

QAP

Public Comment

# (1) StoneLeaf Companies



## StoneLeaf Companies

October 6, 2014  
Board of Directors  
c/o Cameron Dorsey and Jean Latsha  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701

Dear Chairman Oxer, Board Members & TDCHA Staff:

As long time developers, builders and owners in the Housing Tax Credit Program, StoneLeaf Companies would like to submit several recommendations for modifications to the 2015 State of Texas Qualified Allocation Plan (QAP).

Chapter 11:

### **RECOMMENDATION #1**

#### **11.9(c)(4)(B) Opportunity Index**

We recommend that developments located in rural areas be given an allowable proximity of two linear miles to essential community assets.

The QAP currently allows for qualification of points in rural areas based on a proximity of one linear mile to essential community assets reflected in clauses (i)-(v). The Uniform Multifamily Rules, Subchapter B (10.101(a)(2)) lists the same community assets with an allowable radius of two miles for rural areas. Urban developments are given an allowable radius of one mile. It would be consistent with the Uniform Multifamily Rules to adjust the allowable distance for rural developments for community assets in the QAP to a proximity of two linear miles.

Rural communities in Texas are commonly known to have limited resources and therefore have limited community assets. It is common for these rural communities to have only one grocery store, one health related facility, one child care facility, etc. It is not uncommon for Texas residents of the rural communities to drive up to two miles to obtain services from these community assets.

### **RECOMMENDATION #2**

#### **11.9(c)(6)(D) Underserved Area**

We recommend that developments in rural areas be allowed to receive points if they are located in a census tract that has not received a competitive tax credit allocation, serving the same Target Population, within the past 15 years.

The QAP currently only allows for rural developments to receive points if they are located in a census tract that has never received a competitive tax credit allocation serving the same Target Population. It does not appear that a single 15-20 year old tax credit development in a rural community would redefine the definition of an underserved area.

There are rural communities throughout the State of Texas that have received tax credit allocations over a decade ago and are still in need of affordable housing due to growth. It is common to have a rural community located within a single census tract. With all of the requirements already in place for these communities to receive a tax credit allocation, it seems as though they are being penalized for having a tax credit development that may no longer be in its compliance period. We feel a market study is the best way to determine the need for housing in any given community.

**RECOMMENDATION #3**  
**11.9(c)(6) Underserved Area**

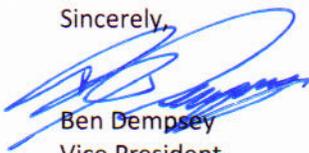
We recommend that elderly developments be eligible to score the same "underserved area" points as general population developments, as long as they meet the same criteria.

In 2012 National Association of Home Builders did a study that showed nearly 38% of American households are headed by someone age 55 or over, and that number was only expected to increase over the next seven years when this age demographic will account for 45% of U.S. households. Also, the attached article from Affordable Housing Finance Magazine (October 2014), provides results of a study from Harvard University's Joint Center for Housing Studies (JCHS) and the AARP Foundation that shows 4 million low-income seniors will be left to find affordable and adequate housing in the private market by 2030 if housing assistance doesn't increase.

Rural Texas communities in particular are in need of senior housing developments. While we understand the factors that have created the inequity between family and senior properties, we feel we are severely falling behind in providing housing for an aging population. We also understand that seniors can live in family housing, although it seems the common response from many of them is that they do not want to.

Please take these recommendations into consideration as you prepare for the final draft of the 2015 QAP. Thank you for your dedicated service to the State of Texas.

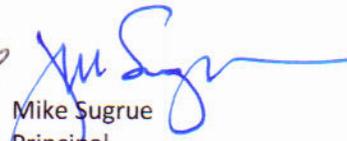
Sincerely,



Ben Dempsey  
Vice President  
StoneLeaf Companies



Victoria Sugrue  
Principal  
StoneLeaf Companies



Mike Sugrue  
Principal  
StoneLeaf Companies

cc: Cameron Dorsey – TDHCA Staff  
Jean Latsha – TDHCA Staff

# U.S. Unprepared for Senior Housing Needs

The nation is not prepared to meet the housing needs of aging Americans, according to a new report by Harvard University's Joint Center for Housing Studies (JCHS) and the AARP Foundation.

As Americans continue to live longer, the number of adults age 50 or older is expected to grow to 132 million by 2030. One in five Americans will be 65 or older in 2030, and one in eight will be 75 or older in 2040.

*Housing America's Older Adults: Meeting the Needs of an Aging Population* underscores the fact that there's a shortage of accessible housing units and high housing-cost burdens for seniors today, and that the dramatic demographic changes coming down the road can only exacerbate those problems.

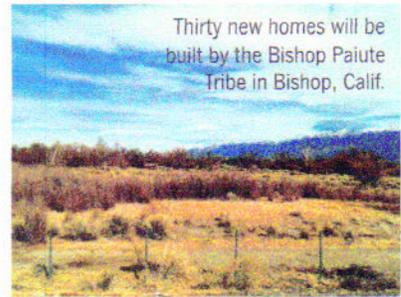
Seniors are at increased risks of financial stress, with typical household incomes dropping later in life. One-third of adults 50 or older paid more than 30 percent of their income for housing in 2012, with nearly 9.6 million severely cost-burdened seniors paying more than 50 percent of their income for housing.

Housing assistance also is limited for very low-income households 62 and older. In 2011, 3.9 million very low-income renter households were eligible for rental assistance, but only 1.4 million received the aid.

Current projections show that this gap will only continue to grow. Senior households eligible for rental assistance are expected to increase by 1.3 million between 2011 and 2020 and another 1.3 million between 2020 and 2030. If there aren't any boosts in housing aid, there will be 4 million very low-income senior households by 2030 who will be left to find affordable and safe housing in the private market.

The report also shows that those with severe housing-cost burdens spend much less on food and health care than those who can afford their housing.

Another staggering statistic is that a typical 65-year-old homeowner has enough wealth to afford in-home assistance for nearly nine years or assisted living for six and a half years, while typical renters of that age can only afford these services for two months.



## NATIVE AMERICAN TRIBE RECEIVES LIHTCs

The Bishop Paiute Tribe has become the first California Native American tribe to receive an award of low-income housing tax credits (LIHTCs).

It recently received reservations of \$884,507 in federal housing credits and \$3.4 million in state housing credits from the California Tax Credit Allocation Committee (TCAC). Located in the small town of Bishop in the state's Eastern Sierra region, the tribe will use the credits to build 30 new homes and a community building.

The award was made through a pilot Native American set-aside in California's LIHTC program.

Native American tribes had contacted the TCAC in 2013 and asked officials to consider changes to the 9 percent tax credit process because they believed tribal applicants were unlikely to be able to compete successfully for the credits.

"After careful consideration, TCAC decided on a pilot program to apportion some credits for federally recognized tribes out of the rural set-aside," says Bill Ainsworth, spokesman for state treasurer and TCAC chairman Bill Lockyer. "The pilot apportionment will continue through 2015, allowing TCAC to analyze results before considering additional changes."

In the first round, TCAC received two applications under the set-aside. Bishop Paiute's application scored the program's full 148 points, according to Ainsworth.

The TCAC has received two additional Native American apportionment applications in the current second round.

PHOTO: BOWEN NATIONAL RESEARCH

### BY THE NUMBERS

4 million

very low-income senior renters will be left to find affordable and adequate housing in the private market by 2030 if housing assistance doesn't increase.

\$6,100

is the net wealth accumulated by the median renter age 50 or older.

132 million

Americans are projected to be 50 or older by 2030.

(2) Bridgette Wallis

**From:** [Bridgette](#)  
**To:** [teresa.morales@tdhca.state.tx.us](mailto:teresa.morales@tdhca.state.tx.us)  
**Subject:** Citizen Requests Important Changes to the 2015 QAP for the 9% HTC program  
**Date:** Thursday, September 25, 2014 7:37:12 PM

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To the TDHCA:

I recently spoke at TDHCA's September Board Meeting about the lack of citizen oversight in the QAP for the 9% Tax Credit Program.

There are also clear issues with transparency in this public-private partnership that need to be addressed in the 2015 QAP. This program requires states to dispense funds to developers in the form of indirect federal tax credits. Where does this money come from but from taxpayers? Additionally, there is direct HUD funding going into many, if not most of these 9% developments.

Here's an example that is specific to McKinney, TX, but it could be from any 9% HTC award in the country:

According to the application for the M1 mixed-income apartments, the M1 will cost about \$23.6 million to build. Groundfloor (the developers) will get \$14.2 million from the tax credit equity they sell from the 9% HTC award, \$1 million from the McKinney Housing Authority, \$1.5 million from HUD Section 8 vouchers, and they'll take out an FHA loan for about \$9.3 million. Obviously, the majority of the funding comes from public funds.

And yet, citizens are not afforded the same transparent access to the contracts and business records of the developers who receive these direct and indirect public funds. Citizens who file Open Records requests find that many of their requests cannot be honored because the TDHCA only requires minimal paperwork from developers in their applications. It is well established that public-private partnerships work best when there is clear transparency on both the public and private sides.

A report called "Transparency in Public-Private Partnerships" lists a few of the reasons why transparency is important:

- Freedom of information for citizens
- Openness in dealings by office-holders
- Predictability in decision-making processes
- Fighting corruption

[http://openarchive.cbs.dk/bitstream/handle/10398/8572/Greve\\_2011\\_b.pdf?sequence=1](http://openarchive.cbs.dk/bitstream/handle/10398/8572/Greve_2011_b.pdf?sequence=1)

Again, we'll use the same McKinney example because there is one person peppered throughout both the M1 and the M2 9% HTC awards (awarded 2013 and 2014), but who was not required to be listed on either of the applications. Nor were any paper trails that he may have been on required by the TDHCA either. The lack of citizen oversight due to the lack of transparency happens everywhere, not just here.

- 1.) Person X (using a different company name) made money as the land sale broker for the M2. Citizens could not get access to the contract through Open Records requests because the TDHCA said they don't require it.
- 2.) Person X made money as the owner of another company that received money for pre-construction work. His employee was listed as a player on the Groundfloor application, not him.
- 3.) Person X performed public relations work and consulting work for Groundfloor. An Open Records request was made for contracts, scope of work, etc. Again, since the TDHCA does not require the information, they could not provide the documents.
- 4.) The two largest donations (\$2,500 each) Person X received for a failed bid to win a local city council seat in 2013 came from the two owners of Groundfloor.

Citizens need to be able to find out the details and depth of involvement of local players. This information cannot be obtained from the little paperwork required in the applications right now.

Citizen notification and participation issues in the 2015 QAP also need to be addressed. In McKinney, a group called Inclusive Communities Project was able to use the 9% Tax Credit Program for its own goals because of the lack of citizen oversight in this program. It appears that ICP's goal is to get as many suburban cities near Dallas to build 9% tax credit apartments in the areas they deem important (in this case, non-elderly and located in specific higher income census tracts); it appears that they have been able to use the lack of citizen oversight in the program to get McKinney to build TWO such developments, two years in a row, through the threat of a lawsuit. They have successfully usurped the 9% HTC program in Frisco too. They are currently working to do the same in other Dallas suburbs. According to the Consent Decree McKinney Housing Authority entered into with ICP, there will be one more application required in 2015.

When cities and city housing authorities are threatened with legal action by a group such as ICP, officials will become pretty cooperative with ICP. We found this to be the case in McKinney. The City Council passed a resolution of support for the applications, most likely out fear that they would get sued again. This, in turn, gave the developers 17 very important points on their applications. The ICP "loaned" the McKinney Housing Authority the money

to “lend” to the developer, Groundfloor, so they would get the points necessary for Support from a Local Subdivision to the tune of \$1 million per application. Since it appears that ICP’s goal is to get housing for Dallas residents anywhere they can, the Dallas Housing Authority is providing vouchers for their Section 8 recipients to the tune of \$1.4 million for 10 years. Both of these sources of money brought each the applications for M1 and M2 13 points each. The 9% tax credit program is being gamed.

Please accept my letter requesting the addition of citizen protections and transparency measures to the 2015 QAP (and all future QAPs).

Thank you,

Bridgette A. Wallis

6320 Blackstone Drive

McKinney, TX 75070

[virtualbridgette@gmail.com](mailto:virtualbridgette@gmail.com)

**From:** [Elena Peinado](#)  
**To:** [Bridgette](#)  
**Cc:** [Jean Latsha](#); [cameron.dorsey@tdhca.state.tx.us](mailto:cameron.dorsey@tdhca.state.tx.us)  
**Subject:** RE: 9% tax credit awards  
**Date:** Friday, September 12, 2014 11:24:37 AM

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Bridgette:

We have requested that the **U.S.** Supreme Court review the case.

I will forward your email for inclusion as public comment on our draft 2015 QAP. The draft 2015 QAP is currently on our website and is scheduled to be published in the September 19 edition of the Texas Register. The published draft will constitute the official version for purposes of public comment. The public comment period goes through October 20.

Best regards,

Elena

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**From:** Bridgette [mailto:virtualbridgette@gmail.com]  
**Sent:** Friday, September 12, 2014 9:06 AM  
**To:** Elena Peinado  
**Cc:** Jean Latsha; cameron.dorsey@tdhca.state.tx.us  
**Subject:** RE: 9% tax credit awards

Elena,

Please humor me again with a few other items. I knew about the ICP court order being suspended for the TDHCA suit. Do you mean the Texas Supreme Court or the U.S. Supreme Court will be taking the case?

So, I gather your two examples were helped along by ICP? Groundfloor Development (2 awards in McKinney caused by another ICP suit) was not hurt in the slightest by the lack of a Neighborhood Organization because they got +4 for no org AND +4 for the community org letters. If that is the case, then why do they ever need to be able to “help” any Neighborhood Orgs come into existence when they’ll always be able to get the same amount of points?

I understand that your job and TDHCAs job is to spend all this HUD money (and indirect subsidies). That is your directive. Citizens only muck up the works of your goal. However, we need to have representation in there. We simply do not.

The definition of Fair Housing, with the help of ICP, has come to mean anything that gets this housing built. Anything or anyone that gums up the works, like citizens, are considered to be against Fair Housing rules.

My other issue that I didn’t get time to discuss at the board meeting was the lack of transparency in this program. TDHCA does not require many records of developers. What

ends up happening is that “shadow players,” usually locals make a lot of money and do not have to tell anyone about it. Surprise that we had this happen here in McKinney.

If the TDHCA doesn't require paperwork (like land sale broker's contracts, consulting contracts, etc.) then citizens are unable to request the paperwork through Open Records requests. I tried to request 2 different items that should be accessible and I was told that TDHCA does not require them. A report called “Transparency in Public-Private Partnerships: Some Lessons from Scandinavia and Australia,” lists a few of the reasons why these PPPs need to be transparent:

- Freedom of information for citizens
- Openness in dealings by office-holders
- Predictability in decision-making processes
- Fighting corruption

Would the ICP legal issues prevent the TDHCA from enacting better transparency rules in the QAP for next year? Would those be considered statutory, as well?

Thank you

**From:** Elena Peinado [mailto:[elena.peinado@tdhca.state.tx.us](mailto:elena.peinado@tdhca.state.tx.us)]

**Sent:** Thursday, September 11, 2014 2:05 PM

**To:** Bridgette

**Cc:** Jean Latsha; [cameron.dorsey@tdhca.state.tx.us](mailto:cameron.dorsey@tdhca.state.tx.us)

**Subject:** RE: 9% tax credit awards

Bridgette,

Our governing statute, Tex. Gov't Code Chapter 2306, has a number of very specific requirements relating to the administration of the tax credit program and includes such things as notification requirements ([§2306.1114](#)), local resolution scoring ([§2306.6710\(b\)\(1\)\(B\)](#)), neighborhood organization scoring ([§2306.6710\(b\)\(1\)\(B\)](#)), and the “being on record” requirement for neighborhood organizations ([§2306.6710\(b\)\(1\)\(J\)](#)). The various rules that the Department has developed over the years to implement these statutory provisions have been shaped in public processes and reviewed and approved by the Governor. It is clear that the Inclusive Communities Project litigation has had an impact on them. Although the trial court order in that case has been suspended while the Supreme Court considers whether or not to grant a *writ of certiorari*, it is highly problematic to develop rules to administer this or any other affordable housing program without a high level of sensitivity to the Fair Housing Act and federal policy regarding that Act. Some of the Department's policy formulation in developing these rules has been a constant evolution of thinking as to how to implement those rules in the manner that best carries out the lawful intent of the statutory provisions. Two good examples of that include:

- 1) Should an area in which no neighborhood organization has been organized be at an automatic severe competitive disadvantage, effectively precluded from receiving affordable housing? It was the strong view of a number of interested, engaged, and informed parties that this was never contemplated or intended and for that reason the scoring structure currently in the rule was developed.

2) Should applicants be allowed to provide neutral technical assistance regarding the formation of neighborhood organizations? Given that the statute is very specific as to what sorts of organizations can qualify as neighborhood organizations and further that the rule fleshes out processes to ensure that these organizations' views are truly reflective of their membership, this seemed like an appropriate approach rather than the previous approach of not allowing such assistance and placing the entire burden of organizing and navigating the requirements on residents of the neighborhood or with counsel of their choosing).

We will absolutely take your comments and include them as official public comment on the proposed rules and address them in the reasoned response portion of any proposed preamble for the Board's consideration.

If you wish to pursue any legislative changes you would need to address those matters directly with members of the Texas Legislature. It appears that the members elected to represent your area include Senator Paxton and Representative Sanford.

Best regards,

**Elena Peinado**

Senior Legislative Advisor  
Texas Department of Housing and Community Affairs  
221 E. 11th Street | Austin, TX 78701  
Office: [512.475.3814](tel:512.475.3814)  
Mobile: [512.217.2278](tel:512.217.2278)  
Fax: [512.469.9606](tel:512.469.9606)

**About TDHCA**

The Texas Department of Housing and Community Affairs is committed to expanding fair housing choice and opportunities for Texans through the administration and funding of affordable housing and homeownership opportunities, weatherization, and community-based services with the help of for-profits, nonprofits, and local governments. For more information about fair housing, funding opportunities, or services in your area, please visit [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us) or the [Learn about Fair Housing in Texas](#) page.

**From:** Bridgette [<mailto:virtualbridgette@gmail.com>]  
**Sent:** Saturday, September 06, 2014 7:29 AM  
**To:** Jean Latsha; [cameron.dorsey@tdhca.state.tx.us](mailto:cameron.dorsey@tdhca.state.tx.us)  
**Cc:** Elena Peinado  
**Subject:** Re: 9% tax credit awards

Hello,

I watched the video of the rest of the board meeting on Thursday. Mr. Dorsey told the board that the changes I discussed are statutory. Can someone please let me know what that means

and who I need to connect with to get that part going?

Thank you,  
Bridgette Wallis

On Fri, Aug 29, 2014 at 10:53 AM, Jean Latsha <[jean.latsha@tdhca.state.tx.us](mailto:jean.latsha@tdhca.state.tx.us)> wrote:  
Oh, ok. The board hears comment on each agenda item as it is presented. Look forward to seeing you there,  
Jean

**From:** Bridgette [mailto:[virtualbridgette@gmail.com](mailto:virtualbridgette@gmail.com)]  
**Sent:** Friday, August 29, 2014 10:50 AM  
**To:** Jean Latsha  
**Cc:** Elena Peinado

**Subject:** Re: 9% tax credit awards

Ms. Latsha, I'm planning on attending the meeting next week. I don't see in the board book that public comments on that topic at the meeting will be taken. I only see that it will be presented. That was why I was asking when are the comments on the topic of interest being taken during that meeting next week.

I see "item 2a Presentation, Discussion, and Possible Action on proposed amendments to 10 TAC Chapter 11 §§11.1(e), 11.2, 11.3(e), 11.3(f), 11.5, 11.6, 11.7, 11.8(b), 11.9(c)(4), 11.9(c)(5), 11.9(c)(7), 11.9(d)(1), 11.9(d)(4), 11.9(e)(3), 11.9(e)(7) and 11.10 concerning the Housing Tax Credit Program Qualified Allocation Plan and directing its publication for public comment in the Texas Register"

I don't see anywhere there that public comments will be taken on this topic at the meeting. This is what I'm trying to get clarified. This is why I'm confused.

On Fri, Aug 29, 2014 at 10:43 AM, Jean Latsha <[jean.latsha@tdhca.state.tx.us](mailto:jean.latsha@tdhca.state.tx.us)> wrote:  
Hi Bridgette,

You are correct that suggestions to the rules that we have received thus far are not included in the board book for the September meeting. This is a draft of the rule generated by staff based partly on those suggestions and partly on staff's own observations and objective to fulfill the policies of statute and the Board. At the meeting next week, staff only presents this draft (and not the comment) to the board, but we do expect to hear quite a bit of public comment on that draft. Based on that comment heard at the board meeting, the board may (or may not) direct staff to make changes before posting the draft in the Texas Register. This is why I suggested that it is a good meeting to attend or at least watch and/or read the transcript. It gives everyone a good sense of the direction in which the board wants to go.

