

**MULTIFAMILY FINANCE PRODUCTION DIVISION**

**BOARD ACTION REQUEST – REVISED (JULY 7, 2004)**

**July 8, 2004**

**Action Items**

Regarding the 2004 Housing Tax Credit Qualified Allocation Plan and Rules (QAP):

1. Adopt emergency amendment to the 2004 Housing Tax Credit Qualified Allocation Plan and Rules (QAP), Title 10, Part 1, Chapter 50, to ensure compliance with Attorney General Opinion Number GA-0208.
2. Approve proposed amendment for public comment to the 2004 Housing Tax Credit Qualified Allocation Plan and Rules (QAP), Title 10, Part 1, Chapter 50, to ensure compliance with Attorney General Opinion Number GA-0208.

**Required Action**

Approve emergency amendment to the 2004 QAP. Approve proposed amendment for public comment to the 2004 QAP.

**Background and Recommendations**

On June 23, 2004, the Attorney General of Texas, Greg Abbott, issued Opinion No. GA-0208 (“the Opinion”), which addressed whether the 2004 QAP was consistent with Senate Bill 264. Of primary concern was whether scoring items not listed in 2306.6710(b) could be interspersed with those nine scoring items that are identified in 2306.6710(b). The Opinion advised that no other items could be interspersed and all additional scoring items must have scores lower than those nine items. Based on this opinion, staff recommends that the Board take two actions:

1. First, staff recommends that the Board adopt an emergency amendment to the QAP that will take effect immediately to reflect compliance with the Opinion.
2. Second, staff recommends that the Board approve an amendment, identical to the emergency amendment, that will be publicized for public comment. After receiving public comment, staff will bring the rule back to its Board.

The recommended changes are consistent with the scoring structure implemented in the revised Recommendation List approved by the Board on June 28, 2004. Only those affected sections are excerpted below, with revisions denoted in blackline.

**§50.9(g)(3)(G) – Exurban Points**

“(G) the Development is located in an incorporated city that is not a Rural Area but has a population no greater than 100,000 based on the most current available information published by the United States Bureau of the Census as of October 1 of the year preceding the applicable program year. The Development can not exceed 100 Units to qualify for these points. (~~740~~ points).”

**§50.9(g)(5) – Affordable Housing Needs Score**

“(5) Housing Needs Characteristics. Each Application, dependent on the city or county where the Development is located, will yield a score based on the Uniform Housing Needs Scoring Component. If a Development is in an incorporated city, the city score will be used. If a Development is outside the boundaries of an incorporated city, then the county score will be used. The Uniform Housing Needs Scoring Component scores for each city and county will be published in the Reference Manual. (~~720~~ points maximum).”

**§50.9(g)(7)(F) – Mixed Income**

“(F) The Development is a mixed-income Development comprised of both market rate Units and qualified tax credit Units. Points will be awarded to Developments with a Unit based Applicable Fraction which is no greater than: [2306.6710(b)(1)(C); 2306.111(g)(3)(E)]

- (i) 80% (~~78~~ points); or,
- (ii) 85% (6 points); or,
- (iii) 90% (4 points); or
- (iv) 95% (2 points).”

**§50.9(g)(11)(F) – Transitional Housing**

“(F) Points will be awarded as follows:

- (i) If all Units in the Development are designed solely for transitional housing for homeless persons, ~~722~~ points will be awarded; or
- (ii) If at least 25% of the Units in the Development are designed for transitional housing for homeless persons, ~~545~~ points will be awarded.”

**§50.9(g)(14)(A)(i-iii) – Leveraging – Type A**

“(i) A contribution of \$500 to \$1,000 per Low Income Unit receives ~~43~~ points; or  
(ii) A contribution of \$1,001 to \$3,500 per Low Income Unit receives ~~86~~ points; or  
(iii) A contribution of \$3,501 to \$6,000 per Low Income Unit receives ~~149~~ points;”

**§50.9(g)(14)(B)(i-iii) – Leveraging – Type B**

“(i) Development-Based Vouchers for 3% to 5% of the total Units receives ~~43~~ points; or  
(ii) Development-Based Vouchers for 6% to 8% of the total Units receives ~~86~~ points; or  
(iii) Development-Based Vouchers for 9% to 10% of the total Units receives ~~149~~ points.”

### **ADDITIONAL REVISION PROPOSED JULY 7, 2004**

At the Board meeting on Thursday, July 8, Department staff will be proposing one additional revision to the Emergency 2004 QAP Amendment and the 2004 QAP Amendment (Non-Emergency) to ensure total compliance with the Attorney General Opinion.

§2306.6710 requires that 9 selection criteria be ranked in priority order. The QAP originally satisfied the third highest item (income level of the tenant) and the seventh highest scoring item (rent levels of the units) jointly. However, after further discussion, staff feels that a revision to this section in which these items are calculated individually more accurately reflects the legislative requirement. Therefore, staff will recommend to the Board that an additional scoring item be added, a seventh item on rent levels.

