless they meet the threshold criteria described in paragraphs (1) and (2) of this subsection:

(1) Submission of the competitive HTC pre-application in the form prescribed by the Department which identifies at a minimum:

(A) Site Control meeting the requirements of §10.204(9) of this title (relating to Required Documentation for Application Submission);

(B) Funding request;

(C) Target Population;

(D) Requested set-asides (At-Risk, USDA, Nonprofit, and/or Rural);

(E) Total Number of Units proposed;

(F) Census tract number in which the Development Site is located;

(G) Expected score for each of the scoring items identified in the pre-application materials;

(H) All issues requiring waivers necessary for the filing of an eligible Application; and

(I) Any community revitalization plan the Applicant anticipates using for points under §11.9(d)(6) of this chapter (relating to Competitive HTC Selection Criteria).

(2) Evidence in the form of a certification provided in the pre-application, that all of the notifications required under this paragraph have been made. (§2306.6704)

(A) Neighborhood Organization Requests. The Applicant must request a list of Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site:

(i) No later than the Pre-application Neighborhood Organization Request Date identified in §11.2 of this chapter, the Applicant must e-mail, fax or mail with registered receipt a completed Neighborhood Organization Request letter as provided in the pre-application to the local elected official, as applicable, based on where the Development is proposed to be located. If the Development is located in an area that has district based locally elected officials, or both at-large and district based locally elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located in an area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or it's ETJ, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format;

(ii) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as provided by the local elected officials, or that the Applicant has knowledge of (regardless of whether the organization is on record with the county or state) as of the date of pre-application submission.

(B) Notification Recipients. No later than the date the pre-application is submitted, notification must be sent to all of the persons or entities prescribed in clauses (i) – (viii) of this subparagraph whose jurisdiction or boundaries include the Development Site. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with registered return receipt or similar tracking mechanism in the format required in the Pre-application Notification Template provided in the pre-application. The Applicant is encouraged to retain proof of delivery in the event the Department requires proof of notification. Acceptable evidence of such delivery is demonstrated by signed receipt

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Author: ccbump Subject: Highlight Date: 10/19/12 11:50:47 AM
11.8 b 1 I - Pre-App Submission - please move the requirement for submission of the revitalization plan to the full application deadline date for the 2013 round to give municipalities time to comply with the current requirements for a revitalization zone.

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)) An Application may qualify for up to fourteen (14) points under subparagraphs (A) and (B) of this paragraph.

(A) Unit Sizes (7 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), for Developments receiving funding from USDA, or for Supportive Housing Developments without meeting these square footage minimums only if requested in the Self Scoring Form.

(i) five-hundred-fifty (550) square feet for an Efficiency Unit;

(ii) six-hundred-fifty (650) square feet for a one Bedroom Unit;

(iii) eight-hundred-fifty (850) square feet for a two Bedroom Unit;

(iv) one-thousand-fifty (1,050) square feet for a three Bedroom Unit; and

(v) one-thousand, two-hundred-fifty (1,250) square feet for a four Bedroom Unit.

(B) Unit Features (7 points). Applications in which Developments provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in §10.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions) and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments will start with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. §42(m)(1)(C)(iv) (2). An Application may qualify to receive points under subparagraph (A) or (B) of this paragraph.

(A) An Application may qualify to receive up to one (1) point provided the ownership structure meets one of the requirements described in clauses (i) – (iii) of this subparagraph:

(i) A Person with at least 50 percent ownership interest in the General Partner also owns at least 50 percent interest in the General Partners of at least three (3) existing tax credit developments in Texas, none of which are in Material Noncompliance. The IRS Form(s) 8609 must have been issued for each of the properties used for points under this paragraph and each must have a Uniform Physical Condition Standard (UPCS) score of at least 85 based on their most recent inspection.

(ii) The ownership structure of the Development Owner includes a joint venture between an experienced Developer and an inexperienced owner. In order to qualify for this point, the inexperienced party must be unable to obtain an Experience Certificate under §10.204(5) of this title (relating to Required Documentation for Application Submission). In addition, the experienced Owner must own at least 30 percent interest in the General Partner and also own at least 50 percent interest in the General Partner of at least three (3) existing tax credit developments in Texas, none of which are in Material Non-Compliance. The IRS Form(s) 8609 must have been issued for each of the properties used for points under this subparagraph and each must have a UPCS score of at least 85 based on their most recent inspection.

(iii) A HUB as certified by the Texas Comptroller of Public Accounts has at least 51 percent ownership interest in the General Partner, materially participates in the Development and operation of the Development throughout the Compliance Period, and will receive at least 20 percent of the cash flow from operations and at least 10 percent of the developer fee.

(B) An Application may qualify to receive up to three (3) points provided the ownership structure meets some combination of the requirements described in clauses (i) – (iii) of this subparagraph:

(i) A Person with at least 50 percent ownership interest in the General Partner also owns at least 50 percent interest in the General Partners of at least three (3) existing tax credit developments in Texas, none of which are in Material Noncompliance. The IRS Form(s) 8609 must have been issued for each of the properties used for points under this paragraph, and each must have a

Author: rachel Subject: Highlight Date: 10/19/12 11:51:10 AM

11.8(b)(2)(B)(i) and (ii) Sponsor Characteristics - Please clarify the rule. Do these two items together mean that an Applicant can receive 3 points for having 5 existing tax credit developments or at least 3 existing tax credit developments?

provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item.

(4) Opportunity Index. If the proposed Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (or 35 percent for Developments in Regions 11 and 13), an Application may qualify to receive up to seven (7) points upon meeting the additional requirements in subparagraphs (A) – (E) of this paragraph. The Department will base poverty rate on data from the most recent 5-year American Community Survey as available on November 15. Developments located in Rural Areas are exempt from meeting the elementary school and poverty rate factors under each of subparagraphs (A) – (E) of this paragraph, but the elementary schools in which tenants may attend can have a rating below acceptable in order to qualify for points. An elementary school attendance zone for the Development Site does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, districts with district-wide enrollment and only one elementary school are acceptable. The applicable school rating will be the 2011 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions.

(A) Development targets the general population; income in the census tract is in the top quartile of median household income for the county or MSA as applicable and the elementary school is exemplary or recognized (7 points);

(B) Development targets the general population; income in the census tract is in the top two quartiles of median household income for the county or MSA as applicable and the elementary school is exemplary or recognized (5 points);

(C) Any Development, regardless of population served is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable and the elementary school is exemplary or recognized (5 points);

(D) Any Development, regardless of population served is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable (3 points); or

(E) Any Development, regardless of population served is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable (1 point).

(5) Educational Excellence. An Application may qualify to receive up to three (3) points for a Development Site located within the attendance zone of a public school with an academic rating of recognized or exemplary (or comparable rating) by the Texas Education Agency, as described in subparagraphs (A) and (B) of this paragraph. An attendance zone does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, districts with district-wide enrollment and only one elementary, middle or high school (as applicable) are acceptable. The applicable school rating will be the 2011 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade

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Author: rachel Subject: Highlight Date: 10/19/12 11:55:57 AM
11.8(b)(4) We recommend that there should be additional categories for points. For example, add a category that would allow any Development that does not serve General Population (elderly or supportive) in the top two quartiles of MHI that have an exemplary or recognized elementary school (4 points). As it stands right now the points awarded for the second quartile for non General Population communities is not equitable.

center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings.

(A) Development is within the attendance zone of an elementary school, a middle school and a high school with an academic rating of recognized or exemplary (3 points); or

(B) Development is within the attendance zone of an elementary school and either a middle school or high school with an academic rating of recognized or exemplary (1 point).

(6) Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive up to two (2) points for proposed Developments located in one of the areas in subparagraphs (A) – (D) of this paragraph. Points will be awarded based on the Development's Target Population as identified in subparagraph (E) or (F) of this paragraph.

(A) A Colonia;

(B) An Economically Distressed Area;

(C) A municipality, or if outside of the boundaries of any municipality, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation; or

(D) For Rural Areas only, a census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation serving the same Target Population.

(E) General or Supportive Housing Developments (2 points); or

(F) Qualified Elderly Developments (1 point).

(7) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive up to two (2) points for Developments in which at least 5 percent of the Units are set aside for Persons with Special Needs. For purposes of this scoring item, Persons with Special Needs is defined as persons with alcohol and/or drug addictions, Colonia residents, Persons with Disabilities, victims of domestic violence, persons with HIV/AIDS, homeless populations and migrant farm workers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require a minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant. After the twelve-month period, the Development Owner will no longer be required to hold Units vacant for households with special needs, but will be required to continue to affirmatively market Units to household with special needs.

(d) Criteria promoting community support and engagement.

(1) Quantifiable Community Participation. (§2306.6710(b)(1)(B); §2306.6725(a)(2)) An Application may qualify for up to sixteen (16) points for written statements from a Neighborhood Organization. The Neighborhood Organization must be on record with the Department or county in which the Development Site is located and whose boundaries contain the Development Site, and which has been in existence no later than the Pre-Application Final Delivery Date. The written statement must meet the requirements in subparagraph (A) of this paragraph.

(A) Statement Requirements.

(i) the Neighborhood Organization's name, a written description and map of the organization's boundaries, signatures and contact information (phone, email and mailing address) for at least two individual members with authority to sign on behalf of the organization;

(ii) certification that the boundaries of the Neighborhood Organization contain the Development Site and that the Neighborhood Organization meets the definition pursuant to Texas Government Code, §2306.004(23-a) and includes at least two separate residential households; and

(iii) an explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason forming the basis of that opposition. A Neighborhood Organization is encouraged to be prepared to provide additional information with regard to opposition.

Author: ccbump Subject: Highlight Date: 10/19/12 10:44:41 AM
11.9 c 6 - Underserved Area - Instead of saying never on items C & D change the time limit to not having an award in the last 5 years.

Also, allow for two points for any Target Population instead of favoring General.

(B) Technical Assistance. For purposes of this section, if there is no Neighborhood Organization already on record, the Applicant, Development Owner, or Developer is allowed to provide technical assistance in the creation of and/or placing on record of a Neighborhood Organization provided that no Neighborhood Organization exists.

(i) Technical assistance is limited to:

(I) the use of a facsimile, copy machine/copying, email and accommodations at public meetings; and

(II) assistance in completing the QCP Neighborhood Information Packet, providing boundary maps and assisting in the Administrative Deficiency process;

(ii) No person required to be listed in accordance with §2306.6707 may participate in any way in the deliberations of a Neighborhood Organization of the Development to which the Application requiring their listing relates. This does not preclude their ability to present information and respond to questions at a duly held meeting where such matter is considered;

(iii) For non-Identity of Interest Applications the seller or their agents could be a member of the Neighborhood Organization if the seller will maintain primary residence within the Neighborhood Organizations boundaries.

(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in clauses (i) – (vi) of this subparagraph. Points will not be cumulated. Where more than one written statement is received for an Application, the averaged weight of all statements received in accordance with this subparagraph will be assessed and awarded.

(i) sixteen (16) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement, that qualified as Quantifiable Community Participation, opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(ii) fourteen (14) points for explicitly stated support from a Neighborhood Organization;

(iii) twelve (12) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement, that qualified as Quantifiable Community Participation, opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(iv) ten (10) points for statements of neutrality from a Neighborhood Organization or statements not meeting all the explicit requirements of this section, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality;

(v) ten (10) points for areas where no Neighborhood Organization is in existence; or

(vi) zero (0) points for statements of opposition meeting the requirements of this subsection.

(D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local governmental entity. If any such comment is challenged, the challenger must declare the basis for the challenge. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any support for the accuracy of its assertions. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination. The determination will be final and may not be waived or appealed.

(2) Community Input other than Quantifiable Community Participation. If there is no Neighborhood Organization on record, then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters must be submitted within the Application. At no time will the Application receive a score lower than zero (0) for this item.

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Author: ccbump Subject: Highlight Date: 10/19/12 11:59:45 AM

11.9 d 1 C Points for QCP - remove the two bonus points for groups that previously opposed a transaction. If this point item is kept the effect could cause the program problems in the future. There is an opportunity for developers to encourage groups to oppose competitors' applications so that they may reapply in the area of opposition the next year. This rule encourages opposition and frankly our industry does not need to encourage local groups to oppose applications. In order to accommodate the requirements of the Remedial Plan please limit the bonus scoring to Region 3 only.

(A) An Application may receive (2 points) for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose of the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide some documentation of its tax exempt status and its existence and participation in the community in which the Development is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts), or taxing entities. Should an Applicant elect this option and the Application receives letters in opposition, then two (2) points will be subtracted from the score for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this subparagraph.

(B) An Application may receive (2) points for a letter of support, from a property owners association created for a master planned community whose boundaries include the Development Site that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (1) of this subsection.

(C) An Application may receive (2) points for a letter of support from a Special Management District, whose boundaries, as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site and for which there is not a Neighborhood Organization on record with the county or state.

(D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, standing alone, cause staff or the Department to terminate the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(3) Commitment of Development Funding by Unit of General Local Government. (§2306.6710(b)(1)(E)) An Application may receive up to thirteen (13) points for a commitment of Development funding from the city or county in which the Development is proposed to be located. Development funding from instrumentalities of a city or county will not qualify for points under this scoring item unless such instrumentalities are first awarding such funds to the city or county for their administration or at least 60 percent of the governing board of the instrumentality is city council members from the city in which the Development will be located (for Developments located in a city) or county commissioners from the county in which the Development will be located (for Developments not located in a city). A government instrumentality may not be a Related Party to the Applicant. Development funding must be provided in the form of a construction and/or permanent loan with an interest rate no higher than the Applicable Federal Rate (AFR) and term of at least 5 years, a grant, an in-kind contribution, a contribution which will support the Development, such as vouchers, or combination thereof. Funds cannot have been provided to the Unit of General Local Government by the Applicant or a Related Party. HOME Investment Partnership Program or Community Development Block Grant funds administered by the State of Texas cannot be utilized for points under this scoring item. The Applicant must provide evidence in the Application that an application or request for the development funds has been submitted in the form of an acknowledgement from the applicable city or county. The acknowledgement must also state that a decision with regard to the awards of such funding will occur no later than August 1. A firm commitment of funds is required by Commitment or the points will be lost (except for Applicants electing the point under subparagraph (B) of this paragraph).

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Author: rachel Subject: Highlight Date: 10/18/12 10:23:50 AM

11.9(d)(3) Commitment of Development Funding by UGLG -

Please allow TDHCA HOME funds to count towards this item. Otherwise it unfairly penalizes Developments in Non-PJs or do not allow HOME funds to count towards this item from any jurisdiction.

this clause or six (6) points for at least two (2) of the items described in subclauses (I) – (IV) of this clause:

(I) Paved roadways or expansion of paved roadways by at least one lane;

(II) Water and/or wastewater service;

(III) Construction of a new police or fire station within one (1) mile of the Development Site that has a service area that includes the Development Site; and

(IV) Construction of a new hospital or expansion of an existing hospital's capacity by at least 25 percent within five (5) miles of the Development Site and ambulance service to and from the hospital is available at the Development Site.

(ii) The Applicant must provide a letter from a government official with specific knowledge of the project. However, the Department staff may rely on other documentation that reasonably documents that the substance of this clause is met, in Department Staff's sole determination. A letter must include:

(I) the nature and scope of the project;

(II) the date completed or projected completion;

(III) source of funding for the project;

(IV) proximity to the Development Site; and

(V) the date of any applicable city or county approvals, if not already completed.