After that meeting, we will publish the draft in the Texas Register on September 19. Then the official public comment period begins and will last until October 20. (There is another board meeting during that time when we may hear comment again, but no action on the rules will be taken.) The written comments made during this period (Sept 19 – Oct 20) will actually be

published in the board book for the November 13 meeting. In addition, staff will prepare a reasoned response to each of these comments. Based on the comment received, staff may recommend some revisions to the draft that was published in the Register and will take that draft to that November meeting for approval. I would like to note that at this stage, any revisions suggested by staff would likely not be of a nature that would introduce new concepts in the rule, but would more likely be what is considered a “logical outgrowth” of the rule that was published in the Register. Therefore, again I think it is appropriate to present comment at next week’s meeting. This is the point at which the board may direct staff to make more drastic changes to the rule – before publication in the Texas Register. After the board approves the rule in November, it is sent to the governor for final approval by December 1.

I hope this helps,  
Jean

**From:** Bridgette [mailto:[virtualbridgette@gmail.com](mailto:virtualbridgette@gmail.com)]  
**Sent:** Friday, August 29, 2014 10:00 AM  
**To:** Jean Latsha  
**Subject:** Re: 9% tax credit awards

Ms. Latsha,  
I'm looking at the board book for the Sept 4th meeting and I see nowhere where public comments are taken regarding the QAP for the 9% htc program for 2015. I see where they talk about it, but I don't see that public comments are taken.

Can you clarify? I've been told all along that I need to wait for this meeting to share my concerns.

Thank you,

On Fri, Aug 8, 2014 at 12:41 PM, Bridgette <[virtualbridgette@gmail.com](mailto:virtualbridgette@gmail.com)> wrote:  
Ms. Latsha,

How about this year's awards: how many were recommended and how many were approved?

The real issue is that individual citizens are not allowed in on the points process. We were just footnotes; we didn't count in the very important point process because we weren't the TDHCA's definition of a "group." How did that come to be that this is the case--that citizens do not count toward points *unless* certain criteria are met (ie. they must know the TDHCA exists, they must know the 9% tax program exists, they must collectively organize with other citizens to create bylaws, boundaries, etc., they must register with the city/county, AND they must register with the TDHCA). And, if they do everything above, they will not only NOT be told of applications, developers will get FOUR extra points because no qualified neighborhood organizations exist.

Citizens should not have to become a group in order to count. Opposition letters mean nothing (there were a few applications that had over 1,000 opposition letters that meant nothing, and the applicants got FOUR extra points!

Who decided all of this? Is it the statute, is it the board, is it you? Who decided that citizens

had to jump through very excessive hoops to participate in the process that indirectly gives their federal tax dollars to a program that may or may not even work?

To me, the residents of the city of McKinney were doubly victimized because this whole process was directed and used by a group of people who think they can sue their way to get what they want (Inclusive Communities Project). The TDHCA played right into their hands because they do not protect individual citizens (through notifications or participation) in the process. There will be no limits to what groups like this can do if citizens are not allowed any muscle at all.

Through my reading of other applications, there are other citizens like me who've been victimized by the way this program counts individuals vs groups.

Ok, with that in mind, will I be able to get up and tell the Board what's wrong with their program on September 4th? If I can find others who can drive down there, can they tell the Board the same thing? Can others send in emails, etc. Would they all go to you again?

I appreciate your time. It has taken me since February to really understand this process and to get to the crux of what's wrong with it. Thank you for helping me get to bottom line.

On Fri, Aug 8, 2014 at 9:59 AM, Jean Latsha <[jean.latsha@tdhca.state.tx.us](mailto:jean.latsha@tdhca.state.tx.us)> wrote:  
Hi Bridgette,

Last year (the 2013 application cycle) staff recommended 64 applications for awards at the late July board meeting and the Board approved that recommendation. Ultimately, some of those applicants were not able to use those awards and some other applicants were awarded a little later in the year, so a total of 67 applications were awarded. The rules that govern the program are primarily dictated by our governing statute, which is Texas Government Code Chapter 2306. This statute does call for the Department to host public hearings across the state in order to hear individual's public comment and also does call for the board to consider such comment when approving award recommendations. However, the statute also very clearly dictates how staff is to score applications. Very specific scoring criteria are required, one of which is "quantifiable community participation with respect to the development, evaluated on the basis of written statements from any neighborhood organization on record with the state or county in which the development is to be located and whose boundaries contain the development site." Staff recommendations are based strictly on eligibility and final score, so while the board may consider individual comment on an application, staff is not directed to do so when scoring an application and ultimately making that recommendation.

Regarding the roundtable, we don't have any transcript or recording of that meeting. It was not a formal board meeting but just a discussion amongst stakeholders. Comments made at that meeting don't carry any more weight than this type of email correspondence with respect to staff's drafting of the rules for 2015. It was just a way for some folks to have a dialogue in a conversational setting. The majority of the discussion focused on other scoring items in our rules, although there was one commenter that asked that we clarify how it is that the Department considers neighborhood organizations on record with the state.

The September 4 board meeting is the one where staff will present a draft of the 2015 rules to

the board. I do encourage you to come to that meeting, because the board will hear comment on the rules and may direct staff to revise that draft before it is published in the Texas register. You are correct that the other meeting on the 15<sup>th</sup> doesn't specifically address your concerns. It is more about how awards are allocated regionally throughout the state.

Hope this helps,  
Jean

**From:** Bridgette [mailto:[virtualbridgette@gmail.com](mailto:virtualbridgette@gmail.com)]  
**Sent:** Thursday, August 07, 2014 6:12 PM  
**To:** [jean.latsha@tdhca.state.tx.us](mailto:jean.latsha@tdhca.state.tx.us)  
**Subject:** 9% tax credit awards

Ms. Latsha,

Now that I've been through the whole process, I have a much clearer idea of it and what's wrong with it. Can you or someone else answer these questions for me:

1. Of the past 2 years of awards for this program, how many were recommended by "staff" and how many were then approved by the Board?
2. When and why did the TDHCA decide individual citizens have no place in the point process? I'm not trying to be adversarial, I notice that individual citizens are just a footnote in this whole process.
3. There was a round table discussion earlier this week that I couldn't attend due to living 5 hours away and having a child to take care of. Is there video of the meeting I can get? I've looked everywhere on your site.
4. I see there are two meetings coming up in September. The Sept 4th Board meeting, are citizens allowed there and are they allowed to comment in any way?

When is the meeting supposed to be about the rules for next year? I'm confused. The September 9th meeting looks like it's about methodology for certain things that do not include what I'm most interested in (which is citizen notification AND individual citizen participation in the points process).

Thank you,

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Bridgette  
[virtualbridgette@gmail.com](mailto:virtualbridgette@gmail.com)  
PublicEdDread.com

(3) Community Development  
Corporation of Brownsville



October 20th, 2014

Texas Department of Housing and Community  
Affairs, C/O Teresa Morales, Rule Comments,  
P.O. Box 13941, Austin, Texas 78711-3941,

Ms. Teresa Morales,

My name is Nick Mitchell-Bennett, I am the Executive Director of the Community Development Corporation of Brownsville. I would like to offer comment and a suggestion to the issue of the SAI score requirements for full points in the current draft of the 2015 QAP.

I want to first state that I am in complete agreement with what TDHCA was trying to do with the Areas of Opportunity scoring requirements. CDCB has been and will continue to be a champion of fair housing for all people in Texas. Nevertheless, as we have stated before we believe that the current scoring structure drives funding away from the poorest minority communities in the nation. A community in dire need of affordable, sustainable and safe places to live. We do not believe this was on purpose. CDCB understands TDHCA's difficult task to make a one size fits all solution for issues related to just Dallas.

The current scoring structure and the use of the SAI score of 77 has inadvertently disqualified the overwhelming majority of locations in the Rio Grande Valley. For example, CDCB reviewed all the School's SAI scores for Senate District 27, where CDCB does all of its work. Of the 28 school districts reviewed only two districts had the required three schools (elementary, middle and high school) that all scored a 77 or better. This was in the Los Fresnos district and one very small area in Brownsville. This means that Harlingen, San Benito, Kingsville, southern Corpus Christi and 98% of Brownsville will never be able to build another multi-family tax credit project.

Since, 2012 there have been 356 tax credit units awarded in the Los Fresno CISD, a town of just 5,700 people. If the current scoring structure continues we will see serious clustering of units in the Los Fresnos school district. I personally would not be opposed to this, CDCB owns over 15 acres in Los Fresnos, but this is not good public policy and needs to be changed.

CDCB would like to suggest that TDHCA consider a carve out for the border region. There is a policy precedent for such a carve out, TDHCA has carved out regions to address issues in the past. For example, to account for income disparities on the border, TDHCA addressed a similar issue with a border carve out for the Opportunity Index poverty rate. In order to keep with the spirit of the Area of Opportunity rules and to open up more areas to be served in this overwhelming area of need, CDCB suggest that the rule be changed to include just one school in the feeder zone of a project meet the SAI 77 rule. We are not suggesting eliminating any other criteria of the AOI;



access to jobs, transportation, etc.... This rule change would open up a bigger area to at least begin the location evaluation process for groups like CDCB as they look for suitable land for development.

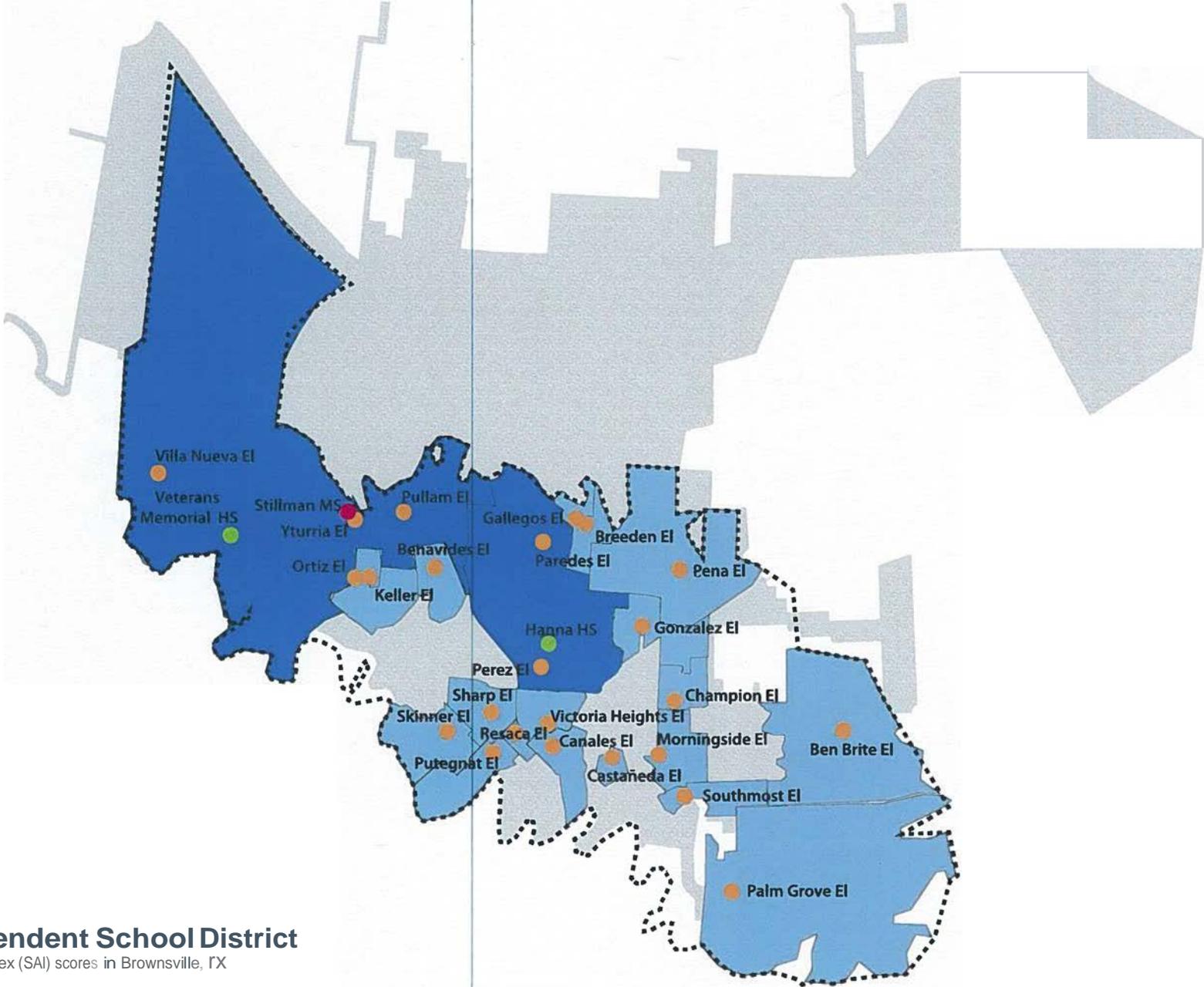
For Example, I have attached a map of the Brownsville ISD indicating how this change would affect places like Brownsville. The red dot (Stillman Middle School) is currently the only area eligible under the current QAP structure; however, if TDHCA applied our suggested rule change all the areas in dark blue and light blue would be open for an initial review for a possible site.

In conclusion, CDCB believes that fair housing for all people should be the law and should play a heavy role in the scoring of tax credit applications. Nevertheless, the current rules only blame the victim of poor school districts in areas like the RGV. Our school districts are working overtime to improve the educational attainment of its students, but do we need to wait until this happens before we are allowed to have safe, sanitary places to live?

Thank you,

Nick Mitchell-Bennett

Executive Director



- Legend**
- Elementary Schools
  - Middle Schools
  - High Schools
  - High School and Middle School Zones
  - Elementary School Zones
  - Brownsville City Limits
  - BID Boundary

### Brownsville Independent School District

Mapping Student Achievement Index (SAI) scores in Brownsville, TX



September 26, 2014

Texas Department of Housing and Community Affairs,  
C/O Teresa Morales, Rule Comments,  
P.O. Box 13941, Austin, Texas 78711-3941,

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The current scoring structure and the use of the SAI score of 77 has inadvertently disqualified the overwhelming majority of locations in the Rio Grande Valley. For example, CDCB reviewed all the School's SAI scores for Senate District 27, where CDCB does all of its work. Of the 28 school districts reviewed only two districts had the required three schools (elementary, middle and high school) that all scored a 77 or better. This was in the Los Fresnos district and one very small area in Brownsville. This means that Harlingen, San Benito, Kingsville, southern Corpus Christi and 98% of Brownsville will never be able to build another Multi-family tax credit project.

As well, since 2012 there have been 356 tax credit units awarded in the Los Fresno CISD, a town of just 5,700 people. If the current scoring structure continues we will see serious clustering of units in the Los Fresnos school district. I personally would not be opposed to this, CDCB owns over 15 acres in Los Fresnos, but this is not good public policy and needs to be changed.

CDCB would like to suggest a solution to this problem. In order to keep with the spirit of the Area of Opportunity rules and to open up more areas to be served in this overwhelming area of need, CDCB suggest that the rule be changed to include just one school in the feeder zone of a project meet the SAI 77 rule. We are not suggesting to eliminate any other criteria of the AOI; access to jobs, transportation, etc... . This rule change would open up a bigger area to at least begin the location evaluation process for groups like CDCB as they look for suitable land for development.



For Example, I have attached a map of the Brownsville ISD indicating how this change would affect places like Brownsville. The red dot (Stillman Middle School) is currently the only area eligible under the current QAP structure, however, if TDHCA applied our suggested rule change all the areas in dark blue and light blue would be open for an initial review for a possible site.

In conclusion, CDCB believes that fair housing for all people should be the law and should play a heavy role in the scoring of tax credit applications. Nevertheless, the current rules only blame the victim of poor school districts in areas like the RGV. Our school districts are working overtime to improve the educational attainment of its students, but do we need to wait until this happens before we are allowed to have safe, sanitary places to live?

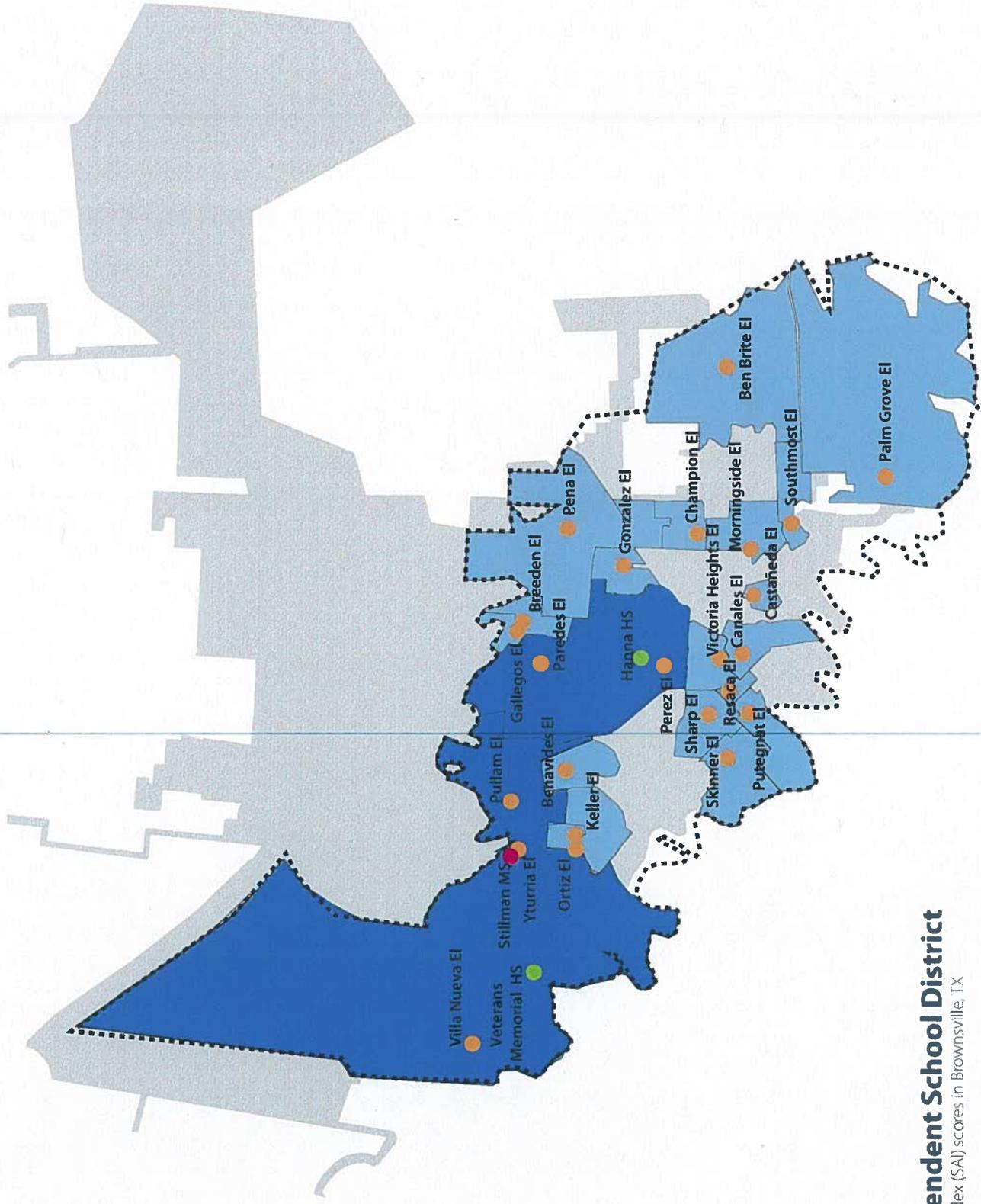
Thank you,

Nick Mitchell-Bennett

Executive Director

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cc. Cameron Dorsey



- Legend**
- Elementary Schools
  - Middle Schools
  - High Schools
  - High School and Middle School Zones
  - Elementary School Zones
  - Brownsville City Limits
  - ..... BISD Boundary

**Brownsville Independent School District**  
 Mapping Student Achievement Index (SAI) scores in Brownsville, TX

## (4) Churchill Residential



September 4, 2014

Ms. Jean Latsha  
Director of Multifamily Programs  
TDHCA  
Box 13941  
Austin, Texas 78711-3941

Re: Definition of school attendance zone for 2015 QAP

Dear Ms. Latsha:

We appreciate your review and consideration of these comments regarding the definition of school attendance zones. As you know, there are a few school districts that have district wide enrollment, with no specific attendance zones. Some of these districts are quite large in geographic area, and have certain areas within those districts that have very good schools. We believe that the ICP mandates would include neighborhoods such as these. We respectfully request that staff consider a text amendment in the 2015 QAP that more specifically provides for flexibility that continues to reward High Opportunity Areas and Educational Excellence.