Because the rents and incomes are integrated within the scoring of Exhibits 12 and 13 (Low Income Targeting), staff will propose to create a new 10 point item that is tied to the Low Income Targeting points. The proposal minimizes adjustments to all other scoring items to minimize the impact on applications; therefore, the third item for income levels would remain unchanged at a maximum of 20 points and applicants would continue to receive the exact number of points already awarded for this item. The new seventh item for rent levels must have a total point award that falls between 9 and 12 points. 10 points results in the minimum change. Through the new "Item 7" each application could receive up to a maximum of 10 points based proportionally on the percentage of points already awarded under the two Low Income Targeting exhibits. An example of how this would be handled follows: An application, between Exhibits 12 and 13 for Low Income Targeting, was originally awarded 16 points out of the 20 point maximum (80% of the possible points). They would continue to receive the 16 points for Item 3 and would then earn an additional 8 points (80% of the 10 point maximum) for Item 7.

This approach adds a substantial number of points, however it does so proportionally and based on the level of commitment already provided. Furthermore, this proposed revision ameliorates the impact of the adjustment already made/proposed for leveraging in that those applications that originally pursued points for low income targeting in lieu of leveraging because the points were higher, will again be appropriately incentivized.

Attached is the additional proposed Emergency QAP Amendment Language and Revised Scoring Breakdown.

**Proposed Revision to the QAP for Emergency Amendment**  
 In Addition to the Proposed Revisions in the Board Book.

“(12) Low Income Targeting Points for Serving Residents at 40% and 50% of AMGI (up to 8 points). An Application may qualify for points under subparagraph (C) of this paragraph. To qualify for these points, the rents for the rent-restricted Units must not be higher than the allowable tax credit rents at the rent-restricted AMGI level. For Section 8 residents, or other rental assistance tenants, the tenant paid rent plus the utility allowance is compared to the rent limit to determine compliance. The Development Owner, upon making selections for this exhibit will set aside Units at the rent-restricted levels of AMGI and will maintain the percentage of such Units continuously over the compliance and extended use period as specified in the LURA. [2306.6725(a)(3); 2306.111(g)(2)and (3)(B); 2306.6710(b)(1)(C) and (G); 2306.6710(e)]

(A) No more than 40% of the total number of low income units (including Units at 60% and 30% of AMGI) will be counted as designated for tenants at or below 50% of the AMGI for purposes of determining the points in the 50% and 40% AMGI categories. No more than 15% of the total number of low income targeted units will be counted as designated for tenants at 40% of the AMGI for purposes of determining the points in the 40% AMGI categories. For purposes of calculating “Total Low Income Targeted Units” for this exhibit, Units at 30% and 60% of AMGI are also included.

(B) In the table below no Unit may be counted twice in determining point eligibility. Use normal rounding to the hundredth to calculate the percentages, points and “Total Points” for 40% and 50% Units. In calculating the percentages, the denominator includes every low income Unit in the Development, not just the 40% and 50% Units. Normal rounding disregards all digits that are more than one decimal place past the digit rounded; therefore, the thousandths place must not be rounded prior to rounding to the hundredth, e.g. 35.0449% equals 35.04%, not 35.05%. To calculate “Rounded Total Points” disregard the hundredth place in “Total Points” and round normally, eg. 7.50 equals 8 and 7.49 equals 7. The final total points requested must be a whole number consistent with this rounding methodology.

(C) Developments should be scored based on the structure in the table below. Only Developments located in counties whose AMGI is below the statewide AMGI, may use Weight Factor B. All other Applicants are required to use Weight Factor A.

% of AMGI	# of Rent Restricted Units (a)	Percentage of Rent Restricted Units (a/b)	Weight A	OR	Weight B	Points
50%	(a)	X	10		15	
40%	(a)	X	20		30	
TOTAL LI TARGETED UNITS* (b)					TOTAL POINTS=	
					ROUNDED	
					TOTAL POINTS =	

\*Includes all Low Income Units

(D) Rent Levels of the Units. Applications will receive up to maximum of 10 additional points for restricting the rent levels of the Units under paragraphs (12) and (13) of this subsection. The total points available for paragraphs (12)(A) through (C) and (13) are 20 points. The percentage of points awarded under those sections will be calculated and that percentage applied to a maximum of 10 additional points to determine the number of points to be awarded. All calculations will be rounded using basic mathematical principles. (Example: If an application receives 16 of the 20 points for items (12)(A) through (C) and (13), which is 80% of the possible points, then the application will receive 8 additional points under this subparagraph (D), which is 80% of the possible points. A half point will be rounded up to the nearest whole number).