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) An Application may qualify to receive a maximum of eighteen (18) points for this item. To qualify for points, a 15-year itemized pro forma that includes all projected income, operating expenses and debt service, and underlying growth assumptions, reflecting a minimum must-pay debt coverage ratio of 1.15 for each year must be submitted. The pro forma must include the signature and contact information evidencing that it has been reviewed and found to be acceptable by an authorized representative of a proposed construction or permanent Third Party lender. An acceptable form of lender approval letter is found in the application. If the letter evidences review of the Development alone it will receive sixteen (16) points. If the letter evidences review of the Development and the Principals, it will receive eighteen (18) points.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(H); §42(m)(1)(C)(iii)) An Application may qualify to receive up to ten (10) points based on the Building Cost (less any structured parking cost that is not included in Eligible Basis) per square foot of the Application, as originally submitted and certified to by the General Contractor, relative to the mean cost per square foot for all similar development types. Structured parking costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking. The square footage used will be the Net Rentable Area (NRA). For the purposes of this paragraph only, if a building is in a Qualified Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors (Elevator Served Development) the NRA will include elevator served interior corridors. If the proposed Development is a Supportive Housing Development, the NRA will include elevator served interior corridors and 50 square feet of common area per Unit. As it relates to this paragraph, an interior corridor is a corridor that is enclosed, heated and/or cooled and otherwise finished space. The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule of the Application.

(A) Each Application will be categorized as:

(i) Qualified Elderly and Elevator Served Development, more than 75 percent single family design, and Supportive Housing Developments; or

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Author: ccbump Subject: Highlight Date: 10/19/12 12:00:29 PM
11.9 e 2 Cost Per Square Foot - Please return to the method used in the 2012 QAP. This is too big of a variable for developers considering how much money and time goes into an application. Really the new norm will be applications that center around the $80 PSF which encourages a race the bottom in terms of quality of units built.

(ii) All other Applications proposing New Construction, Reconstruction, or Adaptive Reuse; or

(iii) All other Applications proposing Rehabilitation.

(B) Within each category listed in subparagraph (A), points will be awarded as follows:

(i) Within 8 percent and equal to or less than the mean cost per square foot (10 points);

(ii) Within 5 percent and greater than the mean cost per square foot (10 points);

(iii) Within 13 percent and equal to or less than the mean cost per square foot (9 points);

(iv) Within 10 percent and greater than the mean cost per square foot (8 points);

(v) Within 18 percent and equal to or less than the mean cost per square foot (7 points);

(vi) Within 15 percent and greater than the mean cost per square foot (6 points); or

(vii) Within 20 percent of the mean cost per square foot (5 points)

(C) Developments with Building Costs of less than $80 per square foot shall receive no less than eight (8) points. Points under this subparagraph are not in addition to the points achieved under subparagraph (B) of this paragraph.

(3) Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted during the Pre-Application Acceptance Period and meets the requirements described in subparagraphs (A) – (I) of this paragraph:

(A) The total number of Units does not increase by more than 10 percent from pre-application to Application;

(B) The designation of the proposed Development as Rural or Urban remains the same;

(C) The proposed Development serves the same Target Population;

(D) The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, and/or Rural);

(E) The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than six (6) points from what was reflected in the pre-application self score;

(F) All necessary waivers and pre-clearance were requested in the pre-application;

(G) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number listed at pre-application is the same at Application;

(H) The pre-application met all applicable requirements; and

(I) The community revitalization plan the Applicant used for points under subsection (d)(6) of this section was submitted at the time of pre-application.

(4) Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3))

(A) An Application may qualify to receive up to three (3) points if at least 5 percent of the total Units are restricted to serve households at or below 30 percent of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) – (iv) of this subparagraph:

(i) the Development leverages CDBG Disaster Recovery, HOPE VI, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 8 percent of the Total Housing Development Cost (3 points); or

(ii) If the Housing Tax Credit funding request is less than 7 percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than 8 percent of the Total Housing Development Cost (2 points); or

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Author: ccbump Subject: Highlight Date: 10/19/12 12:01:19 PM

11.9 e 5 Leveraging of Private, State and Federal Resources - Please increase item ii to 10% and item 3 to 11%. The very nature of this scoring item is going to force developers to underwrite more debt. The Department should be encouraging long term viability and not encourage Applicants to pursue riskier Developments.

involve USDA as a lender if the Applicant is not determined to be at fault for not meeting the deadline.

(D) Any penalties assessed by the Board for subparagraph (A) or (B) of this paragraph based on a Housing Tax Credit Commitment from the preceding Application Round will be attributable to the Applicant or Affiliate of an Application submitted in the current Application Round.

§11.10. Challenges of Competitive HTC Applications.

Challenges. The Department will address challenges received from unrelated entities to a specific active Application. The Department will utilize a preponderance of the evidence standard and determinations made by the Department concerning challenges cannot be appealed by a party unrelated to the Applicant that is the subject of the challenge. The challenge process shall be as stated in paragraphs (1) - (12) of this section. A matter, even if raised as a challenge, that staff chooses to treat as an Administrative Deficiency will be treated and handled as an Administrative Deficiency, not as a challenge.

(1) The challenge must be received by the Department no later than the Application Challenges Deadline as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) and must be accompanied by the corresponding non-refundable challenge processing fee as described in §10.901 of this title (relating to Fee Schedule). Unless the required fee is received with the challenge, no challenge will be deemed to have been submitted, and the challenge fee must be paid for each Application challenged by a challenger.

(2) A challenge must be clearly identified as such, using that word in all capital letters at the top of the page, and it must state the specific identity of and contact information for the person making the challenge.

(3) Challengers must provide, at the time of filing the challenge, any briefing, documentation or other information that the challenger offers in support of the challenge. Challengers must provide sufficient credible evidence that, if confirmed, would substantiate the challenge.

(4) Challenges to the financial feasibility of the proposed Development are premature and will not be accepted; as such issues will be addressed during the underwriting phase of the process.

(5) Challenges relating to undesirable area features as described in §10.101(a)(4) of this chapter (relating to Site and Development Requirements and Restrictions) will not be accepted unless they relate to a failure to disclose substantive issues not already disclosed.

(6) Challengers are encouraged to be prudent in identifying issues to challenge, realizing that most issues will be identified and addressed through the routine review and Administrative Deficiency process;

(7) Once a challenge on an Application has been submitted, subsequent challenges on the same Application from the same challenger will not be accepted;

(8) The Department shall promptly post all items received and purporting to be challenges and any pertinent information to its website;

(9) The Department shall notify the Applicant that a challenge was received within seven (7) business days of the challenge deadline;

(10) The Applicant must provide a response regarding the challenge within fifteen (15) business days of their receipt of the challenge; and

(11) The Department shall promptly post its determinations of all matters submitted as challenges. Because of statutory requirements regarding the posting of materials to be considered by the Board, staff may be required to provide information on late received items relating to challenges as handouts at a Board meeting.

(12) Staff determinations regarding all challenges will be reported to the Board as report items.

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Author: ccbump Subject: Highlight Date: 10/17/12 5:14:05 PM
11.10 5 - Please remove the ability to challenge this item. This is too subjective and open to frivolous challenges.

Chapter 12 Comments - October 22, 2012

(1) Applications that meet any of the criteria under §11.9(c)(4) of this title (relating to Competitive HTC Selection Criteria).

(2) Applications proposed to be located the greatest distance from the nearest Housing Tax Credit assisted Development.

(d) Inducement Resolution. After the pre-applications have been scored and ranked, the pre-application and proposed financing structure will be presented to the Department's Board for consideration of an inducement resolution declaring the Department's initial intent to issue Bonds with respect to the Development. Approval of the inducement resolution does not guarantee final Board approval of the Bond Application. Department staff may recommend that the Board not approve an inducement resolution for a pre-application. Because each Development is unique, making the final determination to issue Bonds is often dependent on the issues presented at the time the full Application is presented to the Board.

§12.5. Pre-Application Threshold Requirements.

The threshold requirements of a pre-application include the criteria listed in paragraphs (1) – (10) of this section. As the Department reviews the pre-application the assumptions as reflected in Chapter 10, Subchapter D of this title (relating to Underwriting and Loan Policies) will be utilized even if not reflected by the Applicant in the pre-application.

(1) Submission of the multifamily bond pre-application in the form prescribed by the Department;

(2) Completed Bond Review Board Residential Rental Attachment for the current program year;

(3) Site Control, evidenced by the documentation required under §10.204(9) of this title (relating to Required Documentation for Application Submission). The Site Control must be valid through the date of the Board meeting at which the inducement resolution is considered and must meet the requirements of §10.204(9) at the time of Application;

(4) Zoning evidenced by the documentation required under §10.204(10) of this title;

(5) Boundary Survey or Plat clearly identifying the location and boundaries of the subject Property;

(6) Current market information (must support affordable rents);

(7) Local area map that shows the location of the Development Site and the location of at least six (6) services within a one mile radius (two miles if in a Rural Area). The mandatory site characteristics are identified in §10.101(a)(2) of this title (relating to Site and Development Requirements and Restrictions);

(8) Organization Chart showing the structure of the Development Owner and of any Developer or Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner or the Developer or Guarantor, as applicable;

(9) Evidence of Entity Registration or Reservation with the Texas Office of the Secretary of State;

(10) A certification, as provided in the pre-application, that the Applicant met the requirements and deadlines for public notifications as identified in §10.203 of this title (relating to Public Notifications (§2306.5705(9))). Notifications must not be older than three (3) months prior to the date of Application submission. Re-notification will be required by Applicants who have submitted a change in the Application, whether from pre-application to Application or as a result of an Administrative Deficiency that reflects a total Unit increase of greater than 10 percent.

§12.6. Pre-Application Scoring Criteria.

The section identifies the scoring criteria used in evaluating and ranking pre-applications. The criteria identified below include those items required under Texas Government Code, §2306.359 and other criteria considered important by the Department. Any scoring items that require supplemental information to substantiate points must be submitted in the pre-application, as further outlined in the Multifamily Bond Pre-Application Submission Procedures Manual. Applicant's proposing multiple sites will be required to submit a

Summary of Comments on Multifamily Housing Revenue Bond Rule (Board approved Draft) (PDF)

Page: 4

Author: ccbump Subject: Highlight Date: 10/19/12 12:11:21 PM
12.5 7 - Pre-Application Threshold Requirements - Please remove this as a requirement for bond deals or, at the very least, increase the area two 2 miles for Urban and 3 Miles for Rural.

Comment (48)
Apolonio (Nono) Flores, Flores Residential, L.C.

(48)

APOLONIO (Nono) FLORES
FLORES RESIDENTIAL, L.C.
201 Cueva Lane, San Antonio, Texas 78232-1137
Telephone 210-494-7944 210-494-5948
Cell Telephone 210-289-5952
Facsimile 210-494-0853
e-mail: nono62@swbell.net

October 22, 2012

ATTN: Ms. Teresa Morales
Texas Department of Housing and Community Affairs
VIA Fax No. 512-475-0764

Re: Rule Comments on TDHCA Housing Tax Credit Program Qualified Allocation Plan

Dear Ms. Morales:

The following are my comments for consideration by TDHCA to the Housing Tax Credit Program QAP published in the September 21, 2012, Texas Register:

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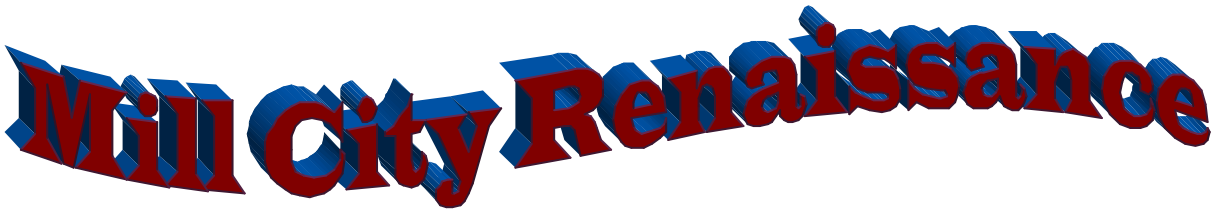
Apolonio Flores

Comment (49)
Jim Slaughter, Mill City Renaissance



Mill City Neighborhood Association (MCNA)
3814 S. Fitzhugh Ave.
Dallas, Texas 75210

October 19, 2012

Tim Irvine, Exec. Director
TDHCA
P.O. Box 13941
Austin, TX 78711-3941

RE: LIHTC M/F Development Ref. ICP v. TDHCA Lawsuit
Neighborhood Support Letter

Dear Mr. Irvine;

Please allow me to introduce myself, I am Jim Slaughter, Acting President of the Mill City Neighborhood Association, located in the city of Dallas, Texas.

The Mill City Neighborhood Association (MCNA) physical location boundaries are depicted by the outline of Census Tract 27.02. We are located in postal zip code zone 75210. The organization is also listed with the City of Dallas, Strategic Customer Services- Community Associations. For a map of our designated area, please visit their website at: www.dallascityhall.com/scs/community_mapping_project.html.

Started in July'2004, the MCNA is committed to revitalizing the community through grass roots efforts. Our neighborhood improvements projects are directed at projects such as; vacant house blight, trash/brush pickup, crime watch activities, stray animal control, code enforcement, housing rehabilitation and new housing/retail development.

We previously supported the proposed 136 unit Hatcher Square Project, proposed by Frazier Revitalization Initiative in your last round of Tax Credits. Unfortunately, the Hatcher Square Project was not funded by your agency. We are still hopefully optimistic about future rounds.

Since that time, we have become aware of the issues related to the ICP vs TDHCA lawsuit, and the negative effect the lawsuit is having on affordable housing development in low income areas; such as our neighborhood boundaries. It is our understanding that the current Judge's Order in this case will put our community out of the "preference boundaries" for any future LIHTC projects.

Mr. Irvine, if this is the case, we will never be able to rebuilt our community for lack of adequate financing. Conventional financing will not be able to fund below market rate rents development projects; thus new construction will be a thing of the past in our neighborhood. Not only is this a problem for our community, it is a problem for the state and nation as a whole. If we take away the financing vehicle for projects serving low-income citizens, then how and will these individuals find adequate housing needs in the future? Relocating families to a non-impacted area only further isolates them from their family support systems and encourages their failure to move above low income status.

The LIHTC program, approved by Congress, and used by States throughout the United States; have clearly shown to assist those with the lowest incomes, for long periods of time. Placing project in QCTs (low-income neighborhoods) have proven to be a very effective tool in enhancing neighborhoods while providing much needed housing. I believe this was the initial intent of Congress when the program was first developed.

Therefore, I urge you, with the support of our neighborhood association; to do the following:

- Appeal the decision and Order if the Judge denies the current Motion.
- File another motion requesting a stay of the Judge's Order until a court of final resort can determine the case, and
- Revise sections of the Proposed 2013 QAP, so that projects in OCTs, that are part of a comprehensive revitalization plan supported by the local city, have a fair competitive chance to receive an award.

I'm available at (214) 500-4233, if you need further clarification on any comment mentioned in this letter.

Thanks for your continued time and support.