We suggest the following language for Opportunity Index (4)(C)-

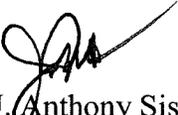
The elementary school attendance zone for Development Sites contained in school districts with district wide enrollment will be a 3 mile radius. Within this 3 mile radius, at least 75% of the elementary schools must have achieved a 77 or greater on index 1 of the performance index, related to student achievement, by the Texas Education Agency. The applicable school rating will be the 2014 accountability rating assigned by the Texas Education Agency.

We suggest a similar language for Educational Excellence (5)

The middle and high school attendance zones for Development Sites contained in school districts with district wide enrollment will be a 3 mile radius. In the case where no middle and high schools are within a 3 mile radius, the closest schools will be considered. Within this radius, at least 75% of the middle and high schools must have achieved a 77 or greater on index 1 of the performance index, related to student achievement, by the Texas Education Agency. The applicable school rating will be the 2014 accountability rating assigned by the Texas Education Agency.

We look forward to your comments and suggestions regarding this matter.

Sincerely,

  
J. Anthony Sisk  
Churchill Residential

**From:** [Tony Sisk](#)  
**To:** [Jean Latsha](#); [Becky Villanueva](#); [teresa.morales@tdhca.state.tx.us](mailto:teresa.morales@tdhca.state.tx.us)  
**Cc:** [Brad Forslund](#)  
**Subject:** RE: 2015 QAP School Attendance Zone  
**Date:** Friday, September 26, 2014 3:50:26 PM

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Jean/Teresa- We also wanted to give public comment related to required free parking spaces. We have over 2000 units of senior tax credit housing, and understand the parking pretty well. We would like to see the 1 to 1 free parking requirement reduced to .75 to 1 free spaces. We think this is much more realistic. At least 25% do not have cars, and we need space to add garages and carports to meet resident demand. Land is getting more expensive and these sites are tight. We tend to purchase better and more expensive sites, which result in tight sites. We would appreciate your making this change in the 2015 QAP.

Thanks

-----Original Message-----

From: Jean Latsha [<mailto:jean.latsha@tdhca.state.tx.us>]  
Sent: Monday, September 22, 2014 2:43 PM  
To: Becky Villanueva; [teresa.morales@tdhca.state.tx.us](mailto:teresa.morales@tdhca.state.tx.us)  
Cc: Brad Forslund; Tony Sisk  
Subject: RE: 2015 QAP School Attendance Zone

Received. Thanks,  
Jean

-----Original Message-----

From: Becky Villanueva [<mailto:bvillanueva@cri.bz>]  
Sent: Monday, September 22, 2014 9:31 AM  
To: Jean Latsha ([jean.latsha@tdhca.state.tx.us](mailto:jean.latsha@tdhca.state.tx.us)); [teresa.morales@tdhca.state.tx.us](mailto:teresa.morales@tdhca.state.tx.us)  
Cc: Brad Forslund; Tony Sisk  
Subject: 2015 QAP School Attendance Zone

Good Morning,

Attached is a letter we are submitting as part of the public comment for the 2015 QAP.

Thank you,

Becky

Your message is ready to be sent with the following file or link attachments:

2015 QAP School Attendance Zone

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

(5) City of Beaumont

**From:** [CBOONE@ci.beaumont.tx.us](mailto:CBOONE@ci.beaumont.tx.us)  
**To:** [teresa.morales@tdhca.state.tx.us](mailto:teresa.morales@tdhca.state.tx.us)  
**Subject:** Rule Comments (2015 QAP)  
**Date:** Friday, September 26, 2014 9:58:53 AM

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2015 Draft QAP Comments

Dear Ms. Morales,

First, let me thank you for the opportunity to comment on the 2015 Draft Qualified Allocation Plan. The citizens of Beaumont have and continue to benefit from this important Multifamily program. However, I would like to suggest the following consideration for the 2015 Qualified Allocation Plan and future Plans.

My suggestion relates to the concern that the QAP seems to give favor to maximizing the number of affordable units and fails to provide any incentive for the development of a truly mixed-income development. Indeed, in the past, many of the awarded projects have 100% of their units subsidized. While I understand that funding is limited and we all desire to maximize the number of affordable units that we can provide. This scoring seems to be contrary of the idea of providing a fully diverse mixed-income community and contrary to recent direction of the Department of Housing and Urban Development.

What I am suggesting is a significant point award for developers that include a certain percentage (15%-20%) of their units be offered as market rate units in order to provide a true mixed-income development.

This point scheme would continue to mostly provide affordable units, while affirmatively promoting a more diverse development and diverse community, based on income. This scheme would essentially be the inverse of inclusionary zoning...instead of only mandating or encouraging the inclusion of affordable units in a development, we would encourage and reward the inclusion of market rate units and thus a more income-diverse and better development.

As a Point of reference, the Spring, 2013 edition of HUD's Evidence Matters states the following:

“Mixed-income residential development is a deliberate strategy of mixing housing units with rents and prices at a variety of levels, including market-rate and subsidized units. Mixed-income communities can be as small as a single building or as large as master planned communities and neighborhood revitalization projects. The mixed-income strategy has been used in four different contexts: special federal housing programs, state and local housing programs, density bonuses and other land-use regulation, and non-programmatic private investment. The strategy gained nationwide momentum in the early 1990s with the authorization of HUD's HOPE VI

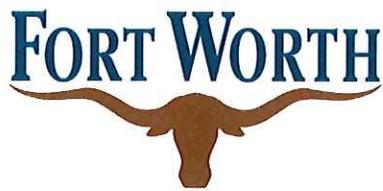
program, and since then it has increasingly been used as a tool to reduce concentrations of public housing in high-poverty neighborhoods and combat the effects of poverty on families. A recent Brookings Institution analysis concludes that concentrated poverty has five wide-ranging impacts: it limits educational opportunity for children, leads to increased crime rates and poor health outcomes, hinders wealth building, reduces private-sector investment and increases prices for goods and services, and raises costs for local governments. To the extent that intentional mixing of incomes can counter these effects and enhance residents' quality of life, HUD aims to use the mixed-income strategy to improve the economic viability of multifamily housing — particularly former public housing developments — and strengthen neighborhoods.”

Drawing from this encouragement from HUD for a truly mixed-income development, I am making this suggested change to the QAP. Again, we understand that the Program provides for a strata of income levels. However, it fails to encourage, reward or even require a more complete--and based on HUD's own assertions-- a healthier development and a better scenario for both the residents, the community and the Program.

Again, thank you for the opportunity to comment and if you have any questions or need any clarification, please do not hesitate to contact me.

Christopher S. Boone, AICP  
Director of Planning & Community Development  
City of Beaumont  
801 Main, Suite 201  
Beaumont, Texas 77701  
(409) 880-3100  
(409) 880-3133 Fax  
cboone@ci.beaumont.tx.us

(6) City of Fort Worth



Cynthia Garcia  
Assistant Director

(817) 392-8187  
Cynthia.B.Garcia@fortworthtexas.gov

October 2, 2014

Governing Board  
Texas Department of Housing & Community Affairs  
P.O. Box 13941  
Austin, Texas 78711

Re: Qualified Allocation Plan Scoring Criteria for Community Revitalization Plan Developments

Dear Chairman Oxer & Members of the TDHCA Board:

The City of Fort Worth appreciates the opportunity to submit these comments to the proposed 2015 Qualified Allocation Plan (QAP). The City believes that the proposed scoring in the QAP creates a significant disadvantage for economically distressed areas of Fort Worth in which the City has targeted for revitalization. In addition, the “Undesirable Neighborhood” characteristic for neighborhoods with 35% and above poverty creates an additional barrier to the creation of quality affordable housing to a significant segment of the City. The following are the City’s comments to the proposed 2015 QAP:

I. High Opportunity Areas and Revitalization Areas

**Position: The QAP’s proposed scoring undermines the support of projects that are vital to the revitalization of low and moderate income areas and prevents Revitalization Areas to compete equally with High Opportunity Areas for an award of Low Income Housing Tax Credits.**

The scoring criteria steers applicants to submit projects in High Opportunity Areas instead of Revitalization Areas

- The proposed scoring awards up to 7 points for projects that qualify as High Opportunity Areas, but only up to 6 points for areas targeted for revitalization. This is the same scoring criterion that was specified in the 2014 QAP. This unequal scoring sends a clear signal to developers to submit applications for High Opportunity Areas instead of Revitalization Areas because these areas have an additional point that can be earned. This additional one point is critical to receiving an award under the 9% program as demonstrated from the scoring and awards from the 2014 QAP.
- The projects that were awarded under the 2014 QAP clearly demonstrate the one point advantage of the High Opportunity Areas in Region 3. For the 2014 QAP, there were 17 applications, 8 were awarded tax credits. Of the 8 that were awarded tax credits, only 1 was not in a High Opportunity Area and it is the City’s belief that the reason it received funding was because it was set-aside.

**Housing and Economic Development Department**

The City of Fort Worth ★ 1000 Throckmorton Street ★ Fort Worth, Texas 76102  
817-392-7540 ★ Fax 817-392-7328

- Of the 17 applications submitted, only 2 were not in High Opportunity Areas. This low number of applicants outside of a High Opportunity Area clearly shows that developers are focusing on High Opportunity Areas.
- Applicants focus on High Opportunity because there is no reason for a developer to spend the time and funds for an application that has a slimmer chance of being successful. The reduced number of applications for Revitalization Areas further stalls efforts to attract the development of affordable housing in areas that are targeted for revitalization.
- The *Tie Breaker Factors* in §11.7 also gives preference to projects in High Opportunity Areas and this further discourages developments in a community's Revitalization Areas.

The proposed scoring drives affordable housing projects into the outer areas of cities and suburbs that lack appropriate services and public transportation for the residents.

- Many of the locations in High Opportunity Areas that are submitted for an award of tax credits are in green fields which do not provide options for residents to find employment or needed goods and services. In addition, these areas are not served by public transportation necessary for residents to find employment or access needed goods and services.
- Local governments lack the resources to extend public transportation to these outside areas, thus limiting residents in LIHTC projects to areas immediately adjacent to the development site. If there are no opportunities to find employment or acquire goods and services nearby, the residents of an LIHTC development are forced into a situation in which they are unable to thrive.
- Supportive services providers also lack the resources to provide additional services outside of their service areas, thus resulting in the residents not receiving the support and assistance they need.

The proposed QAP is in conflict with the efforts by local government to revitalize distressed areas by attracting private investment.

- The attraction of private investment is critical to areas that have been targeted for revitalization. In order to attract private dollars to revitalization areas, it is necessary to increase roof tops to meet critical thresholds needed by developers and their lenders. Without LIHTC awards, developers are not able to finance a housing development in revitalization areas because the "market rents" will not support the debt. Because the market rents will not support the debt in these areas, it is difficult, if not impossible, to attract private investment to create quality affordable housing, thus causing even more decline in the area.
- The favorable scoring for High Opportunity Areas weakens the impact of local revitalization efforts supported by local governments, thus resulting in a 'less bang' for the public buck.

**Request: The City requests that the total points available to High Opportunity Areas and Revitalization Areas be equal in order that the two areas can compete fairly.**

II. “Undesirable Neighborhoods” -Areas with 35% or More Poverty

**Position:** The proposed change in §10.101. *Site and Development Requirements and Restrictions* further hinders development of quality affordable housing in areas with 35% or more poverty.

The proposed addition in (a) (4) creates a significant barrier to an award of tax credits in areas with poverty rates of 35% and above by defining such areas as “Undesirable Neighborhoods”.

- The addition of the “Undesirable Neighborhood” characteristic requires disclosure by the applicant along with payment of an additional application fee equal to \$500 and an automatic review of the area by TDHCA staff. This additional fee and scrutiny creates an additional obstacle for an applicant to endure and overcome in order to receive an award for a development in a Revitalization Area. If the review is necessary for a Revitalization Area, it should also be necessary for developments in a High Opportunity Area to ensure that all residents will have access to employment and necessary goods and services and that the location is suitable for the residents.
- This added impediment for the submission for applications on projects located in Revitalization Areas further impedes City revitalization efforts and acts as a disincentive to applications for Revitalization Area.

The labeling of an area as an “Undesirable Neighborhood” further stigmatizes the residents of the area and perpetuates the negative stereotypes associated with people of lesser means.

A substantial portion of the City of Fort Worth has a poverty rate of 35% or more and the arbitrary 35% would limit potential locations for needed low income housing tax credit developments.

- A significant percentage of the City of Fort Worth has a poverty rate of 35% or more. (Please see attached map.). Many of these areas have not had private investment into new housing in many years, thus forcing residents to live in older and deteriorating housing.
- The City needs affordable housing throughout its city limits and to create a baseless scoring disadvantage to an area that desperately needs quality affordable housing is unreasonable. Tax credit projects should be available for all areas in which there is a need.

**Request:** Remove all references to Undesirable Neighborhood features and remove (a) (4) from §10.101.

Thank you for considering our comments. We look forward to your response.

Sincerely,

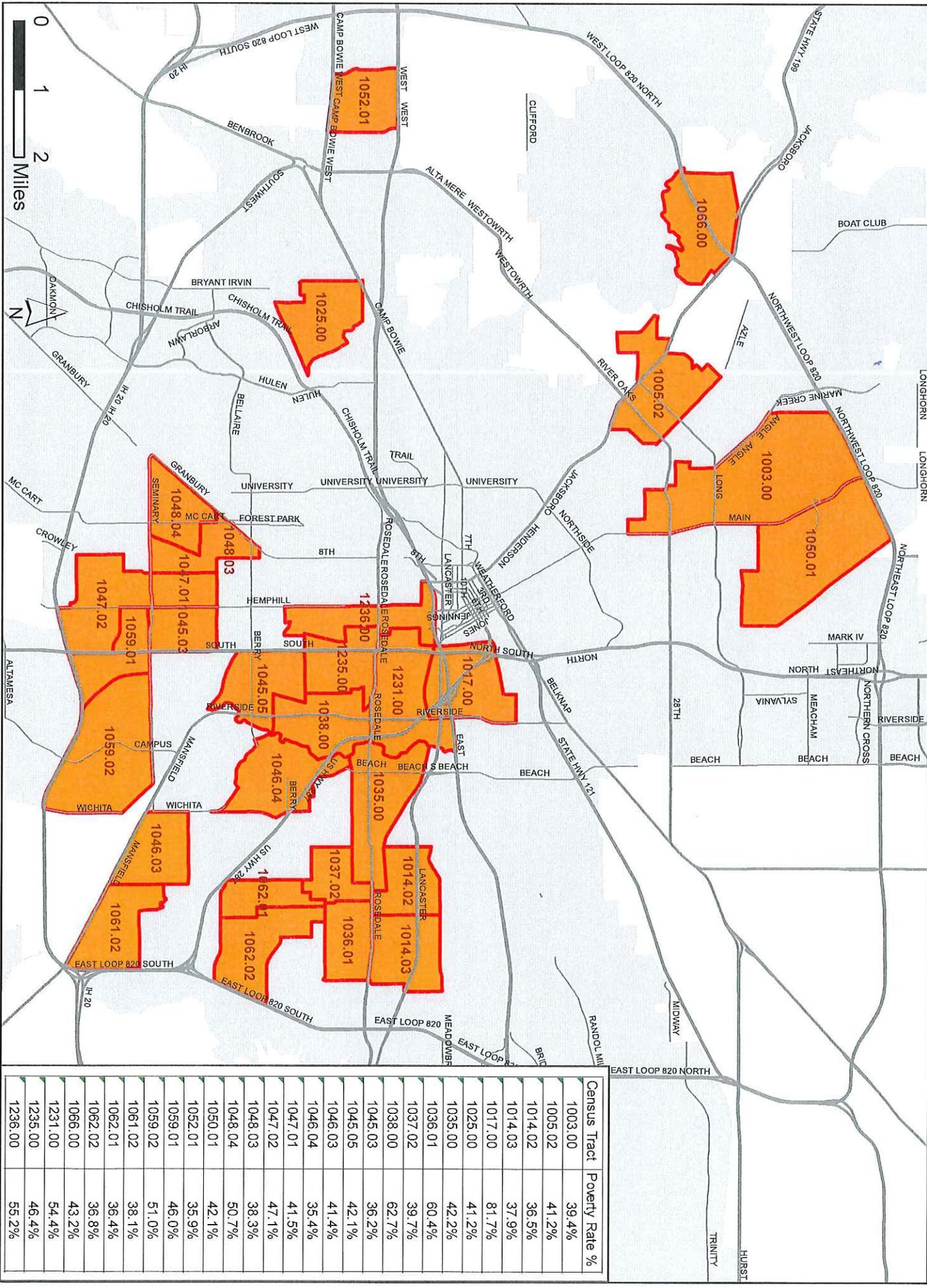


Cynthia Garcia  
Assistant Director

# Census Tracts with Poverty Rates Above 35%



Fort Worth, Texas



Census Tract	Poverty Rate %
1003.00	39.4%
1005.02	41.2%
1014.02	36.5%
1014.03	37.9%
1017.00	81.7%
1025.00	41.2%
1035.00	42.2%
1036.01	60.4%
1037.02	39.7%
1038.00	62.7%
1045.03	36.2%
1045.05	42.1%
1046.03	41.4%
1046.04	35.4%
1047.01	41.5%
1047.02	47.1%
1048.03	38.3%
1048.04	50.7%
1050.01	42.1%
1052.01	35.9%
1059.01	46.0%
1059.02	51.0%
1061.02	38.1%
1062.01	36.4%
1062.02	36.8%
1066.00	43.2%
1231.00	54.4%
1235.00	46.4%
1236.00	55.2%

October 20, 2014

Mr. Cameron Dorsey  
Deputy Executive Director of Multifamily Finance and Fair Housing  
Texas Department of Housing & Community Affairs  
P.O. Box 13941  
Austin, TX 78711-3941

***Re: 2015 Qualified Allocation Plan Scoring Methodology***

Dear Mr. Dorsey,

The City of Fort Worth appreciates the opportunity to submit these comments regarding the proposed 2015 Qualified Allocation Plan (QAP). The City believes that the proposed scoring in the QAP creates a significant disadvantage for economically distressed areas of Fort Worth in which the City has targeted for revitalization. As an example, consider an inner-city revitalization development four miles south of downtown Fort Worth called Renaissance.

For nearly 100 years, Renaissance functioned as an orphanage operated by the Masonic Lodge. When funding for the orphanage dried up, the Masons closed the orphanage and then sold the land in 2005.

Today Renaissance is a master planned, mixed-use community of 180 acres. To date, more than \$125 million has been invested in infrastructure with more to come (see Section 1 of the attached Renaissance Heights Overview).

Renaissance currently has 330,000 square feet of retail space that provides close proximity to grocery stores and other quality retail/commercial entities. More than 600 jobs have been created so far, with more to come. When completed, we expect to have approximately 500,000 square feet of quality retail with more than 1,000 new jobs.

Uplift Education, the YMCA, Cook Children's Health System and ACH Child and Family Services either have built or are building major facilities within the boundaries of Renaissance. These organizations, along with other service/educational/health institutions are committed to improve the quality of life and opportunities for future affordable housing residents and are willing to commit specific services and resources to the future residents of Renaissance Heights (see Section 2 of the attached Renaissance Heights Overview).

Additionally, the leadership of these nonprofit organizations are in the process of creating a single-purpose nonprofit “community quarterback” organization whose **sole purpose** will be to drive the revitalization initiative to ensure the housing, education and wellness components are successful and sustainable and to provide coordination among the partner/coalition organizations in the delivery of such services (see Section 3 of the attached Renaissance Heights Overview).

We believe that a wonderful “high opportunity area” has been created at Renaissance Heights, and the City of Fort Worth has invested significantly toward the revitalization of this inner-city area, but Renaissance is at a significant disadvantage because the current QAP is predisposed against inner-city revitalization efforts. We understand the reasons for this, but we believe that it is possible to modify the QAP scoring criteria so that deserving inner-city revitalization efforts, that have the full support and significant funding from the municipalities in which they are located, are appropriately recognized by the TDHCA for 9% tax credit funding.

We believe that the following modifications would achieve this:

## **1. Modification to Recognize Support of City Endorsement and Funding**

### **Discussion**

#### ***Local Government Support and Funding***

Section 11.9(d)(1)(A) currently awards 14 points for a simple resolution from a governing body of a municipality that it has “no objection” to the application and 17 points for a resolution that the municipality “supports” the development to which an application pertains.