(13) Low Income Targeting Points for Serving Residents at 30% of AMGI (up to 12 points). Applications that propose Units with rents set at 30% AMGI and reserved for occupancy by extremely low-income (those earning annual gross incomes of 30% or less of the AGMI) will be awarded up to 12 points. Developments must have a source of financing for the 30% units. Applicant must submit evidence that the proposed Development has either received development -based rental assistance from a governmental or non-governmental entity, which does not have an identity of interest with the Applicant (with the exception of Applications involving Public Housing Authorities); or received an allocation of funds for on-site Development costs from a local unit of government or a nonprofit organization, which is not related to the Applicant. Such funds can include Community Development Block Grant funds, HOPE VI, local HOME (not funded from the Department), a local housing trust, Affordable Housing Program from the Federal Home Loan Bank or Tax Increment Financing, HUD Section 202, HUD Section 811 and HUD Section 8, and must be in the form of a grant or a forgivable loan (with the exception of Applications involving Public Housing Authorities). Points will be determined on a sliding scale based on the percentage of 30% units. The Development must have already applied for funding from the funding entity. Evidence at the application stage shall include a copy of the application to the funding entity and a letter from the funding entity indicating that the application was received. No later than 14 days before the date of the Board meeting at which staff will make their initial recommendations for credit allocation to the Board, the Applicant or Development Owner must either provide evidence of a commitment for the required financing to the Department or notify the Department that no commitment was received. If the required financing commitment has not been received by that date, the Application will have the points for this item deducted from its final score and will be reevaluated for financial feasibility. No funds from TDHCA's HOME (with the exception of non-Participating Jurisdictions) or Housing Trust Fund sources will qualify under this category. In order to qualify for these points, the Applicant must provide a 5 year rental assistance contract for development-based vouchers for each 30% Unit or grant funds of \$12,500 per 30% Unit. Use normal rounding.

- (A) 3% to 5% of total Development Units at 30% AMGI receives 8 points; or
- (B) 6% to 8% of total Development Units at 30% AMGI receives 10 points; or
- (C) 9% to 10% of total Development Units at 30% AMGI receives 12 points.”

**Scoring Breakdown in Descending Order of Points**  
**Final 2004 QAP**  
**Reflecting Adjustment for AG Opinion as of July 8, 2004**

QAP Exh.#	Topic	Indiv. Points	Cumul 6710 Points Orig	Cumul 6710 Points Rev.	6710 Points for:	6710 Ranking	Comments
1	Financial Feasibility	28	28	28	Financial Feasibility	1	
2	QCP from Neighborhood Organizations	24	24	24	QCP from Neighborhood Organizations	2	+12 to -12 is 24 pt. range.
12	Low Income Targeting (40% & 50% of AMGI)	8	20	20	Income levels of the tenant	3	
13	Low Income Targeting (30% of AMGI with leveraging)	12					
7A	Minimum Square Footages	NA	18	18	Size and quality of the units	4	Combined, these three items address the size and quality of the units.
7D	Common Amenities	6					
7C	Unit Amenities	12					
14	Leveraging	9	9	14	Commitment of development funding by local political subdivisions	5	To ensure that this item is ranked appropriately within the 9 items, the points are being increased. The original range of 3/6/9 points is revised to 4/8/14 points.
6C	Official Support/Opposition	12	12	12	Level of support - state elected officials	6	Note that the exhibit scores a range of +6 to -6 (12 pt. range).
	Rent Levels of the Units	10	NA	10	Rent levels of the Units	7	Added to ensure consistency with Opinion. Portion of 10 points based proportionally on points awarded for Low Income/Rent Level Targeting.
7B	Cost Per Square Foot	9	9	9	Cost per SF	8	
10	Supportive Services	8	8	8	Services to be provided to the tenants	9	Also meets Rider 6 of Appropriations Bill
11	Transitional Housing	22 & 15	22 & 15	7 & 5	NA	NA	For compliance with the AG opinion points are reduced from 22 to 7 for 100% transitional and from 15 to 5 for 25% transitional.
5	Housing Needs Score	20	20	7	NA	NA	All Housing Needs scores were proportionally rescaled from a 20 point range to a 7 point range.
3G	Development Location - Part II	10	10	7	NA		"Exurban" points were adjusted from 10 points to 7 points.
7F	Mixed Income	8	8	7	NA	NA	Mixed Income Points, originally with a range of 8/6/4/2 was revised only to adjusted the 8 points to 7 points and left the rest of the range the same (for a range of 7/6/4/2) since they were already compliant with the legislation.
17	Pre-Application	7	7	7	NA	NA	
15	Length of Affordability	6	6	6	NA	NA	
6B	Public Meeting - Outreach	6	6	6	NA	NA	
4B	Site Location Negatives	6	6	6	NA	NA	-6 points possible
16	Right of First Refusal	5	5	5	NA	NA	
3A-F	Development Location - Part I	5	5	5	NA	NA	
4A	Site Location Amenities	5	5	5	NA	NA	
7G	Small Developments	5	5	5	NA	NA	
7E	Existing Residential	4	4	4	NA	NA	
6A	Consistency Con. Plan	3	3	3	NA	NA	
8	Sponsor Charac. - HUB	3	3	3	NA	NA	
9	Pop. with Children	1	1	1	NA	NA	
18	Penalties	NA	NA	NA	NA	NA	

Note: Grayed boxes under column "Cumul 6710 Points Rev." reflect those changes being made to ensure consistency with the Attorney General opinion.