Respectfully submitted,

Jim Slaughter

Jim Slaughter
Acting President
Mill City Neighborhood Assn.
Jim_slaughter@sbcglobal.net

Cc: Frazier HS, LP, P.O. Box 796368, Dallas, TX 75379
Mill City Renaissance Neighborhood Assn. Officers
Members of the TDHCA Board of Directors
State Senator Royce West, District 23
State Representative Eric Johnson, District 100
US Rep. Congresswoman Eddie B. Johnson, District 30

Comment (50)
Laura Llanes, Housing Authority of the City of Laredo

50

HOUSING AUTHORITY OF THE CITY OF LAREDO

October 22, 2012

VIA FAX NUMBER: (512) 475-0764
ATTN: Ms. Teresa Morales
Texas Department of Housing and Community Affairs

Re: Rule Comments on TDHCA Housing Tax Credit Program Qualified Allocation Plan

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2000 San Francisco Avenue
Laredo, Texas 78040
Phone (956) 722-4521 Facsimile (956) 722-6561 TTY-TDD (722) 722-2243

Section 11.9(b)(2)(A) Sponsor Characteristics: Should include provisions awarding 1 point for a Housing Authority that has at least 51 percent ownership interest in the General Partner, materially participates in the Development and operation of the Development throughout the compliance period, and will receive at least 80 percent of the cash flow from operations and at least 25 percent of the developer fee.

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Laura Llanes
Executive Director

2000 San Francisco Avenue
Laredo, Texas 78040
Phone (956) 722-4521 Facsimile (956) 722-6561 TTY-TDD (722) 722-2243

Comment (51)
United States Green Building Council (USGBC)

51

USGBC
2101 L STREET, NW
SUITE 500
WASHINGTON, DC 20037
202.828.7422
USGBC.ORG

Texas Department of Housing and Community Affairs
Attn: Teresa Morales, Rule Comments
P.O. Box 1394
Austin, Texas 78711-3941
f: (512) 475-0764

Re: PUBLIC COMMENT
TDHCA Board Approved Draft of the Uniform Multifamily Rules

Section:
Chapter 10 of the Texas Administrative Code
Subchapter B – Site and Development Requirements and Restrictions
(5) Common Amenities.

In this section "Green Building Certifications" are awarded with points. This section states: "Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices." The criteria awards LEED and NAHB's National Green Building Standard (NGBS) certification with four points.

COMMENT:
USGBC recommends that only the Emerald level of NAHB's National Green Building Standard be adopted as a compliance path for this program.

Recommended Language Change (for 2013 QAP):

Change "National Green Building Standard" to "National Green Building Standard Emerald Level"

There are vast differences in the minimum requirements of LEED and NAHB's National Green Building Standard (NGBS) and they should not be viewed as equal programs. NGBS does not require performance testing to achieve certification. Performance tests are used in all certification levels of LEED to verify very important Energy Efficiency and Indoor Air Quality measures. Performance testing has become an industry standard as an analytical tool for the qualification of green building programs yet NGBS does not require performance tests for any level other than Emerald, their highest.

An example of how the exclusion of performance testing is an oversight can be found in the Build Green New Mexico green building program. Build Green New

Mexico amended NGBS to require performance testing starting at the Silver level.

http://buildgreennm.com/index.php?page=certification-process

A second example can be found in a 2010 analysis that was conducted for the City of Cincinnati's LEED tax abatement program. NAHB members approached Cincinnati and recommended that they adopt NGBS as equal to LEED for this program. An independent group (AIA) concluded that NGBS is not equal to LEED because minimum requirements in the energy category (including performance tests) were not the same level or rigor as LEED. The City of Cincinnati did not adopt NGBS for this program and continues to recognize only LEED.

http://www.cincinnati-oh.gov/community-development/linkservid/55F0DFC5-FD35-8C39-023C6EA45E0D2261/showMeta/0/

Comment (52)
Barry Palmer, Coats Rose

COATS | ROSE
A Professional Corporation

BARRY J. PALMER

bpalmer@coatsrose.com
Direct Dial
(713) 653-7395
Direct Fax
(713) 890-3944

October 22, 2012

Mr. Tim Irvine
Executive Director
TDHCA
221 East 11th Street
Austin, Texas 78701

Re: QAP Comments

Dear Tim:

Please accept these comments on the proposed QAP and related rules.

Subchapter A – General Information and Definitions

10.3(109) and (116) The definitions of Supportive Housing and Transitional Housing are connected to one another and should be clarified so that ownership can be in the form of a tax credit partnership. In the definition of Transitional Housing, we recommend adding the following provision to paragraph 116(B): "is owned by a Development Owner that includes a governmental entity or a qualified nonprofit…"

10.3(101) – The "Right of First Refusal" definition should, consistent with federal law, allow a government agency to acquire a tax credit property pursuant to a right of first refusal. We propose replacing the phrase "nonprofit or tenant organization with the term "Qualified ROFR Organization. We propose adding the term "Qualified ROFR Organization" which is a logical outgrowth of the proposed rule to conform the rule to section 42 of the Internal Revenue Code, to be defined as "(1) a qualified nonprofit that meets the requirements of section 42(h)(5) of the Code, (2) a government agency, (3) a tenant organization, or (4) tenants."

Subchapter B – Site and Development Requirements and Restrictions

10.101 (a)(4) While we recognize that the Undesirable Area Features are part of the ICP remedial plan, we urge the Department to provide an exemption for properties that are required to obtain HUD environmental or site and neighborhood standards clearance. Practically, developers and TDHCA staff will find it impossible to determine which sites are prohibited by

undefined characteristics such as "high-crime area" or "significant presence of blighted structures". While private developers have the option of locating potential projects in areas where the prohibited area characteristics are least likely to exist, 10.101(a)(4) will effectively prevent severely distressed public housing sites from participating in TDHCA programs. It removes the only tool in the toolkit of large Texas housing authorities that need these programs to transform 50+ year old public housing developments.

We propose that the Department provide an exemption for any development that includes federal funding in its construction financing sources and must comply with HUD environmental assessment or federal site and neighborhood regulations. The process of obtaining HUD environmental or site and neighborhood standards clearance for a project utilizing federal funding is in place and well-established. Requiring that TDHCA staff visit the site for pre-clearance under 10.101(a)(4) would only be duplicated effort for these projects. We suggest that the Applicant be permitted to elect to proceed with the exemption, instead of pre-clearance by the TDHCA. The exemption would be only available if the project actually obtains the required environmental and/or site and neighborhood standards clearances and the underlying federal funding is actually closed. Choosing to rely upon federal funding for an exemption would mean loss of the tax credit allocation if the federal financing is not closed for any reason. We propose that tax credit allocations made pursuant to an exemption would not be subject to challenges under 10.101(a)(4).

In the event that you do not look favorably upon the suggested exemption described above, then we request that you consider exemptions for projects that are located in a city's revitalization area, as evidenced by a letter from the municipality's housing department.

QAP 11.2 Program Calendar

Two deadlines in the program calendar go beyond statutory requirements. The first is the December 17th requirement to request neighborhood organizations. This deadline is not in section 2306 of the Government Code, and mid-December is too early to require tax credit developers to have selected sites, especially with the adoption of the QAP by the board only a month before. The second deadline is the 10% Test, which is not required under federal law until one year after the carryover allocation is executed by the Department. We propose November 1st as the deadline for the 10% test

Commitment of Development Funding by Unit of General Local Government

The changes to this section are not consistent with past public comment or current market conditions. Tax credit prices are currently more than 90 cents per tax credit, so the need for gap financing is less than it has been in recent years. At the same time, budget cuts have been severe at the local government level in most cities in Texas. These conditions weigh heavily against TDHCA's proposed points for local government funding in the range of millions of dollars per project. We have proposed lowering the dollar amounts to a level within reach of local governments and consistent with the level of gap financing tax credit properties need at current equity pricing. Moreover, requiring more local government funding would have the unintended consequence of decreasing the total number of affordable housing units generated in the State by siphoning dollars from other types of developments to the tax credit program.

HOME Investment Partnership funding has always been an acceptable source of local government funding, primarily because this is the main source of affordable housing gap financing available at the local government level. The proposed removal of this source puts developers in the awkward position of asking local government not to use the primary affordable housing funding source, but rather to use funding that would otherwise be used for roads, hospitals, and parks, which is likely to increase the NIMBYism that we all hope to avoid.

Moreover, funding from public housing authorities should qualify. While chapter 2306 of the Government Code does not define "local political subdivision," it does define "local government" as an entity created under chapter 394 of the Local Government Code. (2306.004(19), and housing authorities are organized under that chapter of the government code. Because of the ambiguity in interpreting the statute regarding this section of the QAP, we recommend following the precedent of the Department for more than 10 years and allowing public housing authorities to qualify for these points.

We also propose changing the deadline for the final loan commitment to November 1st, not August 1st. Large cities will not be able to meet a deadline of August 1st.

Community Revitalization Plan Points

HUD site and neighborhood clearance for a site is not possible at the tax credit application stage. As you know, HUD processing time precludes this clearance so early in the development process.

Cost of Development by Square Foot Points

We do not support the concept of tying these points to the mean cost per square foot of other applications. This revision is potentially in conflict with section 2306 of the Government Code, which requires the Department to score and rank an application using a point system that prioritizes in descending order criteria regarding the cost of the development by square foot. If the Department decides to go forward with this proposed change, we urge the Department to calculate the mean cost per square foot for similar development types within the large cities separately. In other words, it costs more to build a new construction development in the City of Austin than in Manor or Taylor, and the rule should be revised to clarify that Austin deals will only be compared to one another in the calculation, Houston deals will be averaged only against each other. Otherwise, the Department will make the large cities uncompetitive in the tax credit round.

Leveraging Points

The Leveraging point category should be restored to the 2012-2013 QAP language. There are very few HOPE VI or Choice Neighborhood grants in Texas at this point, so CDBG Disaster Recovery funds will be the primary leveraging source, and that source is only available in certain regions of the state. In addition, the Tax Credit Funding Request percentages of Total Housing Development Cost are not consistent with typical tax credit investor requirements. We propose returning to the prior QAP language, or at least including HUD-insured loans and other loans with a 100-basis-point advantage over market rates in the list of programs that qualify.

If you have questions, please contact me. We appreciate the opportunity to provide QAP comments.

Sincerely,

Barry J. Palmer

Comment (53)
Ruben Sepulveda, Weslaco Housing Authority

(53)

Weslaco Housing Authority
P. O. BOX 95
WESLACO, TEXAS 78599-0095

October 22, 2012

ATTN: Ms. Teresa Morales
Texas Department of Housing and Community Affairs
VIA Fax No. 512-475-0764

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Sincerely,

Ruben Sepulveda
Executive Director

Comment (54)
J. Fernandez Lopez, Pharr Housing Authority

54

PHARR Housing Authority

J. Fernando Lopez
Executive Director

October 22, 2012

Ms. Teresa Morales
Texas Department of Housing and Community Affairs
512-475-0764 Fax

J. Fernando Lopez
Executive Director
104 W. Polk
Pharr, Texas 78577
956-783-1316
956-781-3758 Fax

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Section 11.9(e)(4)(A)(I) Leveraging of Private, State, and Federal Resources: Needs to include leveraging of funding from the Public Housing Program Capital Fund, Project Based Vouchers, and Section 8 Vouchers to assist families with their relocation.

Sincerely,

J. Fernando Lopez
Executive Director

Comment (55)
Jose A. Saenz, McAllen Housing Authority

55

McAllen Housing Authority
"Transforming Families, Strengthening Communities"

2301 JASMINE AVENUE
MCALLEN, TEXAS 78501

October 22, 2012

ATTN: Ms. Teresa Morales
Texas Department of Housing and Community Affairs
VIA Fax No. 512-475-0764

Re: **Rule Comments on TDHCA Housing Tax Credit Program Qualified Allocation Plan**

Dear Ms. Morales:

The following are my comments for consideration by TDHCA to the Housing Tax Credit Program QAP published in the September 21, 2012, Texas Register:

Section 11.4(b) Maximum Request Limit (Competitive HTC Only): TDHCA should not allow an applicant to request more than the credit amount available in a sub-region. This QAP provision to allow an applicant to request up to 150% of the credit amount available in a sub-region is not consistent with the provisions of Texas Government Code Chapter 2306 which requires TDHCA to use a formula to make regional allocations and has no provisions that allow TDHCA to allow an applicant to request more than the credit amount available in a sub-region. Additionally, the QAP prohibits awards to an applicant if there are not sufficient funds within the sub-region to fully award the application that then places the application in the rural or statewide collapse.

Section 11.5(3)(D) At-Risk Set-Aside: There are at-risk developments that have existing rental assistance with rents lower than the tax credits rents and may not be financially feasible unless they are allowed to eliminate a portion of that benefit. For example, the existing rental assistance may be within the tax credits rents for units at 30% AMGI and the development should be required to retain the rental assistance for those units but be allowed to eliminate the existing rental assistance on the other units who will retain their affordability within the HTC income and rent restrictions. This provisions should provide "... unless regulatory or financial barriers necessitate elimination of a portion of that benefit for the Development."

Section 11.9(b)(2) Sponsor Characteristics: Housing Authorities have extensive experience in providing affordable housing as developers, owners, and managers of Public Housing and Contract Administrators of HUD rental assistance contracts under Section 8 of the National Housing Act (Voucher Program). Many Texas Housing Authorities have as much as 75 years administering the Public Housing Program and 45 years administering the Section 8 Program. TDHCA needs to recognize this experience by awarding participation by Housing Authorities the maximum points under Sponsor Characteristics.

Section 11.9(b)(2)(A) Sponsor Characteristics: Should include provisions awarding 1 point for a Housing Authority that has at least 51 percent ownership interest in the General Partner, materially participates in the Development and operation of the Development throughout the compliance period, and will receive at least 80 percent of the cash flow from operations and at least 25 percent of the developer fee.

 Phone: (956) 686-3951 | Fax: (956) 686-3112

Section 11.9(b)(2)(B) Sponsor Characteristics: Should include provisions awarding 3 points for a Housing Authority that that is rated by HUD as a High Performer or 2 points if rated by HUD as a Standard Performer and has at least 51 percent ownership interest in the General Partner, materially participates in the Development and operation of the Development throughout the compliance period, and will receive at least 80 percent of the cash flow from operations and at least 25 percent of the developer fee.

Section 11.9(d)(3) Commitment of Development Funding by Unit Of General Local Government: TDHCA proposes to restrict the awards points for funding from only a City or County. In prior years these points were allowed for funding by a "Unit of General Local Government" such as a Housing Authority. There is no basis for TDHCA to now exclude consideration for funding by any Unit of Local Government limit the award of points to only funding by a City or County.

Additionally, TDHCA proposes to penalize participation by a government instrumentality such as a Public Facility Corporation PFC) created under Chapter 303 of the Texas Local Government Code that was adopted by the Texas Legislature so that local governments such a City, County, Housing Authority or other Units of Local Government can carry out activities with their instrumentalities such as a PFC. There are many HTC developments in Texas sponsored by Units of Local Government using their instrumentality PFCs. TDHCA needs to remove from the QAP all proposed restrictions on instrumentalities.

Section 11.9(e)(4)(A)(i) Leveraging of Private, State, and Federal Resources: Needs to include leveraging of funding from the Public Housing Program Capital Fund, Project Based Vouchers, and Section 8 Vouchers to assist families with their relocation.