We believe that to achieve the maximum number of points, such resolutions should be accompanied by direct monetary support by the municipality for the development. Currently an application for a development that has received significant funding directly from a municipality receives the same number of points as an application for a development that has received little or no municipality funding.

We acknowledge that the issue of whether or not a development receives financial support and the applicable points associated with this support are currently addressed in Section 11.9(d)(2)- Commitment of Development Funding by Local Political Subdivision. However, we believe that the points associated with Local Support from the elected officials of the applicable governing municipality should also be tied to funding received from that specific municipality for the proposed development. This proposed approach would more appropriately reflect the decisions of the local municipality’s elected officials to support specific developments with financial support. Furthermore the points associated with this support should be tied to the amount of funding provided by the

local municipality.

### ***Community Revitalization Plan Developments***

We believe Section 11.9(d)(7)(A) should be changed. This section currently provides 4 points for a community revitalization plan with a total budget or projected economic value at the \$6 million level, but doesn't address community revitalization plans that have a total budget or projected economic value that significantly exceeds \$6 million.

We respectfully submit that a community revitalization plan that has significant economic backing from all government sources (including the sponsoring municipality) may actually have a greater chance of long-term sustainability than stand-alone developments in so called "high opportunity areas" that may not have the same level of financial resources providing new infrastructure and other resources targeted specifically for community revitalization. Extrapolating from the existing scoring approach of 4 points for \$6 million in total budget or projected economic value, we believe it is appropriate to award additional points for higher total budget or projected economic values of \$9 million, \$12 million and \$15 million. We also believe that the qualification to receive such points should be tied directly to the level of direct funding the development receives from the municipality which is reflective its support of that specific proposed development.

We therefore recommend the following changes to the QAP.

### **Proposed QAP Changes**

Section 11.9(d)(1)(A) should be amended as follows:

(A) Within a municipality, the Application will receive:

- (i) seventeen (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development and the municipality provides at least \$1,100,000 of local funding directly to the development; or
- (ii) sixteen (16) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development and the municipality provides at least \$700,000 but less than \$1,100,000 of local funding directly to the development; or
- (iii) fifteen (15) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development and the municipality provides at least \$350,000 but less than \$700,000 of local funding directly to the development; or
- (iv) fourteen (14) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development and the municipality provides less than \$350,000 of local funding directly to the development; or

(v) thirteen (13) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.

~~(ii) fourteen (14) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.~~

The first paragraph of Section 11.9(d)(7)(A)(i) should be amended as follows:

(i) An Application may qualify to receive up to six-~~(6)~~nine (9) points if the Development Site is located in an area targeted for revitalization in a community revitalization plan that meets the criteria described in subclauses (I) - (VI) of this clause:

Section 11.9(d)(7)(A)(ii) should be amended as follows:

(ii) Points will be awarded based on:

(I) Applications will receive the following points based on the total budget of projected economic value of the applicable target area of the community revitalization plan:

(a) Applications will receive seven (7) points if the applicable target area of the community revitalization plan has a total budget or projected economic value of at least \$15,000,000 and the application qualifies for seventeen (17) points under Section 11.9(d)(1)(A); or

(b) Applications will receive six (6) points if the applicable target area of the community revitalization plan has a total budget or projected economic value of at least \$12,000,000 but less than \$15,000,000 and the application qualifies for at least sixteen (16) points under Section 11.9(d)(1)(A); or

(c) Applications will receive five (5) points if the applicable target area of the community revitalization plan has a total budget or projected economic value of at least \$9,000,000 but less than \$12,000,000 and the application qualifies for at least fifteen (15) points under Section 11.9(d)(1)(A); or

(d) Applications will receive four (4) points if the applicable target area of the community revitalization plan has a total budget or projected economic value of at least \$6,000,000 but less than \$9,000,000 and the application qualifies for at least fourteen (14) points under Section 11.9(d)(1)(A); or

(e) Applications will receive two (2) points if the applicable target area of the community revitalization plan has a total budget or projected economic value of at least \$3,000,000 but less than \$6,000,000.

~~(I) Applications will receive four (4) points if the applicable target area of the community revitalization plan has a total budget or projected economic value of \$6,000,000 or greater; or~~

~~(II) Applications will receive two (2) points if the applicable target area of the community revitalization plan has a total budget or projected economic value of at least \$4,000,000; and~~

(HII) Applications may receive (2) points in addition to those under subclause (I) ~~or (H)~~ of this clause 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.

## **2. Modification to Recognize Enhanced Tenant Services**

### **Discussion**

Section 11.9(3) provides up to 10 points for developments that provide certain supportive services that are provided to the residents. (11 points for PSA qualifying developments). In our opinion it is too easy to achieve the 10-point maximum under this section. We also believe that more should be done to ensure that residents can easily/readily avail themselves of services from outside organizations.

Accordingly, we recommend that the points that can be achieved under each individual service item be reduced so that developments are required to provide more tenant services to be eligible to receive the maximum points that can be achieved under Section 11.9(3).

Additionally, we recommend that the ability to achieve the award of maximum points under the Tenant Services area be dependent upon the establishment and funding of a non-profit organization whose sole purpose is to coordinate the efforts of third party service providers to more effectively serve the residents of the Development.

We therefore recommend the following changes to the QAP and the LURA.

### **Proposed QAP Changes**

Section 11.9(c)(3) should be amended as follows:

(3) Tenant Services. (§2306.6710(b)(1)(I) and §2306.6725(a)(1) A Supportive Housing Development qualifying under the Nonprofit Set-Aside or Developments participating in the City of Houston's Permanent Supportive Housing ("PSH") program may qualify to receive up to eleven (11) points and all other Developments may receive up to ten (10) points.

(A) A Supportive Housing Development qualifying under the Nonprofit Set-Aside or Developments participating in the City of Houston's Permanent Supportive Housing ("PSH") program may qualify to receive up to nine (9) points and all other Developments may receive up to eight (8) points under this subclause (A). A Development participating in the PSH program and electing ~~eleven~~ (11) points under this paragraph must have applied for PSH funds by the Full Application Delivery Date, must have a commitment of PSH funds by

Commitment, must qualify for five (5) or seven (7) points under paragraph (4) of this subsection, and must not have more than 18 percent of the total Units restricted for Persons with Special Needs as defined under paragraph (7) of this subsection. 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 the minimum. 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.

- (B) Applications may receive two (2) points if the Development provides evidence of the creation of a non-profit organization whose sole purpose is to coordinate the efforts of third party service providers to more effectively serve the residents of the Development. This organization must be established as a legal entity under Section 501(c)(3) of the Internal Revenue Code and must be staffed with at least one (1) full-time employee, show proof of an actual physical office location and show adequate funding in place to cover operations for a minimum of two years with a verifiable amount of not less than \$250,000. Additionally such non-profit organization must show evidence of contracts with at least four (4) non-affiliated third party service providers to provide specific services to the residents of the Development within the following classification of services.

- i. Educational and Learning Services
- ii. Health Care and Wellness Services
- iii. Recreational Services
- iv. Social Services

The contracts must state the specific services that will be provided to the residents or a duration for a minimum duration of 2 years, the dollar value of the services that will be provided along with proof of financial resources in place that are adequate to cover the cost of the services that will be provided to the residents by the service provider.

### **Proposed Changes to Allowable Tenant Services**

The LURA should be amended as follows:

- (A) joint use library center, as evidenced by a written agreement with the local school district or local free public charter school (~~2 points~~ 1 point);
- (B) weekday character building program (shall include at least on a semi-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~~ 1 point);
- (C) daily transportation such as bus passes, cab vouchers, specialized van on-site (~~4 points~~ 2 point);
- (D) Food pantry/common household items accessible to residents at least on a monthly basis (~~4 point~~ ½ point; 1 point if at least semi-monthly);
- (E) GED preparation classes (shall include an instructor providing on-site coursework and exam) (~~1 point~~ 1 point);

- (F) English as a second language classes (shall include an instructor providing on-site coursework and exam) (~~1 point~~ ½ 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~~ ½ point);
- (H) annual health fair (~~1 point~~ ½ point);
- (I) quarterly health and nutritional courses (~~1 point~~ ½ point, 1 point if monthly);
- (J) organized team sports programs or youth programs offered by the Development or through contracted parties (~~1 point~~ ½ point);
- (K) scholastic tutoring (shall include weekday homework help or other focus on academics) (~~3 points~~ 2 points);
- (L) Notary Public Services during regular business hours (§2306.6710(b)(3)) (~~1 point~~ ½ point);
- (M) weekly exercise classes (~~2 points~~ 1 point);
- (N) twice monthly arts, crafts, and other recreational activities such as Book Clubs and creative writing classes (~~2 points~~ 1 point);
- (O) annual income tax preparation (offered by an income tax prep service) (~~1 point~~ ½ point);
- (P) monthly transportation to community/social events such as lawful gaming sites, mall trips, community theatre, bowling, organized tours, etc. (~~1 point~~ ½ point);
- (Q) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, etc.) (~~1 point~~ ½ point);
- (R) specific and pre-approved case management worker services offered through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (~~1 point~~ ½ 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~~ 1 point);
- (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~~ ½ point);
- (U) contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services; also resident training programs that train and hire residents for job opportunities inside the development in areas like leasing, tenant services, maintenance, landscaping, or food and beverage operation (~~2 points~~ 1½ points);
- (V) external partnerships for provision of weekly AA or NA meetings at the Development Site (~~2 points~~ 1 point);
- (W) contracted onsite occupational or physical therapy services for seniors and Persons with Disabilities (~~2 points~~ 1 point);
- (X) a full-time resident services coordinator with a dedicated office space at the development (~~2 points~~ 1 point); and

(Y) a resident-run pea patch or community garden (~~1 point~~ ½ point).

### **3. Modification to Recognize Free Public Charter Schools**

#### **Discussion**

Free public charter schools that are within 1 mile of the proposed development should be included as an alternative to independent school systems.

#### **QAP Change**

The first sentence of Section 11.(c)(5) should be amended as follows:

(5) Educational Excellence. An Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of public schools (including free public charter schools) that have achieved a 77 or greater on index 1 of the performance index, related to student achievement, by the Texas Education Agency, provided that the schools also have a Met Standard rating. Points will be awarded as described in subparagraphs (A) and (B) of this paragraph.

In summary, some municipalities are contributing very significant amounts to revitalize targeted inner-city areas. However, they cannot succeed in such worthy initiatives without 9% tax credits to build affordable housing.

Moreover, inner-city revitalization initiatives that have a proven plan designed to both create a healthy, stable neighborhood as well as a pathway out of poverty for everyone in the community should be recognized and awarded additional points.

We are hopeful that the TDHCA staff and Board members will deem it appropriate to allow for changes to the QAP scoring approach to support these municipalities and their revitalization initiatives to combine (1) affordable/mixed income housing with (2) a high quality cradle to college education pipeline and (3) the community and support services necessary to help children and families maximize their potential.

We thank you for your consideration.

Sincerely,



Jesus Chapa  
Director of Housing & Economic Development  
City of Fort Worth

cc: TDHCA Board Members



Section 1

Renaissance Heights Master Plan

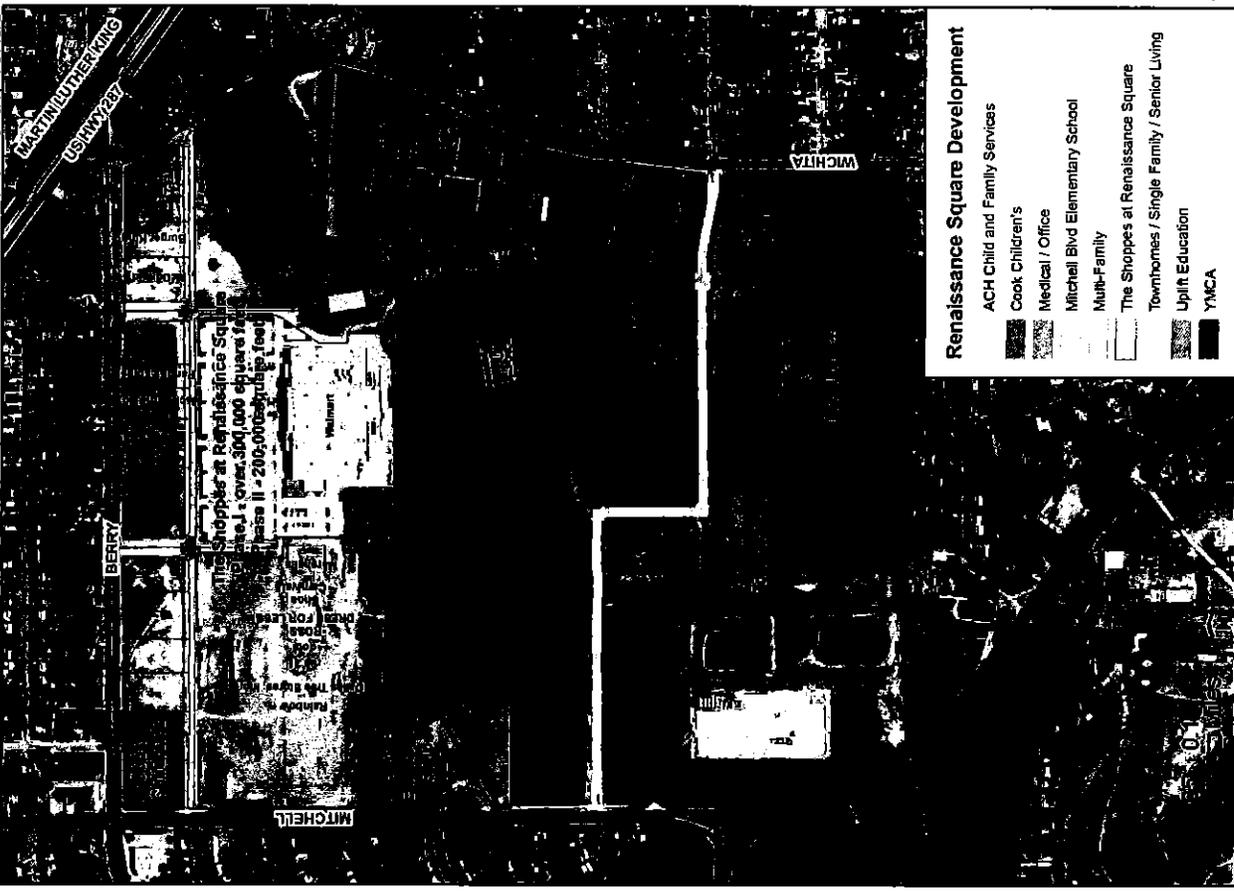


2014

Fort Worth

Renaissance Square

Fort Worth, Texas



Renaissance Heights

CFW HED 10/3/14



Section 2

# Renaissance Heights Coalition

# Renaissance Heights Coalition



**uplifteducation**  
Shine through.

- Uplift Education is the oldest and largest network of free, public, charter schools in North Texas, with track records of success in underserved communities.
- Built on two premises: (1) All children can succeed in college and career, and (2) all schools can be excellent, Uplift currently serves nearly 12,000 students on 14 campuses throughout the DFW Metroplex.
- 84% of children at Uplift's urban campuses receive free or reduced lunch; this number reaches as much as 90% at several of its schools.
- Uplift strategically opens schools in communities with few, high-performing public options. The success of its students is dramatic. Consider the 2014 graduating class:
  - 100% of Uplift's 280? graduates were accepted to college.
  - Nearly half of those colleges were top 100 schools.
  - \$67 million in scholarships and grants.
  - Seven seniors received either the prestigious Gates or Dell scholarship.

*Uplift is committed to being a part of the revitalization of Renaissance Heights.*

*We are committing to provide preferential enrollment to residents of Renaissance Heights.*

*We are partnering with the YMCA's early learning program to ensure that all children in Renaissance Heights come to us in kindergarten well-prepared.*

*We are partnering with ACH to ensure families have access to the critical social/emotional support they need to thrive.*

*Texas Wesleyan University has committed to provide scholarships and reduced tuition to Uplift graduates.*

*The Cook Children's clinic—within walkable distance from our campus—will ensure all families have access to affordable health care.*

# Renaissance Heights Coalition



- The YMCA of Metropolitan Fort Worth has been a part of the Fort Worth community for over 125 years, with a long-standing history of serving the community through well being and recreational activities, child care, summer camp, and family services.
- Their mission is to put Christian principles into practice through programs that build healthy spirit, mind and body for all. The Y's focus is on healthy living, youth development, and social responsibility.
- The YMCA of Metropolitan Fort Worth is committed to the Renaissance Heights Initiative, and is in the process of raising funds to build a \$10 million facility on the west side of Renaissance Heights. The city of Fort Worth will contribute an additional \$2 million outdoor aquatic center that will serve youth, families, and seniors with health and wellness programs.

*We are currently partnering with Uplift Charter school to provide after school enrichment programming; FWISD on pre-school early learning education; Texas Wesleyan on providing mentors for our youth leadership program; and we are exploring partnerships with other organizations in the Renaissance Heights.*

*The McDonald Southeast Y currently serves over 1,500 youth and families of predominately low socio-economic status and predominately minority with increased health disparities in Southeast Fort Worth. The Community Disadvantage Index rating for the zip code is a 9 out of 10 which is clear evidence that this area of Southeast Fort Worth has some of the greatest needs.*

*We are committed to developing a community that integrates healthy living, youth development, and social responsibility.*

# Renaissance Heights Coalition



**Texas Wesleyan**  
UNIVERSITY

- A private, 4-year liberal arts institution located in southeast Fort Worth. Its 124-year history boast a mission **to develop students to their potential as individuals and as members of the world community.**
- With an overall minority enrollment of approximately 45% (over 47% at the undergraduate level), and an average student age of 26, the university is truly diverse. Of its undergraduate domestic population:
  - Over 60% are financially needy and receive Pell grants provided by the Federal government.
  - Approximately 71% of students are from Texas, 68 % are from Tarrant County, and
  - 19% of incoming freshman class graduated from high schools within Fort Worth ISD.
- Located in this predominately Hispanic and African-American community of Southeast Fort Worth, Texas Wesleyan has developed many programs that encourage minority students to pursue a college education. In fact, the university's fastest growing student segments include minority populations, lower income students, nontraditional students and those who are not fully prepared for college.

*As an anchor institution in Southeast Fort Worth, we focus on community and economic development, and are in the midst of a \$6.7 million construction project, which will bring 25 new jobs to the local area.*

*Joining the Purpose Built Communities and Renaissance Heights project team is a prime example of our interest in improving the social fabric of the local community, helping to move individuals and families from poverty to sustainability through our cradle-to-college education partnership model.*

*Certainly Texas Wesleyan agrees with the premise to invest in high opportunity areas, but redlining areas of poverty eliminates opportunities for public/private partnerships – such as the Renaissance Heights partner organizations – to make a difference in their local communities deserving revitalization.*

# Renaissance Heights Coalition



- With its main campus located on Wichita Street on the east side of Renaissance Heights, ACH Child and Family Services is a 100-year-old nonprofit organization dedicated to helping children, youth and families in the community overcome life's challenges.
- All ACH services are child-centered and family-focused to best address the needs of children while closely involving families. ACH partners with its clients to provide the right services, and right level of assistance that will help them overcome life's challenges and achieve their own goals.
- The organization strives to partner with families and support their efforts to provide environments for children to thrive, helping the families identify their own strengths as individuals and as families and build on those strengths to improve how they function as a family.
- Characteristics of ACH's effective services include well trained staff, comprehensive program descriptions, effective supervision, culturally sensitive approaches, and measurable outcomes which indicate program success.

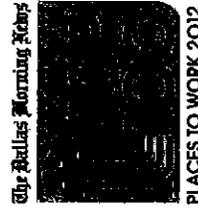
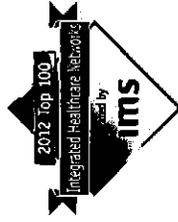
*We believe the Purpose Built model provides a unique opportunity to support the mixed income residents of Renaissance Heights and entire southeast area of Fort Worth. We are committed to developing a community that provides children with safety, hope and love.*

*We work in our community to serve families where they are. An example is our collaboration with the Fort Worth Independent School District's Family Resource Centers, which provide supportive behavioral health services and mental health care to FWISD students and their families. Our collaboration with the Family Support Centers puts us in direct contact with families who would benefit from our services. We have now extended such services to Uplift Mighty Preparatory School, a public charter school and our neighbor in Renaissance Heights.*

# Renaissance Heights Coalition

## CookChildren's.

- A preeminent children's health care system
- Since 1981
- Private not-for-profit
- The leading pediatric IDN
- 60+ service locations
- 6,000 employees
- More than 1.2 million patient encounters each year
- Creating \$1.4 billion in annual economic impact and \$103.6 million in direct community benefit



# Renaissance Heights Coalition

## CookChildren's.

- Cook Children's Physician Network thru the Neighborhood Clinics has been offering pediatric healthcare services to low income neighborhoods in Fort Worth for 20 years.
- Currently there are six locations strategically located in the community to provide easy access to the hospital's most vulnerable patient population.
- The clinics average 90,000 visits annually providing well visits, immunizations, acute care, behavioral health counseling, nutrition counseling, and recently dental services.
- Neighborhood Clinics are designed to be a medical home for a segment of children with different circumstances than the average family. Therefore it is imperative that the staff and providers are prepared to handle the challenges they will face in carrying out their patient's medical plan. In addition, it is necessary to provide additional services for the family as a whole in order to remove the roadblocks that could impede a positive medical outcome for the patient. Everyone you see at Cook Children's represents the collaboration that is necessary to reach this common goal of overall health.