McAllen Housing Authority

Jose A. Saenz
Executive Director

Comment (56)
Henry Flores, Madhouse Development

From: Cameron Dorsey
To: Teresa Morales;
Subject: FW: Comments to the 2013 QAP
Date: Monday, October 22, 2012 5:37:46 PM

From: henry@madhousedevelopment.net [mailto:henry@madhousedevelopment.net]
Sent: Monday, October 22, 2012 3:30 PM
To: jean.latsha@tdhca.state.tx.us
Cc: Cameron Dorsey (cameron.dorsey@tdhca.state.tx.us)
Subject: Comments to the 2013 QAP

Jean: On behalf of Madhouse Development, Henry IV and I wanted to offer the following comments regarding the Competitive HTC Selection Criteria from the draft Qualified Allocation Plan ("QAP") for 2013:

1) We are generally supportive of the language stated in section 11.9 (b)(2) Sponsor Characteristics and feel that successful experience in Texas should be part of the evaluation criteria but we feel that the use of the Uniform Physical Condition Standard ("UPCS") adds an unacceptable level of uncertainty to this standard because of inconsistencies in the scoring related to this inspection process. We agree that the benchmark standard should be three properties but we feel that the only relevant test that should be applied is that the aforementioned three properties must not be in Material Noncompliance. A minimum score of 70 should be considered acceptable If TDHCA insists on using a UPCS score in its review. We also believe that Section B (i) and B (ii) should be mutually exclusive. If not revised, a developer that has 5 developments that meet the current definition will qualify under those two criteria for a total of three points; I don't believe that it was TDHCA's intent to allocate points in this fashion.

2) The definition of eligible entities uses for Section 11.9 (b)(3) Commitment of Development Funding by Unit of General Local Government should be broad enough to include "multi-jurisdictional"

entities since these type of entities are found in abundance in the poorest parts of Texas. For example, Housing Finance Corporations ("HFC") are often formed by a contingent of counties in South Texas to gain efficiency of scale and maximize the value of the opportunities being presented to their constituents. The boards of these HFC entities are almost always comprised of the County Judges of the participating counties or at a minimum other elected officials and operate only within their territorial jurisdiction. I do agree that efforts to limit state wide entities is legitimate but these HFC type of entities should not be "punished" as part of the process.

3) Section 11.9 (b)(6) describes the criteria relative to the Community Revitalization Plan. We believe that the proposed criteria is overly restrictive and that Tax Increment Financing ("TIF") districts or other similar variations of this type of district which are intended to capture projected tax revenue should be included as eligible for consideration as "Community Revitalization Plans". A TIF is a public financing method that is used for subsidizing redevelopment, and other community-improvement projects in many parts of Texas. TIF is a method to use future gains in taxes to subsidize current improvements, which are projected to create the conditions for said gains. The completion of a public project often results in an increase in the value of surrounding real estate which generates additional tax revenue. When an increase in site value and private investment generates an increase in tax revenues, it is the "tax increment." Tax Increment Financing dedicates tax increments within a certain defined district to finance the debt that is issued to pay for the project. TIF is often designed to channel funding toward improvements in distressed, underdeveloped, or underutilized parts of a jurisdiction where development might otherwise not occur. TIF creates funding for public or private projects by borrowing against the future increase in these property-tax revenues. We believe that the dedication of these revenue sources by a community demonstrates exactly the local commitment required by this point item.

4) Section 11.9 (e)(2)(B) establishes the scoring criteria for points to be awarded relative to a "mean cost per square foot" test. The language being proposed is overly complicated and fails to address any significant public policy issue. We would suggest that the scoring method used last year for cost containment was more than adequate and we urge TDHCA to continue to use the existing protocol with $80 per square foot used as the new

benchmark standard. There is no reason to modify this simple test originally implemented to maximize the number of transactions funded per annual cycle while establishing an adequate cost threshold to ensure the quality of the properties developed under the program.

5) Section 11.9 (e)(7) Development Size suggests that a point be awarded to any application proposing a project with less than 50 units. The size of a Development should be a function of market demand and financial feasibility and TDHCA should allow these factors to determine the appropriate size of a proposed apartment community. TDHCA should eliminate this scoring item.

Madhouse appreciates the opportunity to offer these comments regarding the 2013 QAP. Please let either of us know if you have any questions. Thanks.
Henry Flores

From: Cameron Dorsey
To: Teresa Morales;
Subject: FW: Additional QAP comment
Date: Monday, October 22, 2012 5:35:30 PM

From: henry@madhousedevelopment.net [mailto:henry@madhousedevelopment.net]
Sent: Monday, October 22, 2012 3:35 PM
To: jean.latsha@tdhca.state.tx.us
Cc: Cameron Dorsey (cameron.dorsey@tdhca.state.tx.us)
Subject: Additional QAP comment

Jean: I wanted to offer one additional comment as Chairman of the Board of Commissioners of the Housing Authority of the City of Austin("HACA"). Pursuant to §11.5(3)(D), the redevelopment of public housing qualifies for At-Risk designation where "no less than 25 percent of the proposed Units must be public housing units" in the final project. While HACA understands that some of the language in this section regarding the At-Risk Set-Aside is required by statute, we ask that the TDHCA Board use its discretion so that the proposed language is modified to read that, "no less than 25 percent of the proposed Units must be public housing units or units assisted by a project-based rental subsidy agreement with a term of at least 15 years."

We believe that the 25% benchmark standard is appropriate as written; however, restricting the designation to, "public housing units" fails to include units subsidized via a project-based rental assistance contract, which is the direction of national housing policy with the U.S. Department of Housing and Urban Development ("HUD"). Due to financial and budgetary constraints, HUD must identify other funding sources to preserve and improve aging properties, as it can no longer continue to subsidize Public Housing Authorities ("PHAs") at previous levels. Under the current public housing financing model, PHAs cannot access private debt. Through current HUD programs and initiatives, such as the Rental Assistance Demonstration and the Choice Neighborhood Initiative, HUD encourages the conversion of existing public housing units to units covered by a long-term, project-based rental assistance contract. These new initiatives are based on HUD's recognition that the lack of federal funding will make maintaining the current public housing structure untenable, and that future funding must be

focused on tenant rental subsidy, and not the funding of public housing authority entities or physical assets. The conversion of the assistance from public housing to project-based rental assistance enables PHAs and owners to access private debt and equity to address immediate and long-term capital needs. At their core, these initiatives focus on the preservation and improvement of "At-Risk" public housing properties, without additional federal subsidy funding. We believe our proposed language is in line with current HUD policy, and the spirit of the At-Risk Set-Aside when enacted under §2306. Our proposed language would marry HUD's concept of preserving public housing properties by accessing private debt and equity, with TDHCA's priority of preserving At-Risk public housing units.

Thanks and let me know if you have any specific questions.

Henry

Comment (57)
Laolu Davies-Yemitan, Five Woods, LLC.

From: Cameron Dorsey
To: Teresa Morales;
Subject: FW: Historically Underutilized Businesses QAP Language
Date: Monday, October 22, 2012 5:32:27 PM

From: Laolu Davies-Yemitan [mailto:laolu@5woods.net]
Sent: Monday, October 22, 2012 3:51 PM
To: 'Cameron Dorsey'
Cc: laolu@5woods.net
Subject: Historically Underutilized Businesses QAP Language

Cameron,

I hope this email finds you in good spirits. I am writing you to offer some input on the language applied under Sponsor Characteristics as it pertains to involvement of a HUB as a 51% owner. It has come to my attention that language is being considered of a 100% threshold that would consist of the HUB's percentage ownership, percent of developer fee received, and percent of cash-flow received. It is my understanding that this approach is being proposed as a means of ensuring actual material participation by a HUB in the development. The concern is non-HUB developers have a certain threshold where if it becomes too onerous on their bottom-line to have a HUB participate in the development, they might forego pursuing that option altogether.

The language that was passed by the board in September 2012, where a 51% HUB General Partner receives 10% of the developer fee and 20% of the cash flows, in my estimation should be compelling enough for developers to make sure that their HUB partners do have material participation in a development, and in ultimately achieving the goal of helping HUBs build capacity to the point where they can develop projects on their own. An alternative threshold I would suggest would be a 90% combination of 51% ownership, and the remainder 39% be stipulated with a minimum 10% of developer fee received and the rest being made up for in either developer fee or cash flow. Causing developers to have to share more of their profits (in a 100% threshold schematic) with a HUB, who takes on little to no risk, may end up resulting in the unintended consequence of developers making a determination that

taking on a non-related HUB partner in a development deal just isn't worth it. If you do decide to leave the 100% threshold in place, then be sure to stipulate that HUB ownership should not exceed 60%, so that you don't have deals being loaded up with a HUB owning 80% of a deal for example.

Kindly let me know if I can provide further clarification regarding my perspective on this matter.

Best regards,

Laolu Davies-Yemitan
Five Woods, Llc
(281) 948-9154
Meeting Clients at The Point of Need

Comment (58)
Alyssa Carpenter

Comments Regarding the 2013 QAP
Submitted Monday, October 22, 2012

These comments concern Section 11.9(f)(1) Point Deductions. To begin, I disagree with this section of the QAP. I would like to point out that at the September 6, 2012, Board meeting, both Bobby Bowling and Michael Hartman spoke against this scoring item. And in response to Mr. Hartman's comments, Chairman Oxer responded "I happen to agree with transitioning to a new system like this it will take a little time to get everybody up to speed on how the points work." I understand that staff had a lot of problems with the At-Risk scoring last year; however, it should be noted that even at the Austin Application Workshop, TDHCA staff gave conflicting guidance on whether At-Risk applications were eligible for High Opportunity points. However, if staff insists that this section be included, then I respectfully request that two items be added to the list of scoring items that are exempt from the point deductions.

First, please consider adding Section 11.9(c)(6) Undeserved Area to the list of items that are exempt from point deductions under Section 11.9(f)(1) Point Deductions. Section 11.9(c)(6) provides points for developments located in colonias, economically distressed areas, municipalities and counties that have never received a tax credit allocation, and rural census tracts without existing same population tax credit developments. My concern with the Underserved Area points is the lack of concrete data for many of these categories

As you are aware, "Economically Distressed Area" is not something that can be confirmed by a list and may be subjective in determination. In addition, staff has changed the definition of "Economically Distressed Area" for this application cycle, which does not match what is provided on the TWDB website. Because of the difference in these definitions, I am concerned that there will be confusion about what would qualify under this item. There is also no clarity on what documentation would be required and what should occur if TDHCA staff requested more information.

I am also concerned about the existing data regarding HTC developments. The Department releases a list of 9% and 4% HTC properties with addresses and census tract information, but there are mistakes in this data. If you recall from last year, there was an instance where an applicant believed that a census tract did not have an existing HTC development based on the information provided in the TDHCA inventory, but later found out that the TDHCA inventory was incorrect. I understand and concur with the need for applicant due diligence, but I also believe that there should be some ability to rely on TDHCA's data. It is unfair for TDHCA to provide data, for that data to be used by an applicant, for that data to be incorrect, and then for TDHCA to penalize the applicant for its own incorrect data.

In addition, the current QAP language under 11.9(c)(6)(C) does not address prior HTC developments that have opted out of the program or are no longer affordable for another reason. These properties are no longer on TDHCA's list. In addition, there are developments in areas that may have "received a" tax credit allocation in the form of an award, but had to return the credits prior to Commitment Notice, Carryover, or some other date. Such an area may technically have received an allocation, but the area never benefited. In addition, these developments/awards are not on TDHCA's list. The way the language is currently drafted, 11.9(c)(6)(C) and (D) would include awards that never got built and properties that are no longer on the current TDHCA property inventory. I also ask that this be modified to only include properties that are active and affordable on TDHCA's list.

Second, please consider adding Section 11.9(e)(4) Leveraging to the list of items that are exempt from point deductions under Section 11.9(f)(1) Point Deductions. You have already exempted 11.9(e)(2) Cost of Development per Square Foot from the point deduction, which will be calculated compared to other applications that are submitted. This Cost per Square Foot item specifically states that "An Application

may qualify to receive up to ten (10) points based on the Building Cost (less any structured parking cost thatis not included in Eligible Basis) per square foot of the Application, as originally submitted and certified to by the General Contractor, relative to the mean cost per square foot for all similar development types." Per this language, this scoring item will be determined based on what is in the actual application with no indication that this will be recalculated based on administrative or underwriting changes.

However, the Leveraging scoring item is different. It says "(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule and will be rounded to the nearest hundredth. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary." I am assuming that "Administrative Deficiency" also includes changes requested or required by the REA division, though this is unclear in the QAP.

My concern here is that, if an applicant submits an original application using figures that satisfy both of these scoring items and based on a certification from the general contractor, and then REA requires the applicant to use different figures that are more in line with Marshall and Swift, then this would likely affect both the Cost per Square Foot and Leveraging scoring items. Even though Cost per Square Foot was affected, that scoring item is determined at application and would not be recalculated; however, the applicant could lose points under Leveraging *and then* lose another penalty point. I believe that the Leveraging scoring item should be calculated using the original numbers that are submitted in the application and should not be recalculated based on REA reviews, similar to the Cost per Square Foot scoring item. In other words, I do not believe that the Leveraging scoring item should be subject to penalties based on requested or required changes by the REA division.

To conclude, please consider exempting Section 11.9(c)(6) Underserved Area and Section 11.9(e)(4) Leveraging from point deductions under Section 11.9(f)(1).

Thank you for your consideration.

Alyssa Carpenter
1305 E 6th, Ste 12
Austin, TX 78702
512-789-1295
ajcarpen@gmail.com

Comment (59)
Demetria McCain, Inclusive Communities Project
Ann Lott, Inclusive Communities HDC

Inclusive Communities Project | Inclusive Communities HDC
3301 Elm Street, Dallas Texas 75226

October 22, 2012

Mr. J. Paul Oxer, Chair
Board of Directors
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Dear Chairman Oxer and Members of the Board:

The Inclusive Communities Project (ICP) and the Inclusive Communities Housing Development Corporation (ICHDC) express concern that certain changes recommended in TDHCA's proposed 2013 Multi-family Rules - Qualified Allocation Plan (QAP) will create barriers to the development of Low Income Housing Tax Credit (LIHTC) units in High Opportunity Area locations of the Dallas metropolitan area.

First, the proposed change that eliminates public housing authorities as participants in the commitment of development funding by a local political subdivision is not authorized or required by the Texas Government Code. This proposed change will interfere with ICHDC's facilitation of a consent decree between ICP and the Housing Authority for the City of McKinney, Texas for the creation of LIHTC units in McKinney's High Opportunity Areas.

Second, the proposed plan to eliminate TDHCA HOME funds as an eligible funding source in the commitment of development funding by a local political subdivision would remove a crucial component of funding for LIHTC units. This source of funding has qualified toward selection criteria points for several QAP cycles, and has resulted in elderly projects being developed in opportunity areas within the Dallas Metroplex. TDHCA HOME funds should remain eligible for selection criteria points as LITHC units for the general population are proposed and developed in High Opportunity Areas. Reinstatement of this funding source as a means of gaining selection criteria points would be a less discriminatory alternative than the one proposed.

ICP and ICHDC also note the practice of providing more points for LIHTC units in opportunity areas is common in other states. These states include North Carolina, Illinois, Massachusetts and Mississippi.

An overview of ICP's and ICHDC's observations and comments are attached to this cover letter and we request they be included as part of the public record.

Thank you for your consideration of these comments.

Sincerely,

Demetria McCain, Esq.
VP & Director of Programs and Advocacy, ICP

Ann Lott
Executive Director, ICHDC

§11.9(d)(3) Commitment of Development Funding by Unit of General Local Government

The proposed change eliminating housing authorities as a direct source of local political subdivision funding is not required or authorized by Texas Government Code 2306.6710(b)(1)(E).

The statute requires TDHCA to include a selection criterion that provides points for *the commitment of development funding by local political subdivisions.* The statute does not define "local political subdivisions." However, the statute does define "local government" as *a county, municipality, special district, or any other political subdivision of the state, a public, nonprofit housing finance corporation created under Chapter 394, Local Government Code, or a combination of those entities* (see Tex. Gov't Code Ann. § 2306.004).

The previous QAP set out the selection criteria for this scoring item using the phrase "Unit of General Local Government or a Governmental Instrumentality" without narrowing the scope to include only cities, counties, or entities governed by a majority of elected officials. According to Texas Local Government Code § 392.006, housing authorities are by statute, *a unit of government and the functions of a housing authority are essential governmental functions and not proprietary functions.* Additionally, a recent court ruling upheld that housing authorities are political subdivisions of the state (see *Housing Authority of City of Dallas v. Killingsworth*, 331 S.W.3d 806,810 - Tex. App.--Dallas 2011*).*

ICP recently filed a fair housing lawsuit against the City of McKinney and the McKinney Housing Authority. As a result of the litigation, the McKinney Housing Authority entered into a consent decree, in which they agreed to participate with ICP in the commitment of development funding for tax credit units in the High Opportunity Areas of West McKinney (see *The Inclusive Communities Project, Inc. v. The City of McKinney and The Housing Authority of the City of McKinney*, No. 4:08-CV-434 (E.D. Tex. filed Nov. 19, 2008)). The consent decree is in effect until 2015. The pledge of housing authority funding stimulated the interest of several tax credit developers and resulted in an application for funding in a High Opportunity Area of McKinney during the 2011 cycle (The Millennium - McKinney, TDHCA application #11262). While citizens within the local community supported the application, it received no other local support on record, and was not recommended for funding by TDHCA staff (see TDHCA Board Meeting, September 15, 2011, Transcript pages 214-219).

If the proposed QAP provision is adopted, this part of the consent decree will no longer be available to support tax credit units in the High Opportunity and non-minority concentrated area of McKinney. TDHCA has not provided any reason for the change in the selection criteria for local government development funding. The effect of the change will eliminate one proven conduit of ensuring tax credit units are available for use in non-minority areas of McKinney.

TDHCA HOME grant funding should be used to expand the supply of 9% LIHTC units in High Opportunity Areas

In addition to providing financial resources, TDHCA HOME funds have been used to obtain 9% program selection criteria points for local government development funding. The proposed QAP would limit the provision of these criteria points to HOME entitlement cities or consortium jurisdictions. The entitlement jurisdictions in the Dallas area are much less White non-Hispanic than the non-HOME entitlement jurisdictions in the area. In the past, the TDHCA HOME funds have been used to fund the construction of several elderly units in high opportunity areas of Dallas (i.e. Vista Ridge in Lewisville, Evergreen in Rockwall). This stipulation, if enacted, will hinder the development of general population units in high opportunity suburbs such as Allen, Frisco, Flower Mound, Lewisville, McKinney, and The Colony. Developers will find it difficult, if not impossible, to attain the necessary commitment of funding from the local unit of government.

TDHCA HOME funds provide a viable financing mechanism for the development of LIHTC units in High Opportunity Areas and, as such, should be eligible under this scoring item. The proposal to restrict TDHCA HOME funds as a means of providing points, at a juncture when TDHCA is required to expand housing opportunities, will limit such expansion.

§ 11.9. (c)(4) Opportunity Index

Other states provide more points for high opportunity areas than for Qualified Census Tract (QCT) revitalization areas. States which provide more selection points for opportunity areas include North Carolina, Illinois, Massachusetts, and Mississippi.

The one point differential proposed between maximum points available for Opportunity Index locations (7 points) and Revitalization Plan locations (6 points) in this QAP, is allowed under 26 U.S.C. § 42(m). *ICP v TDHCA*, 2012 WL 3201401, *7 -*8, (N.D. Tex. 2012).

When reviewing the QAP of other states, ICP and ICHDC note many other states also give higher points for opportunity areas. The differences reveal that other jurisdictions, not subject to judicial remedies and oversight, have weighed the issues and decided to encourage LIHTC units in higher opportunity areas by awarding more points for these areas than are given to applications for units in QCTs that contribute to concerted community revitalization plans.[1]

North Carolina (2012 9% allocation $21,244,082)

The North Carolina QAP explicitly prohibited locations for tax credit developments in areas

[1] Some states provide only minimum selection points for QCT revitalization locations. For example, the California QAP gives two selection points for location in a QCT and the development of which would contribute to a concerted community revitalization plan. California gives three selection points for solar hot water for all tenants who have individual water meters.

of minority and low-income concentration. North Carolina allowed for possible exceptions for projects in economically distressed areas with community revitalization plans supported by public funds.

The selection criteria for rehabilitation of projects that are part of a community revitalization plan provide that such projects in severely distressed areas have a reduced likelihood of being awarded tax credits. There were no selection points given for locating projects in a QCT. The relevant portions of the North Carolina QAP state:

Projects cannot be in areas of minority and low-income concentration (measured by comparing the percentage of minority and low-income households in the site's census tract with the community overall). The Agency may make an exception for projects in economically distressed areas which have community revitalization plans with public funds committed to support the effort (see 2012 Low-Income Housing Tax Credit Allocation Plan for the State of North Carolina, Section VI, Part A, Number 5).

Applications will have priority to the extent that the rehabilitation improvements are a part of a community revitalization plan or will benefit the surrounding community. However, projects in severely distressed areas will have a reduced likelihood of being awarded tax credits (see 2012 Low-Income Housing Tax Credit Allocation Plan for the State of North Carolina, Section IV, Part H, Number 3[e]).

Illinois (2012 9% allocation $28,312,365)

Illinois provided four points for a project that is part of a Local Revitalization Plan that included housing goals (see 2012 Low-Income Housing Tax Credit Allocation Plan for the State of Illinois, Section VII, Part E, Number 3). However, if the project is non-elderly and is to be located in one of the Affordable Housing Planning and Appeals Act (AHPAA) cities, it received eight points (see 2012 Low-Income Housing Tax Credit Allocation Plan for the State of Illinois, Section VII, Part E, Number 8). The Illinois AHPAA required cities with less than 10% affordable housing units to adopt and implement an affordable housing plan to provide affordable units equal to 10% of the total units in the city. The municipalities subject to AHPAA are predominantly White, non-Hispanic locations.

Massachusetts (2012 9% allocation $14,492,579)

The Massachusetts QAPs from 2008 through 2012 provided for higher points for an opportunity area than it did for location in a QCT/revitalization area. If the project was in a QCT and the development of that project contributed to a concerted community revitalization plan in conformance with the Section 42 preferences then the QAP provided for six points. The other two Section 42(m)(B)(ii) preferences also received six points. However, the Massachusetts QAPs award 14 points if the development is in a Location in an Opportunity Area. Until this summer, an Opportunity Area was defined as a location in a municipality, which has less than 10% subsidized housing and a census tract within that municipality where the poverty rate is below 15%. Massachusetts then amended the provision to provide the 14 points for a more general definition of an "area of opportunity."

Mississippi (2012 9% allocation $6,552,726)

Mississippi provided two points for proposed projects in a QCT -provided the project contributed to a concerted revitalization plan- and five points for a development site located in a zip code, which has not had any tax credit developments funded for the last five years. These locations are also eligible for the 130% basis boost. Some counties with a need for affordable housing are also eligible for up to five additional points (see State of Mississippi Home Corporation Housing Tax Credit Program 2012 Qualified Allocation Plan, Section 7, Part I. Numbers 1 & 2).

Comment (60)
Veronica Chapa-Jones, City of Houston

CITY OF HOUSTON

Housing and Community Development Department

Annise D. Parker

Mayor

Neal Rackleff
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601 Sawyer Street, Suite 400
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Mr. Cameron Dorsey
Director, Multifamily Programs
Texas Department of Housing & Community Affairs
PO Box 13941
Austin, Texas 78701

RE: City of Houston Public Comment for the TDHCA 2013 Qualified Allocation Plan

Dear Mr. Dorsey,

Thank you for the opportunity to provide public comment on the TDHCA 2013 Qualified Allocation Plan (QAP). The recommendations outlined in this letter establish the City of Houston's Housing and Community Development Department's (HCDD) official public comment for the QAP.

As you may know, HCDD has been one of the State's strongest tax credit development partners over the last several years, leveraging approximately $41,500,000 of the City's HOME Investment Partnership (HOME) program funds since 2009. Currently, the Department is concluding the administration of approximately $60,000,000 in Ike Disaster Recovery Round 1 funds and is preparing to leverage approximately $55,000,000 in Ike Disaster Recovery Round 2 funds toward single family and multifamily rental in targeted areas around the City of Houston. Next year, the Department anticipates utilizing millions of dollars in combined HOME and Community Development Block Grant Funds toward investment in other geographic areas in the city, in addition to the investment in Disaster Recovery areas.

In order to enhance the operations and opportunities for partnership, the City would like to offer the following recommendations:

Recommendation #1: Allow for points from city instrumentalities, where at least 60 percent of the governing board is city council members or is appointed by the Mayor.

Page 16
§11.9. Competitive HTC Selection Criteria
(d) Criteria promoting community support and engagement
(3) Commitment of Development Funding by Unit of General Local Government

(§2306.6710(b)(1)(E))
An Application may receive up to thirteen (13) points for a commitment of funding from the city or county in which the Development is proposed to be located. Development funding from instrumentalities of a city or county will not qualify for points under this scoring item unless such instrumentalities are first awarding such funds to the city or county for their administration or at least 60 percent of the governing board of the instrumentality is city council members or is appointed by the Mayor from the city in which the Development will be located (for Developments located in a city) or county commissioners from the county in which the Development will be located (for Developments not located in a city). A government instrumentality may not be a Related Party to the Applicant. Development funding must be provided in the form of a construction and/or permanent loan with an interest rate no higher than the Applicable Federal Rate (AFR) and term of at least 5 years, a grant, an in-kind contribution, a contribution which will support the Development, such as vouchers, or combination thereof.

[Justification: In the City of Houston, the Mayor appoints the Board Members of some government instrumentalities, such as the Houston Housing Finance Corporation.]

Recomendation #2: Clarifications regarding Site & Neighborhood and Fair Housing Requirements for Ike CDBG Disaster Recovery Program.

Page 18
§11.9. Competitive HTC Selection Criteria
(d) Criteria promoting community support and engagement
(6) Community Revitalization Plan.
(B) For Developments located in Urban Areas outside of Region 3.

(i) An Application may qualify for up to six (6) points for meeting the criteria under subparagraph (A) of this paragraph (with the exception of being located in Region 3); or

(ii) An Application will qualify for six (6) points if the city or county has an existing plan for Community Development Block Grant -Disaster Relief Program (CDBG-DR) funds that includes and ~~the~~ meets the requirements of subclauses (I) -(V) of this clause. In order to qualify for points, the development Site must be located in the target area defined by the plan~~,~~ and the Application must have a commitment of CDBG-DR funds~~ and receive a HUD Site and Neighborhood Clearance with HUD review or approval of such clearance~~:

[Justification: Site and Neighborhood Clearance is only conducted by HUD where the participating jurisdiction's Site and Neighborhood Clearance process is under review, otherwise a participating jurisdiction is required to maintain records that would comply with Site and Neighborhood Standards as prescribed by 24 CFR 983.57.]

(I) the plan defines specific target areas for redevelopment of housing that do not encompass the entire jurisdiction;

(II) the plan affirmatively addresses Fair Housing demonstrated through an approved Fair Housing Activity Statement-Texas (FHAST);

(III) the plan is subject to administration in a manner consistent with the findings of an Analysis of Impediments approved or accepted by HUD within the last three (3) calendar years or an approved Fair Housing Activity Statement –Texas (FHAST), approved by the Texas General Land Office;
[Justification: CDBG-DR subrecipients were required to submit a Fair Housing Activity Statement-Texas in order to apply for Disaster Recovery Funds. This is the primary fair housing document to demonstrate commitment and action steps to affirmatively further fair housing.]

We look forward to successful continued partnership toward the development of quality, affordable housing for Houstonians. If you have additional questions, please contact Ms. Eta Paransky, Director of Multifamily Programs, by phone at 713-868-8449 or via email at eta.paransky@houstontx.gov.

Sincerely,

Veronica Chapa-Jones
Deputy Director

Comment (61)
Lora Myrick, Betco Development

BETCO DEVELOPMENT

Development and Consulting for Affordable Housing in Texas Since 2007

Lora Myrick
Vice President

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lora@betcodev.com

October 20, 2012

Cameron Dorsey, Director of Multifamily
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, TX 78711

Re: 2013 Draft Qualified Allocation Plan

Dear Mr. Dorsey:

We wish to thank you the Department and Department staff for the opportunity to provide comments to the 2012-2013 Qualified Allocation Plan (QAP) and submit the following comments for consideration.

11.4(c)(2) Increase in Eligible Basis

We appreciate that the QAP has included developments in "Rural" areas as being eligible to receive the 130% boost. However, we would like to see included in this category, developments with existing USDA funding that will remain in place be eligible for the increase in eligible basis.

11.9(B)(2) Sponsor Characteristics

As many prior commenters have stated, we also are not in favor of the "Texas" experience requirement. This action seems to limit competition in an arena where good, strong competition will get the people of Texas a better product if not the best product. It is unclear to us how housing will be created in greater numbers or at a higher quality by limiting outside competition. Applicants, both in state and out of state, should be graded on the type of transaction being proposed, the number of such transactions in the applicant's portfolio and the successful development of such transactions, both in quality of the developments and in the operations of the development. There was a time where the Department conducted compliance review requests from other states where these applicants had properties. Perhaps the Department should reconsider the reinstitution of this inquiry as a requirement to do business in Texas.

An alternative could be the additional points are granted to out-of-state developers that show capacity and expertise to develop in Texas if they employ local or Texas Based management companies rather than bringing their own from out of state. This will allow for good solid developers to compete and build quality housing for Texans and creates job opportunities for Texans that will stay in Texas.

In response to the points awarded for the inclusion of Historically Underutilized Businesses (HUBs) in the ownership structure, we do not understand the reasoning to additionally incentivize applicants for the use of HUBs when there is already a threshold requirement to use HUBs in the development. This seems to a waste of valuable resources because

applicants have to add fees for these additional owner entities. It also causes additional undue burden to the ownership structure by forcing an unnecessary entity into the structure which can be problematic should there be future financial or workout issues with the lenders. There have been historical compliance issues related to HUBs in the ownership structures. ARCIT recommends the deletion of this scoring item. However, should the Board decide to keep this item in the scoring criteria, we request the inclusion of non-profits and allow applicants to choose between the use of a HUB and a non-profit partner.

11.9(c)(4) Opportunity Index

A study recently released by the Department, The Bowen Study, emphasized the need for upgrading the existing affordable housing stock and made the point that this is critically important in rural Texas. More than two-thirds of the At-Risk developments located in rural areas. This category was designed to preserve existing affordable housing stock. The intent of the Opportunity Index is to locate affordable housing in high opportunity areas with more jobs, better schools, etc. Due to the fact that At-Risk developments already exist, there is not an "opportunity" to "re-locate" them near more jobs, better schools, etc. Therefore, the opportunity index points put most at risk rural properties at a disadvantage in scoring in this set-aside. With this in mind, we respectfully request excluding applications applying in the At-Risk set-aside from the Opportunity Index scoring criteria.

11.9(d)(1)(C) Quantifiable Community Participation Points

The support or opposition from a Neighborhood Organization in a previous application cycle should have no bearing on the current application cycle. In the majority of organizations, the boundaries are not the same unless the application in question is proposing a development on the same exact site. Most neighborhood organization boundaries do not include vacant land unless they are requested to include that land by a developer or they are attempting to oppose a specific development. Therefore, we respectfully request the deletion of any points that refer to a previous cycle.