*It does 'take a village' to raise a child.*

*Cook Children's has evolved from mobile vans for immunizations only, to temporary buildings in the back of elementary schools, to our current free standing buildings that house complete pediatric primary care services.*

*And now for the first time in the history of Cook Children's we offer dental services at the newest neighborhood clinic in Renaissance square. Cook Children's believes the Renaissance development to be a high opportunity area, which is why we specifically chose it for our newest investment and the location of our very first integrated medical and dental practice.*

*The Renaissance neighborhood clinic will continue to foster relationships with our existing community partners as well as gaining new ones.*



Section 3

Renaissance Heights Foundation

# Successful Revitalization Requires Strong, Committed Leadership

**The establishment of a single-purpose, nonprofit, lead organization is the most critical component of a successful Purpose Built Communities revitalization initiative.**

It takes a lead organization, a 'Community Quarterback' if you will, whose sole job and purpose is to make Renaissance Heights a place where every individual has the support, the services and the opportunity to reach his/her full potential.

The Community Quarterback will be responsible for bringing coalition partners together to work effectively towards the common goal of providing enhanced and collaborative services that will transform this particular neighborhood and surrounding areas.

The Community Quarterback for Renaissance Heights will be a 501(c)(3) nonprofit organization, Renaissance Heights Foundation, and will eliminate duplication of efforts and leverage resources.

We are committed to securing funding for this foundation and currently have preliminary commitments for \$250,000 to pay for at least two years of staffing and expenses. Representatives from the organizations here today, as well as other Fort Worth civic leaders, will comprise the board and the advisory board. The Foundation will be charged with:

- Driving the revitalization initiative to make sure that the housing and all other components are successful and sustainable
- Ensuring that the people in the target neighborhood are engaged, included and served
- Securing a sustainable funding stream of public and private resources
- Serving as a single point of accountability for partners and funders

We are committed to implementing the Purpose Built Model in Renaissance Heights. We have the cradle-to-college education pipeline component. We have the family support and community wellness program component. We are working to add the mixed income component.

(7) Claire Palmer

(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 pro forma itemizing all projected income including Unit rental rate assumptions, 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 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.

An Application shall be entitled to receive an additional twenty (20) points in the event a Project which received tax credits in one of the immediately three (3) preceding allocation rounds suffers a catastrophic loss (meaning an event or phenomenon that produces a loss so great that the Project cannot be rebuilt or restored to use by its Placed in Service deadline), which had to return credits to the Agency and which is ready and able to begin construction immediately upon allocation of credits, including specifically having plans, permits, and financing in place with commitments at the time of application.

**From:** [Jean Latsha](#)  
**To:** [Teresa Morales](#)  
**Subject:** FW: State rep Support  
**Date:** Thursday, October 02, 2014 10:49:05 AM  
**Attachments:** [image003.png](#)

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QAP comment

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**From:** Claire Palmer [mailto:clairepalmer@sbcglobal.net]  
**Sent:** Wednesday, October 01, 2014 2:54 PM  
**To:** 'Jean Latsha'  
**Cc:** 'Tamea A. Dula'  
**Subject:** State rep Support

Section 2306.6710(b)(1)(K)(K) states that the required State Representative Letter must contain the following....” the level of community support for the application, evaluated on the basis of a written statement from the state representative who represents the district containing the proposed development site”;

To me this means the letter is supposed to say that the Representative has evaluated the support of the community and found that there is community support for the development. I am not sure how lese you read it. I have specifically had a state representative in Dallas tell me that is how her office reads it and that is the letter she is willing to write.

What the QAP requires is a support letter from the Representative. I don't think that is the intent of the statute. I think that a letter that says the Rep has talked to the City and they support the application and the Rep supports the City should be what is required.

Thanks for your consideration.

Claire



THE LAW OFFICES OF  
CLAIRE G. PALMER, PLLC

**CLAIRE PALMER**  
972-948-3166  
Fax: 972-432-8825



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Irving, Texas 75063  
[clairepalmerpllc@sbcglobal.net](mailto:clairepalmerpllc@sbcglobal.net)

## (8) MHMRA of Harris County



Mental Health • Mental Retardation  
Authority of Harris County

September 24, 2014

Tim Irvine, Executive Director  
Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, Texas 78711-3941

RE: Comments - Draft Section 811 Program design and requirements  
Draft Program Selection Guidelines for 2015 QAP Applicants

Dear Mr. Irvine:

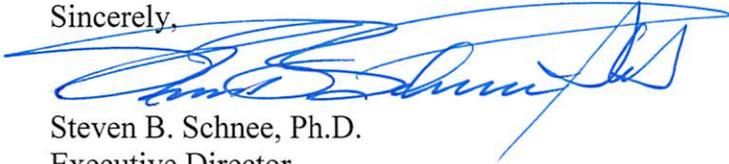
The Mental Health Mental Retardation Authority of Harris County (MHMRA) is very supportive of additional housing programs and resources which address people with disabilities. MHMRA serves adults with chronic mental illness (CMI) and individuals with developmental disabilities (IDD) in Harris County who meet the state of Texas' criteria for priority population. We are one of the largest centers in the state and country and welcome the addition of the Section 811 rental assistance units in the near future to provide these eligible individuals with desperately needed housing.

MHMRA respectfully offers the following comments on the draft documents for you, your staff, and Board to consideration:

- ◆ Applicant's property is not located in an area of high criminal activity
- ◆ Each property has adequate security procedures and equipment in place to safeguard this vulnerable population.
- ◆ The property is in close proximity or readily accessible to needed service providers.
- ◆ Public transportation is available in front or on the property with other transportation options such as Metro Lift and State of Texas's medical transportation being readily available as well.
- ◆ Property Owners and staff have experience or agree to obtain training as to understanding the conditions as well as best practices to interact with people with disabilities.
- ◆ The units designated as part of the program not only should be dispersed throughout the property but should also be equivalent in size, quality, and desirable locations within the complex.
- ◆ Increase the available points per complex for participating in the program from two (2) to five (5) points with points being assigned based on the number of units designated for the disability program.

On behalf of MHMRA, we greatly appreciate you allowing us and others to provide comments on these draft guidelines. If you have any questions or need further information, please do not hesitate to contact me at 713-970-7190, Dr. Scott Strang, Chief Operating Officer, at 713-970-7182, Ms. Rose Childs, Deputy Director, Mental Health Service, at 713-970-3303, or Mr. Samuel Hom, Director of Housing Development at 713-970-7435.

Sincerely,



Steven B. Schnee, Ph.D.  
Executive Director

SBS/sh

rc

# (9) Les Kilday

**From:** [Les Kilday](#)  
**To:** [Kathryn Saar](#); [Jean Latsha](#)  
**Subject:** Comment to 2015 draft QAP  
**Date:** Wednesday, October 08, 2014 9:49:30 PM

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Kathryn and Jean,

Good afternoon. I have a comment to the 2015 draft QAP:

Regarding selection criteria item 11.9(c)(5) Educational Excellence, I would propose 1 point for each school that has achieved a 77 or greater for index 1, provided the schools also have a Met Standard rating.

I don't believe points for this scoring item should hinge, entirely, on the elementary school scoring 77 or greater. In an instance where the elementary school does not score 77 or greater, but the middle school and/or the high school score 77 or greater, I believe points should be available.

As an alternative (if my first proposal is not acceptable), I would propose to add item (C) stating "The Development Site is within the attendance zone of a middle school and a high school with the appropriate rating (1 point).

Thanks,

Les

=====

Les Kilday

Kilday Operating LLC

1717 St. James Place, Suite 150

Houston, TX 77056

Voice: (713)914-9400

Fax: (713)914-9439

<mailto:les@kildayco.net>

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(10) Motivation Education &  
Training, Inc. (MET)



motivation education & training, inc.

Austin Office  
1811 West 38<sup>th</sup> Street  
Austin TX 78731  
Telephone: 512-965-0101  
Fax number : 512-374-1657  
Email: austin@metinc.org

October 1, 2014

Mr. Tim Irvine  
Texas Department of Housing and Community Affairs  
PO Box 13941  
Austin, TX 78711-3941

RE: Comments related to the *Housing Tax Credit Program 2015 LIHTC plan and rules*

Dear Mr. Irvine:

We appreciate the opportunity to comment to TDHCA on the 2015 Low Income Housing Tax Credit Qualified Action Plan and rules. Motivation Education & Training, Inc. is a private nonprofit 501(c)(3) organization funded by a variety of public and private grants and contracts. The agency was incorporated in 1967 and operates on a statewide basis in Texas, Louisiana, Minnesota, North Dakota, and Wyoming. The organization was founded for the purpose of providing academic and vocational training to migrant and seasonal farm workers, with the objective of furthering economic self-sufficiency for MET participants. MET has conducted programs to improve farmworkers' housing situations since the 1970's.

MET's comments are specifically related to how Texas' LIHTC program could better include Texas farmworkers. First, a thank-you for three actions to better include farmworkers with TDHCA programs:

1. In its Qualified Assistance Plan, TDHCA has been including migrant farmworkers within the groups that are defined as those to be included in the special needs category since 2008. We appreciate the effort to better serve farmworkers within Texas' LIHTC program.
2. TDHCA commissioned the *Texas Rural Farmworker Housing Analysis* by Bowen National Research (BNR) that was published November, 2012. Thank you for the Department's expenditure of funds and time to complete this study!
3. TDHCA has participated with MET's series of statewide and regional farmworker housing summits and workshops. We appreciate the participation of TDHCA staff and their efforts to assist since 2004.

There are several obstacles that Texas farmworkers encounter in utilizing Texas' LIHTC housing.

1. First, farmworkers are not likely applicants to LIHTC units without special outreach and marketing. I recently reviewed the appendices in a market study conducted by Bowen National Research for the Hidalgo County Housing Authority in 2012. As part of the analysis, 141 multifamily rental housing properties containing 12,074 units were surveyed by the firm within Hidalgo County. The field survey asked property managers the percentage of units rented to farmworkers. In the appendix, I found 8 facilities, 3 of which were tax credit properties, that said they rented to farmworkers. Collectively within the 8 facilities, 180 (1.3%) of the 12,074 units were rented to farmworkers. Twenty-nine units among the 4,687 units with Tax Credits were rented to farmworkers – thus, only 0.6% of Hidalgo County's tax credit units are occupied by farmworkers, evidence that few farmworkers take advantage of the facilities, likely for a host of reasons.
2. Second, the rents in LIHTC-produced housing often exceed what farmworkers are able to pay. Nor are farmworker wages sufficient to secure other decent rental or ownership homes. Nationally farmworkers household incomes are between \$7,500 and \$10,000. MET clients (averaging 4-person households) earned an average annual wage equal to 38% of the poverty rate. Nationally 60 percent of all US farmworkers live below the poverty level and the poverty rate for these workers exceeds that of all other general occupation categories. Median weekly earnings of full-time farmworkers are 59% of those for all wage and salary workers, although work-weeks usually are upwards of 50 hours a week.

According to Bowen National Research's rural farmworker housing analysis delivered to TDHCA in 2012, 92.7% of farmworkers are not served by the 28 farmworker-designated projects in the 49 rural counties studied in the report. BNR looked at other affordable housing options, including housing developed with LIHTC, HUD Sections 8, 202, and 236, Public Housing, and USDA/Rural Development 515 programs. BNR presumed some farmworkers choose to inhabit affordable housing units. However, very high occupancy rates point to the difficulty to access these units. In the 11,948 units in 290 affordable housing projects within the study region, high occupancy rates mean that few farmworkers will successfully compete for these units. BNR concluded that *“demand for affordable housing is extremely high in each study region, with no region having less than 97.6% of its supply occupied. As such, **there is limited available affordable housing product from which low income households, including farmworkers, can choose.**”*

3. Third, migrant farmworkers may not be able to commit to one-year leases, so their housing choices are even more limited. When in the migrant stream, they will stay only as long as work is available. In homebased housing, they need to be able to leave their units while away. Many pay year-round rents, even while they are away working and not present for months at a time.

We hope that farmworkers may have been better served since 2008 when “migrant farmworkers” were included in the special needs category. Ms. Latsha has offered to help me contact the TDHCA divisions so I can research the results, and I look forward to that.

Because of the obstacles discussed above, we recommend the following:

1. Incorporate BNR's recommendations cited in the of the *Texas Rural Farmworker Housing Analysis*. Specifically, recommendations numbers 2 and 3 state:
  - “**2. Consider Raising Development Standards to Enable Farmworker Projects to be Eligible for Low-Income Housing Tax Credits:** Many typical farmworker housing projects/units do not meet the minimum design standards that would make them eligible for Low-Income Housing Tax Credits and, therefore, developers of farmworker housing cannot access financing through the Tax Credit program. It is recommended that developers of farmworker housing be encouraged to meet design standards for farmworker housing that would create housing units that meet the LIHTC program requirements.”
  - “**3. Consider Providing Assistance and/or Creating Incentives to Encourage Developers to Actively Market Non-Farmworker Housing to Farmworkers:** Given that the existing housing stock in many rural counties has some capacity to accommodate additional renters, government entities should explore ways to assist and/or create incentives for developers of existing or planned non-farmworker housing to market their projects to farmworkers. This would help meet some farmworker housing needs without adding new units to markets.”
2. Set-aside units, funding, and allocate additional points for projects in which units are designated for farmworkers. Follow the examples of best practices from other states, as summarized in the BNA report.
  - In California, for example, \$500,000 is set-aside for farmworker units each year from its allocation of low income housing tax credits. Any returned and unused state Farmworker Credit balance from the previous calendar year is also added to the set-aside.
  - In Washington state, 35 points are added for farmworker-designated housing during when scoring LIHTC applications.
  - The state of Oregon offers a 15% reservation for projects serving farmworkers (or ex-offenders, or preservation of existing properties). Oregon also offers a state-sponsored tax credit program with farmworker housing incentives.
3. Establish a set-aside for farmworkers in units beyond those that are targeted for special needs when a housing facility will be located in areas with a strong agricultural economy that relies on human labor. This can be tied to an established index, perhaps one that the Texas Department of Agriculture or the US Agriculture Census already maintain that relate to agriculture and field labor. Market all LIHTC housing units to farmworkers when located in an agricultural economy (also see number 1 regarding marketing).
4. Establish an incentive for combining LIHTC with USDA Section 514 funding. Other states where farmworkers live already do this (namely, California, Florida, Washington, and Oregon). Best practices include blending Section 514 funding with other funding sources to include farmworkers units within larger mixed population facilities. Providing firm conditional commitments in time for USDA applications so applicants obtain leverage points will also help Texas applicants in competing on the national level with other states that provide incentives for farmworker projects.
5. When USDA Section 514 funding is present, allow even projects in urban areas to compete in the rural category. The Section 514 program can be used in urban areas, and is the only USDA program that can be used outside of rural areas. The LIHTC urban criteria should not typically be applied to farmworker projects.

6. Change the “migrant farmworker” designation to “migrant and seasonal farmworker” (MSFW) or simply “farmworker” to be consistent with sources quoted in the discussion of farmworkers in the *State of Texas Analysis of Impediments to Fair Housing Choice* and the term used in the *US National Agricultural Workers Survey* and other federal programs. Additionally the *2010-2014 State of Texas Consolidated Plan* quotes these same sources as the *AI*. Both focus on the housing and wage difficulty of crop workers. The reports quantify that 42% of farmworkers are migrants, but does not otherwise substantiate differences within the population or housing hardships.

While in the migrant stream, farmworkers need *temporary* homes, not homes for which annual leases must be signed. Both migrant and seasonal farmworkers also have housing needs in the homebase with their *permanent* housing options – which are typically extremely substandard, cost burdened, and crowded. The permanent housing needs are more suited to tax credit possibilities for both seasonal and migrant workers.

Migrant farmworkers have the added difficulty of obtaining housing while in the migrant stream. However, linking the need to tax credit properties is inconsistent and impractical since migrant farmworkers, by definition, will not be able to honor annual leases. For this population, annual lease requirements should be waived if they are an intended special needs category.

Seasonal farmworkers, who work within commuting distances, often have lower incomes than migrant farmworkers, who follow the work and obtain more jobs, and thus earn more income, within a year. Limiting the population to migrant farmworkers excludes some of the poorest farmworkers who have a desperate need to access better homes. I suspect it is not the Department’s intention to exclude a population that is specifically mentioned in its own *Analysis of Impediments*.

Ideally MET would like to see one or two new farmworker housing facilities a year, plus the revitalization of one or two of the 19 existing Section 514/516 projects in the state. This strategy does not necessitate a large number of units or large allocation of funding, but it is a huge leap from what we currently accomplish. Without farmworker-specific initiatives from the state, Texas will likely continue to lose more units than it creates each decade. We therefore think it is important to create some unique avenue to address farmworker housing. We believe this could be done with a very small allocation of periodic funding.

To further the discussion of benefitting farmworkers through the LIHTC program, I would like to offer the following change to the Section 11.5(2) as presented in the 2015 QAP. Assuming this will require a statutory change, I would offer it up for discussion and consideration as a legislative recommendation.

**(2) USDA Set-Aside.** (§2306.111(d-2)) At least 6 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 and will compete within the applicable sub-region unless the New Construction is a USDA Section 514 project.

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.

New construction financed under USDA 514 should not be in the same category as other rural and urban developments. Again, only one or two projects would be anticipated each year, and only a small sliver of the credits would be impacted. However if these projects are not afforded a priority, Texas will continue to lag and our agricultural workforce will remain poorly housed. This situation presents the state with an health threat to everyone who eats fresh fruits and vegetables picked by workers living in unhealthy housing.

Thank you for the opportunity to comment. Please contact me if you have any questions or need clarification on any of these suggestions. MET is happy to continue to work with TDHCA on these or other initiatives that benefit Texas farmworkers.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathy Tyler". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kathy Tyler  
Housing Services Director

(11) Michael Wallis

**From:** [Jean Latsha](#)  
**To:** [Teresa Morales](#)  
**Subject:** FW: Change the rules for the 9% tax credit program to require all local governments to hold a public hearing and/or public comment period before they vote on a resolution in support of an application.  
**Date:** Tuesday, July 08, 2014 2:48:40 PM

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Our first public comment on the rules. I won't forward you all the emails I get, but we'll need to make sure this gets counted as public comment when we get to that point.

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**From:** Michael Wallis [mailto:mail@changemail.org]  
**Sent:** Tuesday, July 08, 2014 2:46 PM  
**To:** jean.latsha@tdhca.state.tx.us  
**Subject:** Change the rules for the 9% tax credit program to require all local governments to hold a public hearing and/or public comment period before they vote on a resolution in support of an application.

Dear Texas Department of Housing and Community Affairs,

I just signed Bridgette Wallis's petition "[Texas Department of Housing and Community Affairs: Change the rules for the 9% tax credit program to require all local governments to hold a public hearing and/or public comment period before they vote on a resolution in support of an application.](#)" on Change.org.

Please change the rules for the 9% tax credit program to require local government to hold a public hearing and/or public comment period before they vote on a resolution in support of an application. Texas citizens deserve a say in what happens in their state and local area. The only way to ensure all citizens are notified is to require citizen notification.

Sincerely,  
Michael Wallis McKinney, Texas

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There are now 13 signatures on this petition. Read reasons why people are signing, and respond to Bridgette Wallis by clicking here:  
<http://www.change.org/petitions/texas-department-of-housing-and-community-affairs-change-the-rules-for-the-9-tax-credit-program-to-require-all-local-governments-to-hold-a-public-hearing-and-or-public-comment-period-before-they-vote-on-a-resolution-in-support-of-an-application/responses/new?response=d0bba1e03a47>

[ ]

(12) Fountainhead  
Management, Inc.