11.9(d)(3) UGLG

We are in favor of a graduated scale of funding based on population and further believe that it is a good change and will resolve some of the inequities between urban and rural. However, the language is confusing and we request there be an example in the QAP showing a calculation of the amount. In addition, we request the Department expand the entities allowed to provide funding. These should include "any" entity created and still under the authority of the city or county, which may include, Housing Finance Corporations, Economic Development Corporations, etc.

11.9(d)(6) Community Revitalization Plan

Rural communities that have created redevelopment plans should be able to use those plans in the same way as urban communities do revitalization. Both serve the needs of community in revitalization. Therefore, we request the Department expand the criteria so that rural areas may receive the full points for having either a redevelopment or revitalization plan. We request the Department expand the definition of infrastructure to include other community-wide amenities that would improve the quality of life for residents (i.e. parks).

11.9(e)(2) Cost of Development per Square Foot

There are many variables in a real estate transaction as it stands. Adding a very unpredictable criterion to the already complex set of variables, high stakes and expensive process is unjustifiable. The original intent of the legislation was to limit the amount of credit requested and to get the most efficient use of credits allocated. The median concept does not accomplish the legislative intent. Additionally, the new language will require too many adjustments or considerations to accommodate the differences in construction through the diverse state of Texas (i.e. single family, multifamily,

townhome, garden style, rural, urban, panhandle, coastalbend, Dallas/Houston metro, construction materials (100% brick, 100% hardiplank), etc…).

We would like to request the reinstatement of the language that was in the 2011 QAP with a cost increase of at least $3000 a unit as we believe it best serves the legislative intent and the language of the statutory requirement. It recognizes that there are very different types of housing in different communities that cannot be averaged and it does not create a significant unknown as applicants make decisions about what which developments to pursue.

11.10 Challenges

Although we do not want to encourage frivolous challenges, we do want to maintain the integrity of the challenge process. We need to keep in mind that the intent of the challenge process was to keep things open, honest and allowed us to "self-police" the process. The proposed fee inhibits this very important part of the process and creates a barrier in which potentially substantive omissions can find protection that never should have been allowed to stand, much less move forward in the process. Therefore, we do not support the challenge fee.

If you have any questions regarding these, comments please feel free to contact me any time.

Sincerely,

Lora Myrick

Lora Myrick
Vice President
BETCO Consulting, LLC

Comment (62)
Lon Burnam, State Representative District 90

From:	Lon Burnam
To:	tim.irvine@tdhca.state.tx.us; jpoxer@comcast.net; lowell.keig@troilolawfirm.com; tgann@lufkinrealestate.com; juan.munoz@ttu.edu; leslie.bingham@valleybaptist.net; mmcwatters@mail.smu.edu;
cc:	Teresa.morales@tdhca.state.tx.us; Rafael Anchia; Elizabeth Zornes;
Subject:	Action in The Inclusive Communities Project, Inc v. TDHCA
Date:	Monday, October 22, 2012 4:45:47 PM

Executive Director Irvine and TDHCA Board members,

Please note my support for the position of Rep. Rafael Anchia regarding TDHCA's response to the upcoming ruling on its motion in The Inclusive Communities Project, Inc. v. Texas Department of Housing and Community Affairs. Specifically, I urge that:

1. If the Judge denies TDHCA's Motion to Alter the Judgment, or to have a new trial, TDHCA should appeal the decision and order,
2. TDHCA should file a motion requesting a stay of the Judge's order until a court of final resort determines the case,
3. TDHCA should have only 1 QAP for all of Texas, and
4. TDHCA should revise sections of its Proposed 2013 QAP, so that projects in QCTs (low-income neighborhoods) that are part of a comprehensive revitalization supported by the City have a competitive opportunity to receive an award.

As a representative for Fort Worth in the Texas Legislature, I believe it is vital that our community revitalization efforts in North Texas focus on those communities that need it most and that we not squander precious resources on affluent suburbs who could much more easily finance their own projects. I join Rep. Anchia in urging you to follow that spirit in your response to the judge's ruling.

Sincerely,
Rep. Lon Burnam
District 90

Comment (63)
John Dugan, City of San Antonio

CITY OF SAN ANTONIO

Office of Grants Monitoring and Administration
1400 S. Flores, Unit 3
San Antonio, Texas 78204

October 22, 2012

Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
P.O. BOX 13941
Austin, TX 78711-3941

RE: Comments on the Draft 2013 QAP for the State Housing Tax Credit Program

Dear Mr. Irvine:

This letter serves as the City of San Antonio's official comments regarding the draft 2013 Qualified Allocation Plan for the State of Texas Housing Tax Credit Program. To develop the following comments, the City of San Antonio coordinated through the City's Center City Development Office, Department of Planning and Community Development, and the Office of Intergovernmental Relations, as well as, multiple affordable housing entities and local stakeholders, several of which have already submitted comments on their own.

The comments on the draft QAP below are representative of the City of San Antonio's interest in preserving the local community's input in the community revitalization process while recognizing that each community maintains unique affordable housing challenges.

Comment #1 - Commitment of Development Funding by UGLG

"Development funding from instrumentalities of a city or county will not qualify for points under this scoring item." The City of San Antonio is concerned with the removal of city instrumentalities to qualify for 13 points. Implementation of this provision would provide a significant disadvantage to local Public Housing Authorities as potential recipients of Housing Tax Credits. The City recommends the exception for Public Housing Authorities to be allowed to qualify for points under this section.

Comment #2 - Criteria promoting community support and engagement

The City of San Antonio is concerned with the restrictions, scoring, and timing associated with the availability of applicants to utilize types of community revitalization plans in Section (d)(6)(A)(i) when applicable to urban areas outside of Region 3.

1. The restrictions in identifying a specific plan that meets each of the required criteria could be problematic for communities statewide. Larger communities including the City of San Antonio may have several plans within its boundaries that focus on specific needs such as transportation plan, affordable housing, and redevelopment, etc... which may not focus on each of the TDHCA required criteria individually but may when the plans overlap.

   The City of San Antonio recommends language in this section to allow for TDHCA to consider multiple plans in order to achieve the cited criteria.

2. Currently, the scoring criterion focuses on the potential economic benefit from a plan, rather than how effectively the development would achieve specific plan goals.

CITY OF SAN ANTONIO
Office of Grants Monitoring and Administration
1400 S. Flores, Unit 3
San Antonio, Texas 78204

The City of San Antonio recommends providing additional points in this section and revising the methodology to achievement points based on either how effectively the development will achieve the cited plan criteria or the number of criteria achieved. This will allow a greater scoring potential to applicants who can achieve the criteria cited in Section (d)(6)(A)(i) while allowing input from multiple plans. For instance, the applicant could relay how the development would show a measurable impact to crime reduction in accordance with a specific plan goal.

3. To be eligible for points, the timing of the plan under consideration mandates completion by January 8, 2013, in line with the Pre-Application Final Delivery Date pursuant to §11.2. If the recommendations in 1 and 2 above are not implemented, the City has a concern on the ability for community plans to effectively have a role in the HTC application process, unless the timeframe is extended to March 31st, to at least allow for the completion and adoption of community plans which are currently underway.

The City of San Antonio values the incredible work by TDHCA staff to ensuring that the Housing Tax Credit Program remains a vital source for affordable housing while protecting the objectives in affirmatively furthering fair housing marketing efforts.

Sincerely,

John M. Dugan
Director

Cc: Sheryl Sculley, City Manager
City of San Antonio

Cc: David Ellison, Assistant City Manager
City Manager's Office, City of San Antonio

Cc: Lourdes Castro Ramírez, President and CEO
San Antonio Housing Authority

Cc: Lori Houston, Director
Center City Development Office, City of San Antonio

Cc: Carlos Contreras, Director
Office of Intergovernmental Relations, City of San Antonio

Comment (64)
Michael Bodaken, National Housing Trust

NATIONAL HOUSING TRUST

October 22, 2012

Mr. Misael Arroyo
Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941

Memo: Texas Draft 2013 Qualified Allocation Plan

Dear Mr. Arroyo:

The National Housing Trust is a national nonprofit organization formed to preserve and revitalize affordable homes to better the quality of life for the families and elderly who live there. NHT engages in housing preservation through real estate development, lending and public policy. Over the past decade, NHT and our affiliate, NHT-Enterprise Preservation Corporation, have preserved more than 25,000 affordable apartments in all types of communities, leveraging more than $1 billion in financing.

We appreciate the opportunity to comment on Texas' Qualified Allocation Plan. The Trust fully acknowledges and appreciates the entire set of preservation policies and programs established by the Texas Department of Housing and Community Affairs. The comments below refer directly and specifically to TDHCA's draft QAP as it relates to the tax credit program and are in no way meant to imply a lack of appreciation for your other successful preservation programs and policies or the current challenges in the tax credit market.

In summary, we urge TDHCA to:

- Maintain the ***15% set-aside for "at risk" developments and continue to prioritize proposals involving preservation and rehabilitation*** of existing multifamily rental housing in the final 2013 QAP.
- ***Balance the allocation of tax credits for new construction and the preservation of existing housing,*** particularly where existing housing is principally occupied by low income minority households.
- ***Maintain the green building incentives in the final QAP,*** and consider working with state utilities to create energy efficiency programs for multifamily properties.

National Preservation Initiative

1101 30th Street, N.W., Suite 400 ■ Washington, D.C. 20007 ■ 202-333-8931 ■ FAX: 202-833-1031

Low Income Housing Tax Credits and Preservation in Texas

Our nation faces a serious shortage of housing for low- and moderate-income families. Over the last decade, more than 15% of our affordable housing nationwide has been lost to market-rate conversion, deterioration, and demolition**.** By prioritizing preservation, Texas' Qualified Allocation Plan can provide the incentives necessary to prevent the loss of this indispensable affordable housing. Property owners, nonprofit organizations, developers, and local governments depend on state housing finance agencies to provide the financial and technical assistance necessary to preserve affordable housing for future generations.

At-risk properties in Texas

Project-based Section 8 properties with contracts expiring before the end of fiscal year 2017:

- 26,443 assisted units in 375 properties
- 47% of which are owned by for-profit owners

Preserving and rehabilitating existing housing has proven to be a cost-effective method to provide rental housing to low-income families and seniors. Nationwide, rehabilitation projects require almost 40% less tax credit equity per unit than new construction developments. In addition, preservation prolongs federal investment in affordable housing properties. As such, states around the nation have recognized that preservation is a common sense response to America's affordable housing shortage, and have prioritized preservation and rehabilitation in their QAPs. **Forty-six state agencies prioritize competitive 9% tax credits for preservation by creating set-asides or awarding points to proposals that involve the preservation and rehabilitation of existing affordable housing.**

Preservation is a cost-effective policy

In 2010, the per-unit cost of preservation projects in Texas was 20% less than that of new construction projects.

The Trust strongly supports TDHCA's efforts to encourage preservation by setting aside 15% of Texas' competitive tax credits for "at risk" developments. Texas' past preservation efforts have been highly successful. **From 2007 – 2011, at least 183 properties with 17,854 apartments were preserved in Texas with 9% and 4% Low Income Housing Tax Credits.** Texas is a leader in the region in prioritizing preservation. **We urge TDHCA to maintain its 15% set-aside for "at risk" developments in the final 2013 QAP.**

Low Income Housing Tax Credits and Fair Housing

The Trust recognizes TDHCA's efforts to expand affordable housing to areas of opportunity through the Opportunity Index, but doing so must not be at the expense of existing low-income communities. **With that in mind, the Trust urges TDHCA to balance the allocation of tax credits for new construction and the preservation of existing housing, particularly where existing housing is principally occupied by low income minority households.** Fair housing principles should combat residential segregation by prohibiting the denial of housing opportunities on the basis of race. Striking a balance between addressing priority housing and redevelopment needs and providing improved opportunities can produce a tension between the twin goals of the Act – avoiding discrimination while promoting integration. By striking a balance between incentivizing new construction in communities of opportunity and investing in existing neighborhoods where low income residents already live, TDHCA will preserve existing affordable housing occupied by low-income households and avoid discrimination against those households by catalyzing investment and development in those neighborhoods.

Preservation is Environmentally Friendly

State and local agencies are increasingly encouraging, and in some cases requiring, affordable housing developers to adopt green building practices. Using green building strategies, preservation projects can deliver significant health, environmental, and financial benefits to lower-income families and communities. Green technologies promote energy and water conservation and provide long-term savings through reduced utility and maintenance costs, all while providing residents with a healthier living environment and reducing carbon emissions.

We enthusiastically support the green building incentives included in TDHCA's threshold and selection scoring criteria, and commend TDHCA for including consideration for green building practices, healthy building materials and energy efficient design features in Texas' QAP.

The Trust also encourages THHCA to partner with Texas' utilities to make energy-efficiency programs more accessible to affordable, multifamily developments. A majority of states implement utility-funded energy efficiency programs, often paid for through charges included in customer utility rates. These programs are a significant and growing source of resources for residential energy retrofits that remain largely untapped by the multifamily sector. Utility energy efficiency program budgets have significantly increased since 2006 and could reach **$12 billion** nationwide by 2020. Reaching under-served markets, such as affordable multifamily housing, will be necessary if utilities are to achieve higher spending and energy saving goals. In several states, utilities are partnering with state housing agencies and affordable housing owners to develop successful multi-family energy efficiency retrofit programs for multifamily properties. **Energy efficiency upgrades in affordable rental housing are a cost-effective approach to lower operating expenses, maintain affordability for low-income households, reduce carbon emissions, and create healthier, more comfortable living environments for low-income families.**

Conclusion

It is fiscally prudent for states to balance tax credit allocations between new construction and preservation/rehabilitation. In addition to helping to build sustainable communities, preservation is significantly more cost-efficient and environmentally friendly than new construction. The National Housing Trust urges the Texas Department of Housing and Community Affairs to continue its support for sustainable communities and the preservation of Texas' existing affordable housing maintaining the set-aside for "at-risk" properties in your final 2013 QAP. I also urge you to continue to encourage the use of green building techniques and materials for rehabilitation and preservation.

Thank you for the opportunity to comment on this important issue in the State of Texas.

Sincerely,

Michael Bodaken
President

Unleashing Utility Resources to Energy Retrofit Affordable Multifamily Housing

UTILITY-FUNDED ENERGY EFFICIENCY PROGRAMS: AN UNTAPPED RESOURCE FOR AFFORDABLE HOUSING

Key Takeaways:

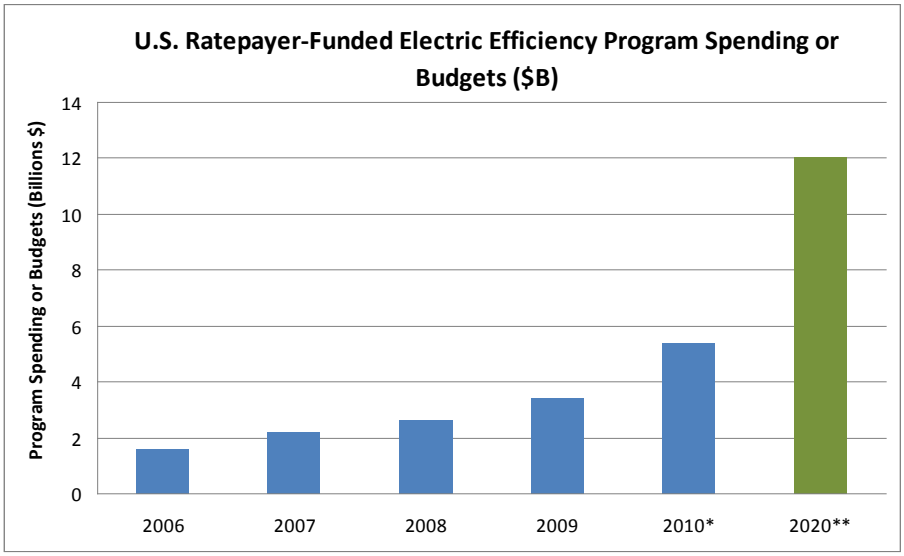
- Utility-funded energy efficiency programs are a significant source of resources for building retrofits that remain largely untapped by the multifamily sector.
- Total nationwide annual spending on utility energy efficiency programs could reach as much as $12 billion by 2020.
- Reaching under-served markets, such as affordable multifamily housing, will be necessary if utilities are to achieve higher spending and energy savings goals.
- In several states, utilities are partnering with housing agencies and affordable housing owners to help shape and administer successful multifamily retrofit programs.

Energy efficiency upgrades in affordable rental housing are a cost-effective approach to lower operating expenses, maintain affordability for low-income households, reduce carbon emissions, and create healthier, more comfortable living environments for low-income families.

A majority of states implement utility-funded energy efficiency programs, often paid for through charges included in customer utility rates. These programs are a significant and growing source of resources for residential energy retrofits that remain largely untapped by the multifamily sector. Utility energy efficiency program budgets have significantly increased since 2006 and could reach $12 billion nationwide by 2020.

If multifamily energy retrofits are to occur at scale, utilities will need to develop energy efficiency programs that address the unique nature of the multifamily sector. While nationwide data is unavailable, most utility-funded programs typically focus first on single-family and small rental properties rather than multifamily properties (5 units or more).[1]

In several states, utilities are partnering with state housing agencies and affordable housing owners to develop successful multifamily energy efficiency retrofit programs.



Total U.S. program spending for years 2006-2009. (Source: ACEEE)
*Total U.S. program budgets for year 2010. (Source: Institute for Electric Efficiency)
**Projected total U.S. program budgets in 2020 according to the Lawrence Berkley Nat'l Labratory (Source: Institute for Electric Efficiency)

NATIONAL HOUSING TRUST

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Washington, D.C. 20007
202-333-8931 | www.nhtinc.org

Iowa

In Iowa, a partnership between the Iowa Utilities Board, the Iowa Finance Authority, and investor-owned utilities ensure that low-income renter households have an opportunity to benefit from energy efficiency improvements. Utilities provide enhanced rebates for energy efficiency improvements in affordable multifamily housing, paying up to 40 percent of the cost of the measures.

New Jersey

New Jersey's largest utility, PSE&G, and the New Jersey Housing and Mortgage Finance Agency (NJHMFA) have collaborated to develop an innovative multifamily housing energy retrofit program. PSE&G's Residential Multifamily Housing Program provides upfront interest-free financing and grant incentives to cover the cost of eligible energy efficiency improvements.

PSE&G worked closely with NJHMFA to develop strategies to address the unique needs of affordable multifamily housing. Highlights of the program include the following:

- Incentives eliminate or significantly reduce the owner's contribution to the construction costs. Owners have the option of repaying the zero interest loans through energy savings and on their utility bill.
- Participating owners who may be unfamiliar with how to procure energy efficiency services receive ongoing guidance and technical assistance for soliciting contractor bids.
- To gain access to potential customers, PSE&G relied on NJHMFA's help to reach multifamily owners. The program has been fully prescribed to date.

Massachusetts

In 2009, the owners and operators of affordable multifamily housing in Massachusetts convinced the state's utility companies and other key stakeholders that the existing utility energy efficiency programs did not work for affordable multifamily buildings. At the time, owners of multifamily properties often had to apply completely separately to a utility's residential and commercial programs, as a building could have a mix of master meters (requiring participation in the commercial utility program) and individual tenant meters (requiring participation in the residential utility program). Further, an electric utility's program might address lighting and appliances, but do nothing to address inefficient heating plant or the building envelope. The utilities agreed to consider revising their programs so that multifamily owners could achieve true one-stop shopping and obtain services that would address the full range of efficiency needs in these buildings. The new Low-Income Multifamily Retrofit Energy Program was launched in 2010. The program's electric utility-funded budget for 2011 is $14 million, and the gas budget is $8.5 million.

Oregon

In Oregon, the state's housing finance agency- Oregon Housing and Community Services (OHCS)- administers an affordable housing program that is partially funded through proceeds from the state's ratepayer-funded energy efficiency budget. The Housing Development Grant Program (HDGP) provides grants to construct new housing or acquire and rehabilitate existing affordable housing. Between 2009-2011, HDGP funding was used to save and improve nearly 600 HUD subsidized affordable apartments that were at risk of being lost from the state's affordable housing supply.

NHT is grateful for the support of the Doris Duke Charitable Foundation, the Energy Foundation, and the Kresge Foundation.

References

[1] National Consumer Law Center, "Up the Chimney: How HUD's Inaction Costs Taxpayers Millions and Drives Up Utility Bills for Low-Income Families."

Comment (65)
Janine Sisak, JSA Development Company

From: Janine Sisak
To: Cameron Dorsey; Teresa Morales <teresa.morales@tdhca.state.tx.us> (teresa.morales@tdhca.state.tx.us);
Subject: Comments to QAP Definition of Supportive Housing
Date: Wednesday, October 03, 2012 5:12:52 PM

Cameron:

Additional comment located in October 9 Board meeting transcript.

As we discussed, I'd like to comment on the definition of Supportive Housing, and specifically recommend adding the following language to the second sentence. The new language is in italics.

"Supportive housing developments generally require established funding sources outside of project cash flow and are proposed and expected to be debt free or have no foreclosable or noncash flow debt, *unless the development is a Tax Credit Bond Development which has a commitment for a project based rental assistance contract that assures a contract rent for a majority of the units, in which case the development is treated as Supportive Housing under all chapters of the Uniform Multifamily Rules, except Subchapter*

D – Underwriting and Loan Policies. ”

P.S. Still waiting for Gateway team to decide whether to go ahead with agenda item next Tuesday. We should have final answer tomorrow.

Thanks

Janine Sisak

Senior Vice President/General Counsel

Diana McIver & Associates, Inc.

4101 Parkstone Heights Drive, Suite 310

Austin, Texas 78746

Phone: 512-328-3232 ext. 166

Fax: 512-328-4584

Comment (66)
Texas Association of Affordable Housing Providers

TAAHP
TEXAS AFFILIATION OF AFFORDABLE HOUSING PROVIDERS | 221 E. 9th street, ste. 408 | Austin, TX 78701
tel 512.476.9901 fax 512.476.9903 taahp.org texashousingconference.org

October 19, 2012

Board of Directors
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Dear Chairman Oxer & Members of the Board:

On behalf of the Texas Affiliation of Affordable Housing Providers (TAAHP), we would like to submit several recommendations for modifications to the 2013 Multifamily Program Rules - Qualified Allocation Plan (QAP) that are being suggested by our membership. TAAHP has more than 275 members including affordable housing professionals active in the development, ownership and management of affordable housing in the State of Texas.

It is TAAHP's policy to submit only recommendations that represent consensus opinions from the membership. Please note that there are several important provisions of the QAP that are not addressed in these consensus comments because the diverse TAAHP Membership has different views on the best ways to address those issues. TAAHP Members will be raising those issues for which there is no consensus individually. TAAHP's recommendations were developed at a meeting with the TAAHP Membership on October 15, 2012 in response to the draft approved by the TDHCA Governing Board on September 6, 2012.

The TAAHP QAP Committee would like to thank the TDHCA Staff for taking the time to review and discuss the consensus comments previously submitted and for incorporating some of the suggested changes in the draft. The comments in this letter represent additional comments, comments that are still under consideration, or comments that have not yet been incorporated into the draft.

Chapter 10, Subchapter A. General Information and Definitions:

RECOMMENDATION #1
§10.003 (a)(106) Site Work.
TAAHP recommends that the definition and development cost schedule be carved out of Site Work and put into a new category defined as "Site Amenity Costs" all non-Site Work items such as pools, fencing, landscaping, sports courts and playground area.

Chapter 10, Subchapter B. Site and Development Restrictions and Requirements:

RECOMMENDATION #2
§10.101(a)(2) Mandatory Site Characteristics.
TAAHP recommends that public transportation be added as an option. Additionally, TAAHP recommends changing the distances for mandatory site characteristics to two (2) miles for urban and three (3) miles for rural.

TAAHP
TEXAS AFFILIATION OF AFFORDABLE HOUSING PROVIDERS | 221 E. 9th street, ste. 408 | Austin, TX 78701
tel 512.476.9901 fax 512.476.9903 taahp.org texashousingconference.org

RECOMMENDATION #3
§10.101(a)(3) Undesirable Site Features.
TAAHP recommends that a waiver process be developed for all undesirable site features. Please note that when the undesirable site features were moved from a negative point category to threshold, the TDHCA Board stated that waivers could be sought. In the alternative, if the Department prefers not to provide a waiver process for this section, it should be made clear that waivers may be requested with respect to items: (B) [railroad tracks], (C) [industrial uses], (E) [high voltage transmission lines, cell towers], and (F) [airport accident or clear zones].

TAAHP also recommends that an exception be carved out for railroads using HUD mitigation standards.

RECOMMENDATION #4
§10.101(a)(4) Undesirable Area Features.
TAAHP recommends that the area features be more clearly defined and quantified.

TAAHP also recommends that the rules provide for an expedited review and appeals process for undesirable area features, such as:

> *The Executive Director shall either grant or deny a waiver or pre-clearance within five (5) business days of receipt by the Department of disclosure of undesirable area features under this clause (4). If the Department does not respond within such five (5) business day period, the application will not be terminated due to issues under this clause (4). Any denial of a waiver or pre-clearance may be immediately appealed to the Board at the next Board meeting regardless of any appeal filing deadlines set forth in Section 10.902 of this chapter (relating to the appeals process).*

Additionally, TAAHP recommends that any area features disclosed under this section and/or any waivers or pre-clearance granted with respect to this section be excluded as grounds for challenges within the challenge process.

RECOMMENDATION #5
§10.101(6)(B) Unit Amenities.
TAAHP recommends adding options for unit amenities to allow for 7 points becoming more achievable. Additionally, TAAHP recommends desk and computer nook be added to the unit amenities list. *Please note that TAAHP members may be providing additional amenities separately and through the public comment process.*

Chapter 10, Subchapter C. Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver Rules:

RECOMMENDATION # 6
§10.205(5) Civil Engineer Feasibility Study.
TAAHP recommends that the feasibility report be deleted or, at a minimum, that the amount of detailed information required from the Civil Engineer be reduced.

TAAHP
TEXAS AFFILIATION OF AFFORDABLE HOUSING PROVIDERS | 221 E. 9th street, ste. 408 | Austin, TX 78701
tel 512.476.9901 fax 512.476.9903 taahp.org texashousingconference.org

Chapter 11. State of Texas 2013 Qualified Allocation Plan Housing Tax Credit Program:

RECOMMENDATION #7
§11.2 Program Calendar for Competitive Housing Tax Credits.
TAAHP recommends moving the submission date of the community revitalization plan from pre-application final delivery date (01/08/2013) to full application final delivery date (03/01/2013).

RECOMMENDATION #8
§11.4(b) Maximum Request Limit (Competitive HTC Only).
TAAHP supports having the maximum request limit amount equal to 150% of the credit amount available in the sub-region as set forth in the draft QAP approved for public comment by the TDCHA Board at the September 6, 2012 Board meeting.

RECOMMENDATION #9
§11.4(c)(2) Increase in Eligible Basis (30 percent Boost).
TAAHP recommends adding the following category to be eligible for the 30 percent boost:

> *(E) any non-Qualified Elderly Development not located in a QCT that receives funds from the local jurisdiction of at least $2,000 per unit.*

RECOMMENDATION #10
§11.7(a) Tie Breaker Factors.
TAAHP recommends deleting the first tie breaker that is based on the Opportunity Index, however; if TDHCA cannot do so with respect to region 3, then TAAHP recommends deleting the first tie breaker that is based on the opportunity index for all regions other than region 3.

RECOMMENDATION #11
§11.8(b)(1)(D) Pre-Application.
TAAHP recommends removing the Community Revitalization Plan, Cost per Square Foot and Local Government Funding categories from the scoring items included in this section.

RECOMMENDATION #12
§11.9(c)(4) Opportunity Index.
TAAHP recommends using the poverty rate for families or individuals (whichever yields the most positive result) for calculating the opportunity index criteria.

RECOMMENDATION #13
§11.9(c)(6)(B) Underserved Area.
TAAHP recommends increasing Qualified Elderly Developments to two (2) points. Additionally, TAAHP recommends comparing development types to each other and revising the language "never received a competitive tax credit allocation" to "within the last five years has not received a tax credit allocation."

RECOMMENDATION #14
§11.9(d)(2)(A) Community Input Other than Quantifiable Community Participation.
TAAHP recommends removing letters of opposition counting against letters of support.

TAAHP
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RECOMMENDATION #15

§11.9(d)(3) Commitment of Development Funding by Unit of General Local Government.

TAAHP recommends changing the date by which the awards occur to no later than Commitment. In many cases a unit of local government will receive more applications for funds than are available and therefore are not in a position to make an award until after the TDHCA Board has determined which applications will receive an award of Tax Credits. If a unit of local government needs to wait until after the late July TDHCA Board meeting in order to know which of its applications are viable, making a decision with regard to awards by August 1 (within a few days of the late July TDHC A Board meeting) is problematic.

RECOMMENDATION #16

§11.9(e)(2)(B) Cost of Development per Square Foot.

TAAHP recommends that the 2011 QAP language with a cost boost of at least $3,000 a unit be reinstated because it best honors the legislative intent and the language of the statutory requirement, it recognizes that we do create different types of housing in different communities that cannot be "averaged," and it does not create a 10 point "unknown" as we make decisions about what developments to pursue. ***Please note that there is emphatic and broad support for this recommendation among the TAAHP Membership.***

TAAHP is very concerned about the new proposed language for several reasons.

First, it does not honor the legislative intent of the statutory language which was established solely for purposes of limiting tax credit requests. This is why the concept of a flat dollar cost per square foot cap was included in the 2004 QAP.

Second, the properties developed in Texas are very diverse in terms of costs, both based on the type of construction (single story cottages, multi-story elevator buildings, multi-story buildings with structured parking, single family, and even developments with two types of construction) and on the location of the development (urban versus rural, hurricane prone areas versus inland, etc.) Based on this diversity, calculating a "mean" as the benchmark is not at all reflective of "true costs." Despite the dollar cost per square foot cap contained in the last 8 QAPs, TDHCA has seen a variety of costs based on the various construction types, and that is why over the years, several different dollar caps have been developed for different situations.

Third, the uncertainty that this proposed language creates for developers is problematic. This is a 10 points category which as proposed is completely outside of the control of the developer and therefore prevents informed decision making about which developments to pursue. When developers are spending at minimum $50,000 to prepare an application, this level of uncertainty is untenable.