**FOUNTAINHEAD MANAGEMENT, INC.**

4000 OLD BENBROOK ROAD

FORT WORTH, TEXAS 76116

TELEPHONE (817) 732-1055; FAX (817) 732-7716

October 13, 2014

Texas Department of Housing  
And Community Affairs  
Attention: Teresa Morales  
Rules Comments  
P.O. Box 13941  
Austin, Texas 78711-3941

Via Fax to (512) 475-1895 and email

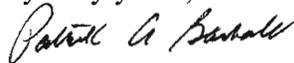
Re: Proposed rules 10 TAC §§ 11.1 – 11.3, 11.5 – 11.10

Dear Ms. Morales:

I am commenting on the proposed Housing Tax Credit Program Qualified Allocation Plan. I am limited my comment solely to the offering of points in §11.9 (c)(4) & (5) – the points for the “opportunity areas” and school zones with educational excellence. Regardless of how the language is phrased, the intent of these points is to locate the housing in non-hispanic Caucasian neighborhoods while making it nearly impossible to locate a tax credit development in a predominately minority neighborhood. In effect, the department is intentionally red-lining minority neighborhoods from future tax credit developments. Thus, I suggest that the current and proposed practice of the department is a per se violation of the Fair Housing Act. On October 2, 2014 in HUD press release number 14-122, HUD announced a settlement against Midland States Bancorp for the ‘bank delineated its service area in a discriminatory manner that excluded areas of high minority concentration, a practice known as redlining’. This is just the most recent of HUD’s many successes against red-lining.

The Dallas Federal court case (now to be heard and hopefully reversed by the United States Supreme Court) may provide some protection for the Department in the five counties involved in that litigation. The remaining counties in Texas are not involved in that litigation and could subject the Department to red-lining litigation which the Department would, in my opinion, have a difficult time winning. Thus, I recommend that the Department give serious consideration to pulling these two sections from the scoring matrix until such time as the Department has successfully obtained a declaratory judgment validating the scoring as not being a violation of intention discrimination.

Very truly yours,



Patrick A. Barbolla

(13) Rural Rental Housing  
Association (RRHA) of Texas



RURAL RENTAL HOUSING ASSOCIATION OF TEXAS, INC.

September 24, 2014

Board of Directors  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, TX 78701

Dear Chairman Ozer and Members of the Board:

I am writing to you on behalf of the Rural Rental Housing Association of Texas, Inc. (RRHA of TX) with more than 700 USDA Section 515 properties in rural Texas, many of which were built in the 1970's and 80's. Thank you for the opportunity to provide comment to the 2015 QAP.

Our priority is preservation of existing properties and we would like to provide comments based on the need to update and repair the physical property, as well as the ability to continue to serve the residents and the community with existing units. Members of the Association have worked in rural communities for 40+ years and we want to serve this population with both existing Section 515 and new LIHTC apartment communities.

First let me say thank you for the staff-added language clarifying the eligible applicants for the USDA set-aside. Although misunderstanding of the USDA funding eligibility doesn't happen often, it's helpful to have it clearly stated that "the Application must meet the requirements of the Set-Aside as of the Full Application Delivery Date". We believe this will clear up previous confusion on the USDA funding sources.

USDA Section 515 properties are existing units—there is simply not much funding at the national level committed to new Section 515 construction. The location of an existing property is established and cannot be relocated to another school district, or closer to local amenities. Because of the competitive point system within the QAP, owners are deciding which properties to put into the Application Cycle based on how they score, and not on which properties are most in need of repair and update, leaving many of the properties most in need to wait for another funding possibility. Regardless, the existing residents are depending on the ownership and management of the property to maintain and repair their units, and the rural communities in which they are located rely on the owners for exterior upkeep. The need for preservation funding exists in the vast majority of Section 515 properties in Texas, and unfortunately sufficient funds are not being appropriated to USDA for this purpose making most rehab dependent on Tax Credits and HOME funds. Our comments for existing and new construction in rural areas follow.

1. 11.9 (c)(5) Educational Excellence: An Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of public schools that have achieved a 76 or greater on index 1 of the performance index, related to student achievement, by the Texas Education Agency, provided that the schools also have a Met Standard rating. **For Applications in the USDA set-aside, the Property must be located within the attendance zones of public schools that have achieved a MET Standard (55) or MET Alternative Standard (30) rating on Index 1 of the performance index.** Points will be awarded 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 an Applicant may use the lowest rating of all elementary, middle, or high schools, respectively, which may possibly be attended by the tenants. The applicable school rating will be the **2013 or 2014** 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. Sixth grade centers will be considered as part of the middle school rating.

***Comment: RRHA's comment is made to lower the score on index 1 of the performance index to allow more potential locations and to alleviate subjectivity from one year to the next. We don't believe the one point score will materially impact the quality of education received between a 76 and a 77. We have also added 2013 and 2014 ratings as qualifying years for the same reason. A school that qualified on last years' exceptional rating and falls below a 77 in the subsequent year is likely to continue to provide a good education to its students. The number becomes very subjective from one year to the next. For Applications in the USDA set-aside, the location of the property has already been determined and residents are already living in the property. Therefore the issue of creating new housing units in high opportunity areas does not apply within the set-aside. Instead, the goal is to maintain the existing property on behalf of the residents and the community and to make decisions based on need, not on school campus points.***

2. 11.9(c)(4)(B) Opportunity Index: For Developments located in a Rural Area, an Application may qualify to receive up to seven (7) cumulative points based on median income of the area and/or proximity to the essential community assets as reflected in clauses (i) - (v) of this subparagraph if the Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (35 percent for regions 11 and 13) or within a census tract with income in the top or second quartile of median household income for the county or MSA as applicable or within the attendance zone of an elementary school that has a Met Standard rating and has achieved a 76 or greater on index 1 of the performance index, related to student achievement.

***Comment: The change from a 77 to a 76 in this subsection is to conform the number for educational excellence for each subsection. We do not believe there is a material difference of one point, yet the difference permits more potential locations for housing. The one point difference rules out a number of deserving and high quality locations, and sometimes forces the Applicant into compromising choices on site locations. By dropping the score 1 point, we believe it will provide more location choices while retaining a good educational rating.***

(i) The Development Site is located within the attendance zone and within two linear miles of an elementary, middle, or high school with a Met Standard rating (For purposes of this clause only, any school, regardless of the number of grades served, can count towards points. However, schools without ratings, unless paired with another appropriately rated school, or schools with a Met Alternative Standard rating, will not be considered.) (3 points);

- (ii) The Development Site is within **two** linear miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program (2 points);
- (iii) The Development Site is located within **two** linear miles of a full service grocery store (2 points);
- (iv) The Development Site is located within **two** linear miles of a center that is licensed by the Department of Family and Protective Services to provide a child care program for infants, toddlers, and/or pre-kindergarten, at a minimum (2 points);
- (v) The Development is a Qualified Elderly Development and the Development Site is located within **two** linear miles of a senior center (2 points); and/or
- (vi) The Development Site is located within **two** linear miles of a health related facility (1 point).

***Comment: Rural communities are often served by one set of amenities for the entire town. Driving distances are measured differently by time in rural areas and less by miles, and it's not uncommon to drive up to 15 miles for a service. One linear mile is too restrictive for rural areas and is forcing rural developers into sites that are not always the best choice in order to locate within the 1 mile distance and receive the points. Additionally, communities that are growing are often building on the outskirts of town where land is available, placing schools and super-stores away from other amenities and central districts. We believe that two (2) linear miles is a reasonable measure for a close location to amenities in rural communities. We have also added "or" to the program for child care. Trying to find a provider licensed by the Department of Family and Protective Services for infants, toddlers and pre-kindergarten in a rural area is somewhat rare and we'd like to see infants and toddlers and/or kindergarten as a more realistic amenity.***

3. 11.9(c)(6): Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive two (2) points for general population or Supportive Housing Developments if the Development Site is located in one of the areas described in subparagraphs (A) - (E) of this paragraph.

(A) A Colonia;

(B) An Economically Distressed Area;

(C) A Place, or if outside of the boundaries of any 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 **not** received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation **in the past 15 years** for a Development that remains an active tax credit development serving the same Target Population;

**(E) For Rural Areas only, a seniors development.**

***Comment: Rural areas that have not received a tax credit allocation in 15 years may not have had any other multifamily development within that period. The lack of large scale development limits choices in most rural areas and 15 years is a more reasonable time-frame to consider. Seniors are underserved in much of the state, and particularly in rural areas where they are the stable and growing population in many communities. There are 48 communities in rural Texas that have been certified as GO TEXAN Retirement Communities, 6 of these locations cover an entire county. To not give parity to seniors and general population in rural areas would ignore population, preference and economic focus trends in many rural Texas communities.***

4. 11.9(c)(7)(A)(iv):(iv) **The Development Site must be located in one of the following areas: Austin-Round Rock MSA, Brownsville-Harlingen MSA, Dallas-Fort Worth MSA; El Paso MSA; Houston-The Woodlands-Sugar Land MSA; McAllen-Edinburg-Mission MSA; or San Antonio-New Braunfels MSA. For purposes of this subsection, the definition of a rural area includes existing USDA projects retaining USDA financing.**

*Comment: RRHA believes the grandfathering rule should apply in urban rim areas where rural projects were built long ago and the city limits have grown out to meet the once rural locations. USDA properties are accepting the 811 population in their projects currently, the Section 515 properties will be competing in the USDA set-aside, not in urban subregions and the scoring should remain consistent within the set-aside.*

5. 11.9(d)(2)(D): One (1) point may be added to the points in subparagraph (B)(i) - (v) of this paragraph and subparagraph (C) of this paragraph if the financing to be provided is in the form of a grant or in-kind contribution meeting the requirements of this paragraph or a permanent loan with a minimum term of fifteen (15) years, **or in rural areas a term of five (5) years** minimum amortization period of thirty (30) years, and interest rate no higher than 3 percent per annum. An Applicant must certify that they intend to maintain the Development funding for the full term of the funding, barring unanticipated events. For Applicants electing this additional point that have not yet received an award or commitment, the structure of the funds will be reviewed at Commitment for compliance with this provision.

*Comment: Rural communities seldom have excess funds within the local government coffers, and any funds they do have need to be repaid as quickly as possible. The 15 year repayment has been a little understood requirement for local officials to grasp, and the prospect of a 5 year rather than a 15 year repayment is more palatable to rural communities.*

#### 6. MF Rules Subchapter B 10.101(a)(3)(3)

**Undesirable Site Features.** Development Sites **within the applicable distance of any of with** the undesirable features identified in subparagraphs (A) - (JH) of this paragraph will be considered ineligible. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD or USDA may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application **(delete: and must include a letter from the fair housing or civil rights office of the existing federal oversight entity indicating that the Rehabilitation of the existing units is consistent with the Fair Housing Act.) 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 (JH) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

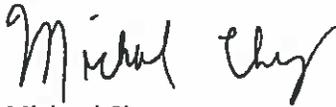
*Comment: State offices of RD and HUD may not be able to certify to Fair Housing at the state level which will require a letter from the National office in Washington DC. It may not be possible to get a letter indicating that the Rehabilitation of the existing units is consistent with the Fair Housing Act in a timely manner which would eventually disqualify the application. We urge this requirement to be deleted.*

TDHCA Board of Directors  
September 24, 2014  
Page 5

**7. Crime Index: Undesirable Neighborhood Characteristics 10.101 (a)(3)(c):** The Neighborhood Scout that reports the Crime Index for local areas has not completed reporting of their Texas Data. This makes it very difficult to select a site in a timely way. If the Neighborhood Scout site has not completed inputting their Texas statistics by October 1, then we recommend that TDHCA go back to the 2014 rule of reporting hot spots.

Thank you, and if you have any questions, please do not hesitate to contact me at 817.285.6315, ext. 15.

Regards,



Michael Chamy  
President

cc: *Tim Irvine- Executive Director, TDHCA*  
*Cameron Dorsey, Deputy Executive Director, TDHCA*  
*Jean Latsha, Director, Tax Credit Program, TDHCA*

***Blue denotes TDHCA 2015 QAP changes***

***Red denotes TDHCA 2015 deletions***

***Magenta denotes RRHA recommended changes***

(14) Terri Anderson

**From:** [Jean Latsha](#)  
**To:** [Teresa Morales](#)  
**Subject:** FW: School Scoring Suggestion  
**Date:** Wednesday, October 01, 2014 9:13:32 PM

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QAP comment

-----Original Message-----

From: TERRI ANDERSON [[mailto:terri\\_l\\_anderson@msn.com](mailto:terri_l_anderson@msn.com)]  
Sent: Tuesday, September 30, 2014 3:05 PM  
To: Jean Latsha; Cameron Dorsey; Kathryn Saar  
Subject: School Scoring Suggestion

Allow for school scoring to have school the Met Standard and be the lesser of the proposed minimum score (77) or the average for the county.

Thank you,  
Terri

Terri L. Anderson, President  
Anderson Capital, LLC  
347 Walnut Grove Ln.  
Coppell, TX 75019  
Phone: 972.567.4630  
Fax: 972.462.8715

Please excuse my spelling. This message was sent from my i-phone.

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Anderson Capital, LLC will not accept time-sensitive action-oriented messages or documentation via e-mail or other electronic delivery.

(15) DMA Development  
Company, LLC



October 15, 2014

VIA EMAIL ([jean.latsha@tdhca.state.tx.us](mailto:jean.latsha@tdhca.state.tx.us))

Jean Latsha  
Director of Multifamily Finance  
Texas Department of Housing and Community Affairs  
221 E. 11<sup>th</sup> Street  
Austin, TX 78701

Re: 2015 Qualified Allocation Plan and Uniform Multifamily Rules Comments

Dear Ms. Latsha:

The comments below are presented on behalf of DMA Development Company, LLC (DMA). Proposed language changes are relative to the Draft 2015 Qualified Allocation Plan (QAP) and Uniform Multifamily Rules (Multifamily Rules).

### ***Qualified Allocation Plan***

#### **Deleted Language, Formerly §11.3(e) Developments in Certain Sub-Regions and Counties.**

DMA supports the proposed deletion of this section of the QAP. TDHCA staff has carefully evaluated the effect of 2014 award allocations on the balance of TDHCA's portfolio between general population and elderly developments, and has found that the portfolio has achieved a greater balance. DMA commends staff's effort, and supports the allowance of elderly developments in the counties and regions prohibited in 2014.

#### **§11.9(c)(4)(A) Opportunity Index for Urban Developments.**

- Comment 1 – Measurement of High Opportunity Schools:

To more accurately measure what constitutes an above average school, DMA suggests a slight revision to the current language to allow elementary schools that meet or exceed the lower of the statewide average or the regional average to meet Opportunity Index standards.

DMA supports TDHCA's policy of incentivizing affordable housing in areas with above average schools. Targeting above average schools is an appropriate approach; however, the current QAP language does not allow for variations in Index 1 scores across regions of the state. In the 2014 application round, this resulted in an anomaly in Urban Region 11, where three developments were awarded within one small city. This happened because the average Index 1 score in Region 11 is below 77, and developers competing in the region were only able to target a few small areas where the elementary school's Index 1 score was a 77 or greater. Because TEA publishes easy to access information for each school in Texas, it is possible to evaluate the quality of a given school relative to other schools in the region, as opposed to the entire state.

- Comment 2 – Points Available to Qualified Elderly Developments:

DMA suggests that Qualified Elderly Developments located in first quartile census tracts with qualifying schools receive 5 points, and in second quartile census tracts with qualifying schools receive 3 points. This represents a return to scoring previously deemed by TDHCA to be acceptable in the 2013 application round.

Providing housing specifically targeted to the needs of seniors is an important policy objective in light of the significant aging population in Texas, and the scoring criteria should allow elderly developments to be competitive in the 9% application process.

A recent publication by the Joint Center for Housing Study at Harvard (JCHSH) illustrates the significant growth rate in older adults as seen in the following chart showing the share of Texas county population aged 50 and older in 1990 and 2010:

Texas Counties – Population Aged 50+	1990	2010
Less than 30%	138	59
30%-39%	97	123
40%-49%	18	66
50% or more	1	6

In 1990, only 1 county had 50% or more of its population aged 50 and older compared with 6 counties in 2010. Perhaps more significantly, the number of counties with 40-49% of its population aged 50+ has jumped from 18 to 66, while the number of counties with less than 30% of its population aged 50+ has dropped from 138 to 59.

According to the study, nationally “between 1990 and 2010, the number of people at least 50 jumped by 35 million, an increase of 55 percent. With the oldest baby boomers reaching retirement age after 2010, the population aged 65 and over is projected to soar to 73 million by 2030, an increase of 33 million in just two decades. By 2040, the aging baby boomers will also push up the population aged 80 and over to 28 million, more than three times the number in 2000.” Texas will mirror the national growth trend into the future. ***Texas needs to act now to even attempt to meet the affordable rental housing demands of this growing population.***

Affordable, accessible rental housing options for the elderly are needed in both rural and urban settings. The JCHSH study indicates “nearly half of households aged 50 and over make their homes in the suburbs and exurbs of metropolitan areas. The remaining half is evenly divided between core cities and rural communities.” Additional affordable housing in urban and suburban communities is needed to serve seniors currently living in those communities so they can successfully age in place with access to transportation and other vital support services.

As the older adult population ages, it is common for them to have age-related disabilities that include hearing, vision, cognitive, mobility, self-care, and independent living difficulties. The most common of these is reduced mobility. Nationally, “more than 17 million older adults report having serious difficulty walking or climbing stairs.” Single-floor living or elevator served apartment buildings is essential for these older adults. As we know, tax credit housing for the general population is typically designed as multi-story walkups, while tax credit housing for seniors requires elevators for multistoried buildings. Additionally tax credit apartment communities specifically designed for seniors generally include accessibility features such as no-

step entry, extra-wide hallways and doors, accessible electrical controls and switches, and lever-style handles on doors and faucets, which are also not found in family tax credit housing. The concept that an elderly person can just as easily live successfully in a family tax credit project is simply not the case.

This coupled with the fact that TDHCA achieved greater balance across its portfolio in 2014 supports reducing the scoring differential between general population and elderly developments.

- Comment 3 – Evaluation of Sites Using Proximity to Amenities – Comment provided for consideration in the 2016 QAP:

The close proximity of sites to desirable amenities provides greater opportunities to the residents of a development. The benefits of more and closer amenities to a site are more impactful than a site's location in a first quartile versus a second quartile census tract. DMA supports the Opportunity Index scoring criteria for rural developments and believes that a similar standard for urban developments would provide a better measure of the desirability of sites than does the proposed 2015 language. DMA suggests putting first and second quartile sites on equal footing, and then focusing on the proximity of amenities to distinguish the scoring of sites from one another. In addition to providing a more accurate measure of what is "high opportunity," a language revision is needed because the language in the 2014 QAP had the effect of causing multiple developers to seek the same sites, often leading to bidding wars and higher site acquisition costs. Not only would an evaluation of sites using proximity to amenities provide a better gauge of the relative quality of sites, it also opens more areas – still of high quality – for potential affordable housing development.

#### **§11.9(c)(5) Educational Excellence.**

DMA suggests a slight revision to the current language to allow elementary schools, middle schools, and high schools that meet or exceed the lower of the statewide average or the regional average to meet Educational Excellence standards for the same reasoning stated above.

#### **§11.9(c)(7) Tenant Populations with Special Housing Needs**

DMA is strongly opposed to including a two point incentive for participating in the 811 program. We request that TDHCA delete participating in the Section 811 program entirely from the QAP, or alternatively, limit those applications that qualify for subparagraph a to those applications in the city limits of Dallas, Fort Worth, Houston, Austin and San Antonio and reduce the point amount from 2 point to 1 point for both paragraphs a and b.

As a firm that has providing consulting services for 811 developments for over 30 years, we are very concerned about incentivizing tax credit developers with two points to agree to house a significant number of Section 811 households. The Section 811 Program is designed to serve a population that requires a greater level of services than those provided at a typical tax credit development. Most developers do not have the expertise to properly serve this population, and we are concerned that the proposed language will result in developers without the proper expertise agreeing to provide housing to a population they are not equipped to serve well.

We believe that the Section 811 program will be more successful if TDHCA creates a RFP process in which developers who have experience serving this population can voluntarily apply. Those who apply may very well be developers who are submitting a tax credit application. In the event that this RFP process is undersubscribed after two RFP rounds, for example, TDHCA can consider incentivizing tax

credit developers to house the remainder of the units if TDHCA is in a “use them or lose them” scenario. We believe that the current approach as outlined in the QAP should be a last resort measure, as opposed to the first attempt at this demonstration program.

**§11.9(d)(6) Input from Community Organizations.**

When a development site is within the boundaries of a neighborhood organization, and the neighborhood organization does not offer either support or opposition to the development, DMA suggests that the QAP allow applicants to access points for input from community organizations. Allowing comment from community organizations in cases where no other community input is available achieves TDHCA’s larger policy goal to consider input from various stakeholders within communities served by the tax credit program.