Finally and most importantly, this proposed change will likely result in homogenously designed housing with the potential for inferior construction quality. Developers will be discouraged from implementing innovative designs that might cost even slightly more than "average." Examples of such innovative design that would be discouraged would include achieving a LEED certification, incorporating a mixed-building or mixed-use concept, or simply meeting a higher architectural standard set by local municipality. Along the same vein, incorporating higher quality construction products that improve long term durability, added security features, and additional non-required amenity features will be discouraged as well, which will simply reduce the quality and longevity of housing funded with tax credits.

TAAHP
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tel 512.476.9901 fax 512.476.9903 taahp.org texashousingconference.org

RECOMMENDATION #17
§11.9(e)(7)(A) Point Deductions.
TAAHP recommends deleting penalty (A).

RECOMMENDATION #18
§11.10 Challenges.
TAAHP supports a $2500 fee for challenges and more time for Applicant to respond to challenges.

On behalf of the TAAHP membership, we appreciate your consideration of these comments. Should any additional information or clarification be needed, please do not hesitate to call.

Sincerely,

Debra Guerrero
Co-Chair, TAAHP QAP Committee

David Koogler
Co-Chair, TAAHP QAP Committee

Cc: TDHCA Staff
TAAHP Membership

Comment (67)
Arnold Garcia, Dilley Housing Authority

(67)

DILLEY HOUSING AUTHORITY

October 22, 2012

ATTN: Ms. Teresa Morales
Texas Department of Housing and Community Affairs
VIA Fax No. 512-475-0764

Re: Rule Comments on TDHCA Housing Tax Credit Program Qualified Allocation Plan

Dear Ms. Morales:

The following are my comments for consideration by TDHCA to the Housing Tax Credit Program QAP published in the September 21, 2012, Texas Register:

Section 11.4(b) Maximum Request Limit (Competitive HTC Only): TDHCA should not allow an applicant to request more than the credit amount available in a sub-region. This QAP provision to allow an applicant to request up to 150% of the credit amount available in a sub-region is not consistent with the provisions of Texas Government Code Chapter 2306 which requires TDHCA to use a formula to make regional allocations and has no provisions that allow TDHCA to allow an applicant to request more than the credit amount available in a sub-region. Additionally, the QAP prohibits awards to an applicant if there are not sufficient funds within the sub-region to fully award the application that then places the application in the rural or statewide collapse.

Section 11.5(3)(D) At-Risk Set-Aside: There are at-risk developments that have existing rental assistance with rents lower than the tax credits rents and may not be financially feasible unless they are allowed to eliminate a portion of that benefit. For example, the existing rental assistance may be within the tax credits rents for units at 30% AMGI and the development should be required to retain the rental assistance for those units but be allowed to eliminate the existing rental assistance on the other units who will retain their affordability within the HTC income and rent restrictions. This provisions should provide " . . . unless regulatory or financial barriers necessitate elimination of a portion of that benefit for the Development."

Section 11.9(b)(2) Sponsor Characteristics: Housing Authorities have extensive experience in providing affordable housing as developers, owners, and managers of Public Housing and Contract Administrators of HUD rental assistance contracts under Section 8 of the National Housing Act (Voucher Program). Many Texas Housing Authorities have as much as 75 years administering the Public Housing Program and 45 years administering the Section 8 Program. TDHCA needs to recognize this experience by awarding participation by Housing Authorities the maximum points under Sponsor Characteristics.

400 Ann St. Dilley, Texas 78017
Phone: (830) 965-1321 Fax: (830) 965-1548
Email: dilleyhousing@yahoo.com

Section 11.9(b)(2)(A) Sponsor Characteristics: Should include provisions awarding 1 point for a Housing Authority that has at least 51 percent ownership interest in the General Partner, materially participates in the Development and operation of the Development throughout the compliance period, and will receive at least 80 percent of the cash flow from operations and at least 25 percent of the developer fee.

Section 11.9(b)(2)(B) Sponsor Characteristics: Should include provisions awarding 3 points for a Housing Authority that that is rated by HUD as a High Performer or 2 points if rated by HUD as a Standard Performer and has at least 51 percent ownership interest in the General Partner, materially participates in the Development and operation of the Development throughout the compliance period, and will receive at least 80 percent of the cash flow from operations and at least 25 percent of the developer fee.

Section 11.9(d)(3) Commitment of Development Funding by Unit Of General Local Government: TDHCA proposes to restrict the awards points for funding from only a City or County. In prior years these points were allowed for funding by a "Unit of General Local Government" such as a Housing Authority. There is no basis for TDHCA to now exclude consideration for funding by any Unit of Local Government limit the award of points to only funding by a City or County.
Additionally, TDHCA proposes to penalize participation by a government instrumentality such as a Public Facility Corporation PFC) created under Chapter 303 of the Texas Local Government Code that was adopted by the Texas Legislature so that local governments such a City, County, Housing Authority or other Units of Local Government can carry out activities with their instrumentalities such as a PFC. There are many HTC developments in Texas sponsored by Units of Local Government using their instrumentality PFCs/ TDHCA needs to remove from the QAP all proposed restrictions on instrumentalities.

Section 11.9(e)(4)(A)(i) Leveraging of Private, State, and Federal Resources: Needs to include leveraging of funding from the Public Housing Program Capital Fund, Project Based Vouchers, and Section 8 Vouchers to assist families with their relocation.

Respectfully,

Arnold J. Garcia
Executive Director
Dilley Housing Authority

Comment (68)
Tony Sisk, Churchill Residential

From: Cameron Dorsey
To: Teresa Morales;
Subject: FW: request for change in threshold rules
Date: Wednesday, September 26, 2012 12:22:02 PM
Attachments: image001.png

Looks like public comment.

From: Tony Sisk [mailto:tsisk@cri.bz]
Sent: Wednesday, September 26, 2012 9:43 AM
To: Cameron.Dorsey@tdhca.state.tx.us
Cc: Jean Latsha (jean.latsha@tdhca.state.tx.us); Brad Forslund
Subject: request for change in threshold rules

Cameron/Jean- We have a couple of suburban family Dallas sites that are a little more than 1 mile away from a total of 6 services. In these growing suburban areas, it takes time to get all of these services in place, but they are coming as rooftops continue to build up. Could you please change the 1 mile rule for Urban to 2 miles, and make it equal to rural. People buy houses in these outlying master plan communities, and don't mind driving 1.5 or 2 miles to services.

Tony

Tony Sisk
Principal
Churchill Residential, Inc.
5605 N. MacArthur Blvd. #580
Irving, TX 75038
972-550-7800 x 224
972-679-8395 Cell
972-550-7900 Fax

Comment (69)
Dan Branch
State Representative District 108

STATE OF TEXAS
HOUSE OF REPRESENTATIVES

DANIEL H. BRANCH
MEMBER

October 23, 2012

Mr. Tim Irvine, Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

Dear Mr. Irvine:

Thank you for your continued service at the Texas Department of Housing and Ciommunity Affairs. I am writing in regards to the TDHCA 2013 Qualified Allocation Plan (QAP).

As co-chair of the Dallas Area Legislative Delegation, I consider it a great honor to represent the citizens of our region and advocate on behalf of my colleagues in the Texas House of Representatives. With this in mind, I am keenly aware that the opportunity for many of our citizens to obtain affordable housing is critical to the success of our region and state.

Having recently been informed that the proposed QAP will have the effect of halting any affordable housing projects in low-income neighborhoods, I ask that you give careful and diligent consideration to the 2013 QAP so that all worthy applicants, including revitalization developments, will have the opportunity to be competitive in the tax credit process. Furthermore, I ask that you please consider the merits and efficiencies of a single QAP for all Texas.

I have advised my staff to closely monitor the proceedings, and look forward to updates throughout the process.

Many thanks again for your consideration, and if I can be of further assistance, please contact me.

Best wishes.

Sincerely,

Dan Branch

DALLAS, HIGHLAND PARK, UNIVERSITY PARK - DISTRICT 108
POST OFFICE BOX 2910 AUSTIN, TEXAS 78768-2910 (512) 463-0367 DAN.BRANCH@HOUSE.STATE.TX.US

Comment (70)
R.L. Bobby Bowling, IV, Tropicana Building Corporation

TROPICANA BUILDING CORPORATION

4655 COHEN AVE • 915-821-3550 • EL PASO, TEXAS 79924

October 22, 2012

Cameron Dorsey
TDHCA
VIA e-mail

RE: COMMENTS ON PROPOSED 2013 QAP AND PROPOSED 2013 UNDERWRITNG RULES

Dear Cameron,

We offer the following comment on the Draft 2013 QAP. We break our comments into 2 categories, comments that offer substantive changes and comments addressing what are merely clerical changes that we think need to be made in language.

Substantive Changes:

1. **11.4(b) Maximum Request Limit:** We request that the per-deal cap be lowered to $1.2 million or 150% of the amount set aside in the sub-region. We have signed on to another letter submitted by a group of experienced Texas developers that details our reasoning for this change, but briefly, a smaller cap will allow for a better distribution of state assets, allowing more deals to be done. With higher tax credit pricing in the market place, a $1.2 million award of credits will support deals large enough to realize economies of scale on the management cost side.

2. **11.9(b)(2) Sponsor Characteristics:** We support the language in the draft QAP for this item, as it will allow TDHCA to award "good players" for keeping properties in outstanding shape. According to Patricia Murphy, the threshold score of 85 on the UPCS proposed in the draft QAP would include the top 40% of properties in the TDHCA portfolio. We believe this is an adequate cut-off point. However, also according to Patricia, a score of 92 would include the top 20% of properties in the TDHCA portfolio—a threshold which we would also support. ***It is important to note that this item does not "require Texas experience" as has been incorrectly identified by out-of-state witnesses in testimony at TDHCA public hearings and board meetings.*** Rather, the point item seeks to identify and reward owners of existing properties who are spending hundreds of thousands of dollars each year to keep their properties in Texas in near-new condition and able to stand up to the most rigorous state compliance program in the country. The point item allows for alternatives for first-time developers to get points and also encourages first-time developers to partner with these "good players"—which is a win-win-win opportunity for the

state of Texas and TDHCA charged with compliance duties by the Federal Government, the new developers (who probably have no idea how difficult compliance requirements in Texas are relative to owning market apartments or tax credit apartments in other states), and most importantly—the low-income tenants being served by the program in Texas. There are many "one and done" players in this industry, and this point-item will also serve to weed-out those with that intention—before they are awarded, instead of after the fact as is the case with the current policy of expelling "bad players" from the program after they own a property and ignore compliance requirements. Most federal, state, and local bidding opportunities DO INCLUDE an item such as this which seeks to reward the "good players" in the program.

3. **11.9(d)(3) Commitment of Funding by a Unit of General Local Government:** We strongly support the language in the draft QAP regarding this item, as without it, an unfair advantage would be realized by local Public Housing Authorities (PHAs) with the higher thresholds for contributions and points also being proposed in the 2013 QAP. Any item that would allow for an unfair advantage to be realized by a public entity over a private entity goes against the original intent of the Section 42 program—a program Congress always intended to be used by private developers—and is innately unfair. We believe Cameron Dorsey stated it best at the October 9th TDHCA Board Meeting when he stated, "...staff can't really come up with a really great policy reason why we would say a PHA deserves to be able to get more points inherently under this item than another development type. We just didn't see a reason to distinguish between types of owners." We agree entirely with this statement, as decades of evidence have shown that the private sector is much more efficient in every aspect of delivering products to the market place than a governmental entity, and if anything, the reverse should occur (tax-paying, private entities should get a point advantage over governmental entities). Also, as Mr. Dorsey stated in further testimony at the October 9th Board Meeting, there are other areas of the QAP and other aspects of the program where PHAs still have a decided advantage over private sector applicants—the ability to exercise their tax-exempt status on both sales and property taxes, as well as re-distribute Section 8 vouchers to themselves on their own tax credit properties are built-in advantages that are quite enough without any expressed QAP point advantages.

Clerical Changes:

1. **11.9(d)(6)(C)(i) For Developments Located in a Rural Area:** This section seeks to clarify that an applicant cannot first pay an entity to do certain things that would gain them points under the QAP, which we agree with. However, the language is too broad as written and may unintentionally disallow any

developer who has paid taxes or fees to a local governmental entity. We would propose changing the language of the second sentence in this paragraph to state:

> *The Applicant or Related Party cannot contribute funds for or finance the project or infrastructure, except through the normal and customary payment of property taxes, franchise taxes, sales taxes, impact fees and/or any other taxes or fees traditionally used to pay for or finance such infrastructure by cities, counties, state or federal governments or their related subsidiaries.*

We also submit the following comment on the proposed 2013 Draft Real Estate Analysis Rules and Guidelines:

1. **10.302(i)(6)(B)(i) and 10.302(i)(6)(B)(iii) Exceptions:** These 2 sections of the rules allow for the TDHCA underwriting feasibility rules to be ignored in their entirety if a PHA dedicates its own Section 8 Project-Based vouchers to at least 50% its development or characterizes at least 50% of its development as "public housing." The supposition in this language (dating back several years) is that the Federal Government will "bail-out" a deal that becomes infeasible—a supposition that we believe is in error and at the very least bad public policy. We believe that this section should be stricken from the rules as it holds private developers to a much stricter standard than for PHAs. The tax credit program has been the most successful affordable housing program ever created by the federal government and in Texas mainly due to the fact that **PRIVATE SECTOR DEVELOPERS** have been the major players in the program, especially in Texas. If it is the Department's wish to allow public sector PHA's to compete with private developers, then at least a level playing field should be established and **ALL DEVELOPERS SHOULD HAVE TO FOLLOW THE SAME UNDERWRITING RULES.** Further, in this economic and fiscal climate, the Federal Government is likely to lessen support of or eliminate entirely both the Section 8 program and the Public Housing program, leaving TDHCA to deal with infeasible projects over the long-term if this rule is not changed.

This concludes our comments for the 2013 draft rules regarding the LIHTC program. Thank you in advance for considering our comments.

Sincerely,

R. L. "Bobby" Bowling IV
President

Comment (71)
Anthony Jackson

From: Tim Irvine
To: Cameron Dorsey; Jean Latsha; Teresa Morales; Barbara Deane; Michael Lyttle;
Subject: FW:
Date: Monday, October 29, 2012 7:11:00 AM

More Frazier-related input

Tim

From: anthony jackson [mailto:antjacks52@yahoo.com]
Sent: Sunday, October 28, 2012 6:44 PM
To: tim.irvine@tdhca.state.tx.us
Subject:

Dear Mr. Irvine

I am a former resident of the Frazier neighborhood in Dallas, Texas. I have become aware of the issues related to the ICP v. TDHCA lawsuit, and the effect the lawsuit is having on affordable housing in low income areas.

As you know, the Frazier area is part of a revitalization effort that has been in progress for quite some time, and with no conventional financing available, the Low Income Housing Tax Credits (LIHTC) are key for the revitalization to continue.

I understand the LIHTC were originally designed for areas of revitalization, in fact, according to your own Motion filed in the ICP v. TDHCA lawsuit, "Section 42 shows a clear congressional preference for assisting those with the lowest incomes, serving low-income tenants for long periods of time, and placing projects in QCTs …Congress clearly intended that LIHTC should be used to help low-income tenants for long periods of time and to revitalize low income areas."

Therefore, I urge you to do the following:

· If the Judge denies the Motion, TDHCA should appeal the decision and Order
· File a motion requesting a stay of the judge's Order until a court of

final resort determines the case

· Revise sections of the Proposed 2013 QAP, so that projects in QCTs (low-income neighborhoods) that are part of a comprehensive revitalization supported by the city have a competitive opportunity to receive an award

Thank you,

Sincerely
Anthony Jackson