**§11.9(d)(7)(A)(ii) Community Revitalization For Developments Located in a Urban Areas.**

Smaller urban jurisdictions often have smaller community revitalization budgets than larger jurisdictions. With this in mind, we suggest a downward adjustment to the budget amounts that qualify for points in jurisdictions with smaller populations, in order to accurately reward the planning efforts of those communities. DMA suggests the following language:

- (I) Applications will receive four (4) points if the Development Site is located in a jurisdiction with a population over 200,000, and the applicable target area of the community revitalization plan has a total ~~budget or~~ projected ~~economic~~ expenditure value of \$6,000,000 or greater from public or private sources. Such value will be evaluated for the period beginning 5 years prior to the beginning of the Application Acceptance Period, and extending 5 years after the beginning of the Application Acceptance Period; or
- (II) Applications will receive two (2) points if the Development Site is located in a jurisdiction with a population over 200,000, and the applicable target area of the community revitalization plan has a total ~~budget or~~ projected ~~economic~~ expenditure value of at least \$4,000,000 from public or private sources; ~~and or~~
- (III) Applications will receive four (4) points if the Development Site is located in a jurisdiction with a population of 200,000 or less, and the applicable target area of the community revitalization plan has a total projected expenditure value of \$3,000,000 or greater from public or private sources; or
- (IV) Applications will receive two (2) points if the Development Site is located in a jurisdiction with a population of 200,000 or less, and the applicable target area of the community revitalization plan has a total projected expenditure value of \$1,000,000 or greater from public or private sources;
- ~~(HV)~~ Applications may receive (2) points in addition to those under subclause (I), ~~or (II), (III), or~~ (IV) of this clause 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 Applications contributing most significantly to concerted revitalization efforts.

**§11.9(e)(2)(B)-(F) Cost of Development per Square Foot.**

Over the past two years, construction pricing has significantly increased, and continues to increase. During the 2015 Rules Roundtable staff heard from multiple members of the development community attesting to this fact. DMA experienced between 5% and 25% increases in construction pricing for its 2013 developments between application and construction closing. In recognition of this significant and continuing increase in construction costs in both Urban and Rural areas, DMA recommends that the cost per foot figures for each scoring category be increased. DMA suggests a \$10 per square foot increase for each category.

**§11.9(e)(4)(A)(ii)-(iv) Leveraging of Private, State, and Federal Resources.**

As previously mentioned, developers have experienced significant and continuing construction cost increases. DMA agrees that points should be offered for leveraging housing tax credit resources. However, to prevent awarded developments from experiencing feasibility issues post-award, DMA suggests an increase in the allowed percentage of tax credits to total costs. DMA suggests the following:

- (i) the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than ~~9~~10 percent of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or
- (ii) If the Housing Tax Credit funding request is less than ~~8~~9 percent of the Total Housing Development Cost (3 points); or
- (iii) If the Housing Tax Credit funding request is less than ~~9~~10 percent of the Total Housing Development Cost (2 points); or
- (iv) If the Housing Tax Credit funding request is less than ~~10~~11 percent of the Total Housing Development Cost (1 point).

***Subchapter B – Site and Development Requirements and Restrictions***

**§10.101(a)(1) Floodplain.**

It appears that the new language in this section was intended to require that all developments *located in the floodplain* must be able to obtain flood insurance. We suggest that a correction be made to indicate that this language does not apply to all developments, but rather to developments in the floodplain.

**§10.101(a)(2) Mandatory Community Assets.**

DMA supports staff's addition of the proximity to public transportation as a mandatory amenity specific to Supportive Housing Developments. We recommend reducing the required distance to 1/2 of a mile.

**§10.101(a)(4)(B)(ii) Undesirable Neighborhood Characteristics.**

DMA has concerns about the use of Neighborhoodscout.com. While this site seems to aggregate crime data from a variety of sources, the algorithm used to determine a crime index score is not transparent, and as such cannot be evaluated for accuracy. DMA suggests the use of another, more transparent methodology, using only violent crimes.

**§10.101(b)(6)(B) Unit and Development Features.**

DMA recommends that the amenity options deleted in the 2015 draft be added back. All amenities that improve the quality of construction and long-term viability of the development ultimately benefit the

residents. Additionally, more options for unit and development amenities should be available to developers, rather than fewer.

### ***Subchapter G – Fee Schedule, Appeals and other Provisions***

#### **§10.901(18) Unused Credit and Penalty Fees.**

DMA suggests the following language revision:

... 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. unless the Applicant has demonstrated by a preponderance of the evidence that the Applicant returned the full credit amount due to circumstances that were beyond the Applicant's or any Affiliate's control in which case penalties will not be assessed. Such circumstances excepting an Applicant from penalties include, but are not limited to: acts of God, such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures; loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; litigation; material delay caused by governmental agency action or inaction; changes in law, rules or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures or material and/or labor shortages. 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...

Thank you for your consideration of our comments. Please contact me at [audreym@dmacompanies.com](mailto:audreym@dmacompanies.com) or (512) 328-3232 ext. 4502 with any questions.

Sincerely,

DMA DEVELOPMENT, LLC



Audrey Martin  
Director of Real Estate Development

cc: Cameron Dorsey, TDHCA  
Teresa Morales, TDHCA  
Kathryn Saar, TDHCA  
Diana McIver  
JoEllen Smith  
Janine Sisak  
Valentin DeLeon

## (16) Communities for Veterans



October 16, 2014

Cameron Dorsey, Deputy Executive Director  
Texas Department of Housing and Community Affairs  
Multifamily Finance and Fair Housing  
221 East 11th Street  
Austin, Texas 78701

Dear Mr. Dorsey:

We appreciate the opportunity to provide comments on the Draft 2015 State of Texas Qualified Allocation Plan (QAP), and the Uniform Multifamily Rules (Rules), which the Texas Department of Housing and Community Affairs (TDHCA) will use to allocate Federal Low Income Housing Tax Credits (Tax Credits). Specifically, we ask that you consider the below revisions (additions are underlined, deletions are ~~strickethrough~~) to the proposed language in the working draft of the 2015 QAP that appeared in the “Board Book” of the September 4, 2014 meeting of the TDHCA Board.

**(5) Credit Returns Resulting from Force Majeure Events.** In the event that the Department receives a return of Competitive HTC's during the current program year from an Application that received a Competitive Housing Tax Credit award during any of the preceding three years, such returned credit will, if all of the requirements of this paragraph are met, be allocated separately from the current year's tax credit allocation, and shall not be subject to the requirements of paragraph (2) of this section. Requests to separately allocate returned credit where all of the requirements of this paragraph have not been met or requests for waivers of any part of this paragraph will ~~not~~ be considered within the discretion of the Executive Director. For purposes of this paragraph, credits returned after September 30 of the preceding program year may be considered to have been returned on January 1 of the current year in accordance with the treatment described in §(b)(2)(C)(iii) of Treasury Regulation 1.42-14. The Department's Governing Board may approve the execution of a current program year Carryover Agreement regarding the returned credits with the Development Owner that returned such credits only if:

(A) The credits were returned as a result of “Force Majeure” events that occurred after the execution of a Carryover Allocation Agreement ~~start of construction~~ and before issuance of Forms 8609. Force Majeure events are sudden and unforeseen civil unrest, shortages of labor or material, financial difficulties caused by temporary shutdown, sequestration, or administrative delays by an instrumentality of the government of the United States, fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events, or any other catastrophic natural, social, political, or economic event that, in the discretion of the Executive Director, unforeseeably prevents the Development from reaching completion within the time prescribed at Carryover. Force Majeure events must delay a closing of debt or equity finance or make

- construction activity impossible or materially impede its ~~progress for a duration of at least 90 days, whether consecutive or not;~~
- (B) Acts or events caused by the willful negligence or willful act of the Development Owner, Affiliate or a Related Party shall under no circumstance be considered to be caused by Force Majeure.;
  - (C) A Development Owner claiming Force Majeure must provide evidence of the type of event, as described in subparagraph (A) of this paragraph, when the event occurred, and that the loss was a direct result of the event;
  - (D) The Development Owner must prove that reasonable steps were taken to minimize or mitigate any delay or damages, that the Development Owner substantially fulfilled all obligations not impeded by the event, that the Development and Development Owner was properly insured and that the Department was timely notified of the likelihood or actual occurrence of an event described in subparagraph (A) of this paragraph;

The lack of a mechanism in the QAP to allow the forward allocation of Tax Credits when extraordinary delays arise outside the control of the applicant leaves the Department without the administrative tools it needs to preserve and ensure the ultimate completion of Texas Developments unable to move forward to completion by the placed in service deadline. As long as the Department lacks the administrative tools to address this concern, stakeholders will act in ways that ultimately result in inefficient use of the state's affordable housing resources. As the end of the first carryover year approaches, the increased risk that a project may be unable to meet the placed in service deadline by even one day can lead to inefficient decisions about financing, or worse, that a viable project does not move forward due to uncertainty. Without some process for mitigating the placed-in-service "drop-dead" date, the default decision is to not do the project when unforeseen delays in project delivery can potentially occur. The ultimate loss is to the future residents who are denied quality housing (in a competitively selected project which attested to its need).

Adding this or similar text to the QAP will provide the Department sufficient discretion to address unexpected delays to Developments which otherwise comply with the terms of Carryover. This flexibility will remedy the inefficient pricing effect or pre-mature abandonment of the project by providing all stakeholders sufficient assurance that an administrative remedy is in place to avert a worst case scenario should unexpected delays occur. This authority should be used in extraordinary circumstances within the discretion of the Department. Other state Housing Finance Agencies utilize similar provisions. For your convenience, a sample of these provisions is provided with this letter. We appreciate the Department's responsiveness to public comments and its willingness to craft workable policies that produce high quality affordable housing for low income Texans.

Respectfully,



Donald W. Paxton  
Communities for Veterans

**Florida:**

“Notwithstanding any other provision of this QAP, where a Development has not been placed in service by the date required or it is apparent that a Development will not be placed in service by the date required, and such failure is due to circumstances beyond the Applicant’s control, and the Applicant has returned its Housing Credit Allocation in the last calendar quarter of the year in which it was otherwise required to be placed in service, the Corporation may reserve allocation in an amount not to exceed the amount of Housing Credits returned, and may allocate such Housing Credits to the Applicant for the year after the year in which the Development was otherwise required to be placed in service, provided the following conditions have been met: (i) the sponsor must have provided written notice to the Corporation, describing the circumstances, all remedial measures attempted by the Applicant to mitigate the delay, and any other pertinent information, prior to returning the allocation; and (ii) the Executive Director must find and determine that the delay was caused by circumstances beyond the Applicant’s control, that the sponsor exercised due diligence in seeking to resolve the circumstances causing delay, that the Development in all respects, except time placed in service, still meets the conditions upon which the Housing Credits were originally allocated, and that the Development is still desirable in terms of meeting affordable housing needs”

2014 Qualified Allocation Plan at Page 3 of 5.

**Georgia:**

“[The Georgia Department of Community Affairs] will consider a forward exchange of credit if a delay in completion is due solely to circumstances beyond the control of the owner/developer. Examples of such delays include unforeseen sewer issues, delays due to HUD policy and procedure or for extraordinary delays in the issuance of local development or building permits. In the event DCA does approve a forward exchange, the placed in service date will be extended for only a period of six months. Failure to meet that extended placed in service date (6 months) will be considered a major instance of non-compliance and will be considered in DCA compliance scoring.”

2012 Tax Credit Manual DCA Office of Affordable Housing Page 22 of 25.

**Louisiana:**

“Every request for a voluntary return/reallocation must be formally submitted in writing. Each voluntary credit return/reallocation request will be evaluated by staff and placed on the upcoming Board agenda for Board consideration. If the request involves any material changes, approval for the material change will be included in the board material package. The LHC Board will be required to provide approval to allocate any credits from the current housing credit ceiling but under the rules of the QAP from which the returned credits were originally allocated.”

2014 Qualified Allocation Plan at page 30 of 81.

(17) Scott Marks, Coats Rose

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October 20, 2014

Ms. Teresa Morales  
TDHCA  
221 East 11<sup>th</sup> Street  
Suite 201  
Austin, Texas 78701

Re: Comments on QAP and Uniform Multifamily Rules

Dear Teresa:

Please accept this letter as our comments on the draft 2015 rules.

REMOVE NEIGHBORHOOD SCOUT SCORE FROM UNDESIRABLE NEIGHBORHOOD CHARACTERISTICS [10.101(a)(4)]

The Neighborhood Scout crime index score is not an appropriate tool for determining whether a neighborhood should qualify for the tax credit program. Some of the best neighborhoods in Austin and other cities around the state score very poorly using that website's scoring system. In Austin, for example, Tarrytown and Clarksville, two of the most expensive areas and neighborhoods that would otherwise seem high-opportunity, score below a 40. Clarksville scores a 1.

We urge the Department to abandon the concept of avoiding neighborhoods because of crime. The Department is under no legal obligation at this point to cling to that definition of "undesirable." Some advocates advance the principle in part because of the perceived strong correlation between crime and area of minority concentration, but crime statistics are notoriously unreliable. Moreover, high-crime areas include some parts of the state with the most substandard housing, such as public housing properties that were in some respects – lack of air conditioning, for example – substandard when constructed and are definitely substandard more than 50 years later. The Department's decision to redline the state's worst housing from the tax credit program arguably made sense when there was a legal obligation to do so, but is unjustified at this point.

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The proposed rule also requires, for a site in a high-crime area, evidence that the development will satisfy the obligation of affirmatively furthering fair housing. HUD in its Choice Neighborhood NOFA (excerpt attached) takes the opposite approach, relying on evidence of high crime as an eligibility threshold to participate in the program. In other words, HUD – the federal agency charged by Congress with interpreting the obligation of affirmatively furthering fair housing – takes the position that high crime is a reason to target a neighborhood with development funding, not a reason to redline a neighborhood. As a policy matter, this makes sense because many high-crime neighborhoods are places where children are currently living in substandard housing, and a prohibition on using tax credits to remedy those substandard living conditions is itself a fair housing issue.

If TDHCA decides to continue to assess crime in neighborhoods as an eligibility issue, the HUD definition in the Choice Neighborhood NOFA focusing on Part I violent crime is a better tool than the Neighborhood Scout index.

#### TIGHTEN THE DEFINITION OF SUPPORTIVE HOUSING

The additional points for supportive housing developments make it very important to define supportive housing clearly. We propose the following definition of “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 include established funding sources outside of project cash flow that require certain populations be served and/or certain services provided. The developments are expected to be ~~free of foreclosable debt or have debt that is subject to cash flow repayment~~ debt free, or have no permanent foreclosable or noncash flow debt. A Supportive Housing Development financed with tax-exempt bonds with a project based rental assistance contract for a majority of the Units may be treated as Supportive Housing under all subchapters of this chapter, except Subchapter D of this chapter (relating to Underwriting and Loan Policy). The services offered generally include case management and 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.*

#### ADJUST COST PER SQUARE FOOT SCORING ITEM

Construction costs are skyrocketing in Texas. A booming economy and thriving natural gas exploration in major swaths of the state place additional financial pressure on affordable housing developers’ tight budgets. 2015 may be the perfect year to allow points if the Building Cost or Hard Cost included in eligible basis satisfy the thresholds. It would also be a good year to increase the hard cost dollar amounts, and to restore the 50 square feet of common area per unit in the Net Rentable Area of Supportive Housing developments.

October 20, 2014

Page 3

MAKE FULL APPLICATION DELIVERY DATE THE DEADLINE FOR QCP  
NEIGHBORHOOD ORGANIZATIONS TO BE ON RECORD WITH TDHCA

The draft QAP changes the deadline for neighborhood organizations to submit documents to the department from the Full Application Delivery Date to the beginning of the Application Acceptance Period. This timing is a problem for developers that will need to meet with neighborhood organizations, sometimes multiple times, and explain the TDHCA process. It is not in the interest of the department or the communities served by the tax credit program for QCP support letters to be disregarded because a neighborhood organization was unable to submit paperwork on January 2<sup>nd</sup>, a very busy holiday time for everyone.

We appreciate your consideration of these comments. If you would like to discuss, please contact us at (512) 684-3843.

Sincerely,

  
Scott A. Marks

requirements; or

(4) Is otherwise determined by HUD to be capable of carrying out a revitalization program.

**c. Previous Participation Certification for Multifamily Assisted Property Owners.** If the Lead Applicant or Co-Applicant is the owner of the assisted property that is the subject of the Choice Neighborhoods activity grant, you are required to submit form HUD-2530, Previous Participation Certification. If the property listed has defaulted on a mortgage loan or has less than satisfactory review ratings (physical inspections, management and financial reviews), HUD will use documents and information available to it to determine whether you qualify as an eligible applicant. Approvals of entities that have defaulted or received unsatisfactory review rating will be subjected to HUD's Previous Participation clearance review process. Applicants may still be eligible to apply for Choice Neighborhoods funding if HUD deems the applicant to be making substantial progress in addressing the deficiencies related to such default or review rating. However, multifamily assisted property owners with defaults or less than satisfactory review ratings are strongly encouraged to consider partnering with another entity (such as a local government or a nonprofit) to serve as the Lead Applicant for purposes of the Choice Neighborhoods grant.

**2. Eligible Target Housing.** Each application must focus on the revitalization of at least one severely distressed public and/or HUD-assisted housing project. The definition of severely distressed housing from section 24(j)(2) of the 1937 Act is included in section I.C along with definitions of public housing and assisted housing.

### **3. Eligible Neighborhoods.**

**a.** Eligible neighborhoods for Choice Neighborhoods grant funds include neighborhoods with

(1) at least 20 percent of the households estimated to be in poverty or have extremely low incomes and

(2) that are experiencing distress related to one or more of the following:

(a) high crime; defined as where either the Part I violent crime rate (measured as Part I violent crimes per 1000 persons) over the three years (2011-2013) is at least 1.5 times the per capita Part I violent crime rate (measured as Part I violent crimes per 1000 persons) of the city or, where no city data are available, county/parish in which the neighborhood is located over the same time frame; or the rate is greater than 18 crimes per 1000 persons; OR

(b) high vacancy or substandard homes; defined as where either the most current rate within the last year of long-term vacant or substandard homes is at least 1.5 times higher than that of the county/parish; or the rate is greater than 4 percent; OR

(c) inadequate schools; defined as where either a low-performing public school or a persistently lowest-achieving public school is in the neighborhood or at least 20 percent of the children from the target public and/or HUD-assisted housing attend such a school.

**b.** HUD recognizes that some of the eligible neighborhoods may be impacted areas and/or areas of minority concentration. Since a goal of this program is to transform such areas into neighborhoods of choice, these neighborhoods are still eligible for funding under this NOFA.

**4. Program Activities.** Program activities include tasks necessary to develop a

within the target neighborhood. HUD will use the same data from the mapping tool as used for the Eligible Neighborhood threshold to assign points for this factor.

Concentration of Households in Poverty or with Extremely Low Incomes	Points Awarded
40.00 percent and above	5
Between 36.25 and 39.99 percent	4
Between 32.50 and 36.24 percent	3
Between 28.75 and 32.49 percent	2
Between 25.00 and 28.74 percent	1
24.99 percent and below	0

(2) Long-term Vacancy. You may receive up to 2 points based on the current rate of long-term vacant properties within the target neighborhood. You will earn points for the higher of either the rate of vacant housing or the ratio of vacant housing in the neighborhood to the county/parish in accordance with the table below. HUD will use data from the mapping tool to determine the vacancy rate for this scoring criteria and the Eligible Neighborhood threshold.

Current Long-term Vacancy Rate in the Target Neighborhood	Current Long-Term Vacancy Rate in the Target Neighborhood is X times the County/Parish	Points Awarded
14.00 percent and above	More than 4.00	2
Between 7.00 and 13.99 percent	Between 2.00 and 3.99	1
Less than 7 percent	Less than 2.00	0

(3) Part I Violent Crime. You may receive up to 5 points based on the rate of Part I violent crimes for the precinct/PSA in which the target housing is located for the three years 2011-2013 (measured as Part I violent crimes per 1,000 persons). You must submit data for each of the three years, and preferably break out the number of incidences for each of the four classifications of Part I violent crimes, in your attachments as a letter of certification from the local law enforcement agency or by providing a copy/print out of published local law enforcement data. If providing the latter, the source must be identifiable. You will earn points for the higher of the 3-year average for either the rate compared to the city/county/parish or the rate in accordance with the applicable table below.

Part I Violent Crime Rate- crimes per 1000 residents in precinct/PSA of Target Housing	Part I Violent Crime Rate of precinct/PSA is X times the City/County/Parish*	Points Awarded
--	--	----------------

27.00 or more	More than 2.51	5
Between 25.00 and 26.99	Between 2.32 and 2.50	4
Between 23.00 and 24.99	Between 2.13 and 2.31	3
Between 21.00 and 22.99	Between 1.94 and 2.12	2
Between 19.00 and 20.99	Between 1.75 and 1.93	1
18.99 or less	Less than 1.75	0

\*In non-metropolitan areas, if the Precinct/PSA is coterminous with the County/Parish, the applicant may compare its Part I violent crime rate to that of the state.

You will also receive 0 points if the data are not for the time-period specified (calendar years 2009-2011), in the format required (i.e. shows each of the three years individually, indicates the number of incidents per 1,000 residents), or otherwise inadequate to make HUD's rating of this factor possible.

e. **Need for Affordable Housing in the Community – 1 point.** You will receive 1 point if the Choice Neighborhoods project is in a county/parish where the shortage of housing affordable to very low-income (VLI) renter households (0 to 50 percent AMI) is greater than the national rate using the most currently available Census Data. HUD will use data included in the mapping tool for this rating factor. The shortage rate is calculated as the number of VLI renter households divided by the number of rental units affordable and available to VLI households, where affordable and available equals units that: (1) have rents not exceeding 30 percent of 50 percent of AMI; and (2) are vacant or occupied by a VLI renter household.

#### **RATING FACTOR - PLAN**

**Maximum Points: 36**

This factor addresses the quality and feasibility of your proposed work plan and evaluates how well you have developed an achievable and thorough strategy for leading a collaborative planning process that will develop a comprehensive Transformation Plan aligned with the three core goals of Choice Neighborhoods – Housing, People and Neighborhoods. Points will be awarded based on the extent to which you demonstrate how your proposed activities will address the goals of the program. Fewer points will be awarded if your plan is less comprehensive and achievable, does not address all the criteria and/or lacks specificity.

f. **Planning Activities.** You may receive up to 18 points by providing a detailed and comprehensive description of the specific planning activities you will undertake during the Planning Grant period to create a Transformation Plan that encompasses the three core goals of Choice Neighborhoods. Describe your plan for conducting a household-level assessment of the residents living in the target housing site and, if existing administrative data are inadequate, surveying a representative sample of people residing in the overall neighborhood. You should discuss how you will devise a plan that catalogs neighborhood assets, builds on the strengths, and improves on weaknesses. Please also address how you will use your resident needs assessments to ensure that you focus on those resident populations with the highest needs. Describe your plan for

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SCOTT A. MARKS

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October 14, 2014

Ms. Jean Latsha  
TDHCA  
201 East 11<sup>th</sup> Street  
Austin, Texas 78701

Re: QAP At-Risk Setaside

Dear Jean:

The “At-risk development” definition includes any development financed under Section 202 of the Housing Act of 1959 that is subject to the following conditions: (a) the stipulation to maintain affordability in the contract granting the subsidy is nearing expiration, or (b) the federally insured mortgage on the development is eligible for prepayment or is nearing the end of its term. [**Tex. Gov’t Code**, 2306.6702(a)(5)] This statutory definition covers a development with a HUD 202 loan that is currently eligible for prepayment.

As background, the HUD 202 loan program funded loans directly from HUD to a non-profit sponsor. The financing documents include a Mortgage Note and a Regulatory Agreement. The program’s Regulatory Agreements typically require affordability but only “so long as the loan is outstanding.” The Mortgage Note allows prepayment with HUD approval. Upon prepayment, the affordability restrictions in the Regulatory Agreement terminate.

In interpreting statutes, courts resolve ambiguity by reading statutes as a whole and avoid interpreting words to be useless or a nullity. **Tex. Gov’t Code**, 311.021(2); *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 439 (Tex. 2011); *Meritor Auto Inc. v. Ruan Leasing Co.*, 44 S.W.3d 86, 89-90 (Tex. 2001). In the context of a housing development financed under Section 202 of the Housing Act of 1959, the structure of the “at-risk development” definition reveals legislative intent that one or both statutory conditions –: affordability nearing expiration or a federally insured mortgage eligible for prepayment – must apply. If TDHCA were to interpret those conditions as not applying to the HUD 202 program, the inclusion by the Legislature of the HUD 202 program in the statute becomes a nullity.

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October 14, 2014

Page 2

A 202 loan with an approved prepayment would actually satisfy both conditions. The Regulatory Agreement, which is the stipulation to maintain affordability, is nearing expiration because its affordability restrictions expire upon prepayment of the loan. As evidence of the pending expiration, it would be appropriate for TDHCA to require prepayment approval as a condition of a tax credit commitment to evidence the expiration of the Regulatory Agreement in the near future.

A Section 202 loan can be construed as federally insured because upon default HUD is obligated to cover losses in the program. HUD itself includes 202 loans in the category of "Multifamily Insurance Programs." HUD Handbook 4350.1, Multifamily Asset Management and Project Servicing, section 1-7 includes "direct loans and capital advances to sponsors of housing for elderly and disabled/handicapped" in the category of "Multifamily Insurance Programs." (see attached) The HUD handbook is evidence that the federal government views the HUD 202 program as being equivalent to a mortgage insurance program. Moreover, prepayment of a 202 loan also satisfies the 2014 QAP requirement that there should be no prepayment penalty because HUD does not impose a prepayment penalty in the 202 program.

For these reasons, we encourage TDHCA to clarify 11.5(a)(3) of the 2015 QAP as follows:

"Developments with HUD-insured mortgages (including loans under Section 202 of the Housing Act of 1959) qualifying as At-Risk under 2306.6702(a)(5) may be eligible if the HUD-insured mortgage is eligible for prepayment without penalty."

We appreciate your assistance with preserving the long-term affordability of properties in the HUD 202 program, and please contact us at (512) 684-3843 if you would like to discuss.

Sincerely,



Scott A. Marks

- C. Maximizing collections of all funds due HUD, with particular emphasis on the collection of delinquent debt.
- D. Enforcing statutes and regulations.
- E. Allocating, administering, and monitoring subsidy-based programs in a cost-effective manner.

1-5. Interrelationships. HUD, through the Office of Housing, works with mortgagors, managing agents, and mortgagees to form a team whose objective is to provide an adequate supply of well maintained, financially solvent, affordable housing. This housing must be provided on a nondiscriminatory basis. Effective teamwork is essential to achieve the intent of HUD's multifamily programs and the HUD/owner/managing agent/ lender relationship is interdependent. For example, HUD and a mortgagee must jointly decide and may agree to modify an existing FHA-insured Note and Mortgage upon a request from a mortgagor; if the insured Note and the Mortgage are to be modified, neither HUD nor the mortgagee may do it independently of the other.

1-6. Cooperation. As with any team, the extent of cooperation among its members is as important in achieving excellence as are the skills of each member. The formal relationships among the housing team members are contractually controlled, while the day-to-day relationships are complex, diverse, and sometimes conflicting. Mutual respect for the other team members and an appreciation of their points of view are essential for the satisfactory fulfillment of the goals. When HUD intervenes to help resolve the occasional conflicts between borrowers and lenders, HUD protects its interests as the insurer of the loan and attempts to improve the working relationships among the other members of the housing team.

 1-7. Mortgage Insurance Programs. Through its various programs of mortgage insurance, HUD eases the flow of capital from lenders to borrowers by enabling loans that have lower

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equity requirements for borrowers than loans that are conventionally financed. HUD's non-recourse loans stimulate sponsors to borrow money to develop and own projects; lenders, limited exposure to loss further stimulates lending. HUD also provides direct loans and capital advances to sponsors of housing for elderly and disabled/handicapped.

1-8. HUD/Mortgagor/Managing Agent Relationship. HUD's relationship with the mortgagor/managing agent involves many duties and responsibilities for both HUD and the mortgagor/managing agent. While protection of the contingent liability of the Secretary is paramount in all asset management activities taken by HUD, HUD exercises care to prevent undue, unwarranted, or unauthorized intervention in the affairs of the mortgagor and the managing agent. The terms of the Mortgage, Regulatory Agreement (or Corporate Charter in some older projects), Mortgagor's Certificate, and the provisions of HUD regulations, subsidy contracts, and handbooks set forth the rights and responsibilities of both parties. HUD encourages good asset management by providing friendly and cooperative assistance to the mortgagor/managing agent, but the business relationship between HUD and the mortgagor and its managing agent requires strict adherence to their respective responsibilities by all parties to fully discharge their duties and obligations in a professional manner. HUD also encourages positive, constructive interactions among Loan Management Branch staff and associations of housing managing agents and project owners to foster new ideas, to resolve conflicts, and to develop mutually agreeable solutions to problems that may arise.

A. Among many asset management duties, HUD is responsible for authorizing releases from the Reserve Fund for Replacements and Residual Receipts accounts, for authorizing alterations, modifications, or additions to physical structures, for authorizing partial releases of security and changes in ownership, for establishing rental rates in most

# (18) National Church Residences



October 15, 2014

Ms. Jean Latsha  
Director of Multifamily Finance  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701-2410

Dear Jean,

Thank you for the opportunity to present recommendations to the 2015 Qualified Allocation Plan (QAP). Included below are recommendations based off of the Draft 2015 QAP on behalf of National Church Residences. Please include the following requests as our official Public Comment.

**1. HUD 202 Direct Loans Should be Included in the At-Risk Set Aside**

See attached letter from Coats Rose supporting that projects financed with 202 Direct loans should be included in the At-Risk set aside.

This letter supports that projects financed by 202 Direct Loans are “At-Risk” by definition as (a) the stipulation to maintain affordability in the contract granting subsidy is nearing expiration, and (b) the federally insured mortgage is eligible for prepayment without penalty.

**2. Opportunity Index Not Effective Yardstick for Existing Elderly Developments or PSH**

High opportunity areas are not an effective yardstick for vulnerable populations including existing elderly developments and permanent supportive housing for homeless individuals. High Opportunity areas exclude existing elderly developments for the following reasons:

- High performing schools do not impact the quality of life of senior residents.
- Rehabilitations focus on enhancing and preserving existing community assets – they do not alter (or increase) the concentration of affordable housing in an area.
- Unless these existing assets are rehabbed in a timely manner, they will become a community liability (as opposed to a community asset).
- For Rehabilitations in Rural Areas, current tenants of existing affordable housing are part of the poverty rate, so by setting a required poverty rate at below 15% results in the most poor and vulnerable population disqualifying their own communities from accessing capital essential for preserving their affordable housing development.
- Finally, project sponsors do not have the ability to “re-locate” an existing project to a higher performing school district/higher income areas.

In the alternative, National Church Residences proposes that rehabs be eligible for up to 7 points if there is a service coordinator onsite for 15 hours a week or health care services within one mile.

High opportunity areas exclude Permanent Supportive Housing developments for the following reasons:

- For PSH projects that are SROs or target single adult individuals, high performing schools do not impact the quality of life for residents.
- Locating Permanent Supportive Housing in areas of median to lower income areas typically provides better employment opportunities for low-skilled residents in these developments.
- Site selection near services and public transportation is imperative for the success of a Permanent Supportive Housing Community. These characteristics should be considered a priority in a site as opposed to high income areas.

In the alternative, National Church Residences proposes that Permanent Supportive Housing that targets homeless adults be eligible for up to 7 points if there is a full time case manager onsite for 35 hours a week or health care services within one mile.

### **3. Educational Excellence Not Effective Yardstick for Existing Elderly Developments**

Education excellence is not a good yardstick for existing elderly developments because educational excellence does not directly impact the quality of life of senior residents. In the alternative, developments should be able to receive 3 points for elderly developments if an onsite care coordinator/service coordinator office is built into the project work scope. An onsite care coordinator or service coordinator who can assess a senior's or resident's health and social needs, and then assist directly with having those needs met, directly impacts quality of life for those residents. Proposed Alternative language includes:

An Application proposing Qualified Elderly combined with Rehabilitation may qualify to receive up to three (3) points for a Development Site that:

- (A) The Development has an on-site care coordinator or service coordinator on site for a minimum of 15 hours per week ( 3 points): or
- (B) The development site is within 1 mile of a Senior Center (2 points).

[NOTE: by allowing only Existing Qualified Elderly projects to qualify under these alternative Educational Excellence points reduces the concern that more developers will elect to build new construction senior housing as opposed to new construction general family occupancy.]

### **4. Mandatory Development Amenities**

National Church Residences appreciates the change to allow for PTAC units in efficiency units for projects involving Rehabilitation. We further recommend that central air not be required for acquisition/rehabilitation properties for all one bedroom units and efficiency units with less than 600 SF that do not currently have this feature for the following reasons:

- A PTAC unit is sufficient to adequately and comfortably heat and cool a 600 SF unit and can be adapted to successfully for both efficiency and 1 bedroom units.
- The cost to replace a PTAC system with central air is cost prohibitive in an existing project. For example, on National Church Residences' Prairie Village project in El Campo, a 38 unit acquisition rehab, the cost to replace the existing PTACs with high efficiency PTACs would have been \$85,000 vs. installing a central air at \$290,000. The project could have saved

\$163,685 or \$4,307/unit by using high efficiency PTACs. These funds could have been spent more effectively and have greater impact elsewhere.

- PTAC's are much less expensive as it relates to long term maintenance costs. An un-certified technician can maintain a PTAC while a split system maintenance requires a certified tech to repair further increasing the operating expenses of the project.

## **5. Underserved Areas**

It is not equitable that these points are only available for general and supportive housing, and that elderly projects are at a 2 point disadvantage. Elderly projects should be able to obtain the 2 points. Elderly projects are separate and distinct from general projects (difference amenities, physical layout, accessibility concerns) and seniors prefer to age with their peers. By leaving seniors out, TDHCA seems to classify senior residents preferences/concerns as secondary to other program residents.

We recommend that Qualified Senior Developments are included to receive 2 points for Underserved Areas.

## **6. Tenant Populations with Special Housing Needs**

This election encourages developers to designate units as Special Needs, even if the developer has no services to ensure a tenant's success as a resident through sufficient supportive services. National Church Residences urges TDHCA to require that such developments have adequate onsite supportive services and service coordinators. This will best serve individuals with special needs and ensure that electing developers have the infrastructure, desire and fortitude to serve this population. Services in projects for Special Needs tenants must be provided in a cost effective and high quality way by experienced and caring experts.

National Church Residences recommends that projects receiving additional points for Tenant Populations with Special Needs be required to provide adequate services on-site for these tenants and have sufficient service experience or have an MOU with a service provider to deliver services.

## **7. Tenant Services**

National Church Residences supports expanding these allowable points to include other cities that are developing their PSH Requests for Applications such as Austin which has issued a Request for Proposal / NOFA for Permanent Supportive Housing.

Additionally, National Church Residences does not support limiting the restriction of units to Persons with Special Needs to 18%. Developments that feature single-site models of supportive housing to larger percentages of Persons with Special Needs are often more efficient and cost effective in delivering on-site services and case management. These models are part of the entire continuum of care, and in turn, leads to a higher standard of living for more of Texas's individuals with special needs. In single-site models, services are able to be housed on-site and a 24-7 secured entry can be maintained and funded. Property management teams effectively coordinate with onsite service delivery teams, ensuring resident success at much higher levels than more scattered placement models.

Further, the Department of Housing and Urban Development (HUD), emphasized individual choice and a continuum of supportive housing in their *Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of Olmstead* released June 2013:

HUD is committed to providing individuals with disabilities a meaningful choice in housing and the delivery of long-term health care and support services. To that end, HUD is exploring how it can fund additional integrated housing units scattered throughout communities. *HUD also continues to fund single site supportive housing that is statutorily permitted to house and provide voluntary supportive services to individuals with disabilities in some or all of the units.*

#### **8. Developments in Certain Sub-Regions and Counties.**

We support TDHCA lifting the ban on Qualified Elderly Developments in Sub-Regions and Counties.

Qualified Elderly Developments that are acquisition/rehabs should be exempt from this ruling provided they development is 100% Section 8. Many of the existing elderly housing throughout the state was built under the HUD 202 program and are reaching the end of their useful life if they don't receive a substantial rehabilitation. By prohibiting an allocation for rehabilitation in these particular counties, elderly households in those buildings are at risk of losing their affordable unit (or, at best, left with unsafe, tired and dated units/amenities) and/or Section 8 contract.

#### **9. Criteria promoting the efficient use of limited resources and applicant accountability (\$/SF)**

National Church Residences recommends a 20% boost for existing 1 bedroom units smaller than 600 square feet and existing efficiency units smaller than 500 square feet for the following reasons:

- A significant amount of our Texas projects were originally financed under the HUD 202 program or other HUD/RAD programs which built 1 bedroom units at approximately 540 square feet vs. 650 for a typical LIHTC unit resulting in higher costs per SF.
- For rehabilitated projects, cost do not significantly fluctuate per unit size as all projects/0br and 1br units (regardless of size) need the same renovations such as cabinets, energy efficient appliances, bathroom fixtures, major building systems (hot water, boiler, HVAC, etc) – spreading the same per unit costs are less square footage (540 SF versus 650) unfairly penalizes existing projects with smaller units.
- Acquisition price can be no greater than the outstanding debt (ex: seller notes are prohibited under TDHCA 9% projects). Therefore, the appraised value, unit sizes and required scope do not affect acquisition price. As a result, acquisition costs for buildings with smaller units are not necessarily less than buildings with larger units.

Proposed language includes:

(F) Applications proposing Rehabilitation of Developments with existing one bedroom units smaller than 600 square feet and existing efficiency units smaller than 500 square feet will be eligible for points if one of the following conditions are met:

(i) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than \$120 per square foot;

(ii) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than \$156 per square foot, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than \$156 per square foot.

See attached Exhibit A for an example.

We appreciate the opportunity to provide comments, and would be happy to provide any additional information.

Sincerely,

A handwritten signature in blue ink that reads "Tracey Fine".

**Tracey Fine**

Project Leader, Southwest Region

National Church Residences

Office Location: Austin, Texas

Cell: 773.860.5747

[tfine@nationalchurchresidences.org](mailto:tfine@nationalchurchresidences.org)

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Exhibit A, \$/SF Example

<b>50 units, 1 BR</b>	202 Project	540 SF	Other Rehabs	650 SF	Difference
Total SF of 50 units		27,000 SF		32,500 SF	
Total SF including 5,000 SF of community room / common area		32,000 SF		37,500 SF	
Acquisition Cost	\$1,900,000	\$59.38	\$1,900,000	\$50.67	
Hard Costs	\$2,800,000	\$87.50	\$2,800,000	\$74.67	
Additional cost for larger unit*			\$150,000	\$4.00	
Unit ONLY \$/SF		\$174.07		\$149.23	16.6%
<b>TOTAL BUILDING \$/SF</b>	<b>\$4,700,000</b>	<b>\$146.88</b>	<b>\$4,850,000</b>	<b>\$129.33</b>	<b>13.6%</b>
Total \$/Unit		\$94,000		\$97,000	-3.1%
Under \$130/SF = 12 Points		<b>NO</b>		<b>YES</b>	

*\*Additional cost for larger units include increase for flooring, paint, ceiling, drywall, exterior walls, roof, etc. estimated at an additional \$3,000 per unit.*

- 202 unit Costs are 16.6% higher \$/SF when spread over smaller units excluding common area/community space
- 202 unit Costs are 13.6% higher when including 5,000 SF of common area / community space

In the example above, the 202 project at 540 SF cannot receive the points under the \$/SF criteria without reducing the scope of work to the property, yet still needs the same level of renovation as the property with 650 SF.

(19) Texas Association of  
Affordable Housing Providers  
(TAAHP)



TAAHP

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October 15, 2014

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 2015 Multifamily Program Rules - Qualified Allocation Plan (QAP) that are being suggested by our membership. TAAHP has more than 300 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 September 4, 2014 in response to the QAP and Multifamily Rules approved for public comment by the TDHCA Governing Board that same day.

Before we get into specific revisions, we would like to make the general recommendation that the Section 811 Program be removed from the scoring criteria in the QAP and be administered through a separate Request for Proposal process. We as an industry have grave concerns regarding the compliance requirements and criteria of the program that have not been fully vetted. We would suggest that the Department work out the issues that have been raised by allowing those that have the best skills and resources to provide for the residents under this program. Some of the issues that have been raised include the cost increases associated with compliance and management, development concerns regarding floodplain and farmland designations and an overall concern regarding the additional service that may be needed to assist this special needs population. Section 811 is a very important program serving a specialized population and they are owed the best in housing and services available to them. Trying to ambitiously marry the LIHTC and Section 811 programs without full due diligence of the program itself does the developers a disservice but most importantly the very residents we are attempting to help.

Chapter 11. State of Texas 2015 Qualified Allocation Plan Housing Tax Credit Program:

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### **RECOMMENDATION #1**

#### **§11.6 (5) Credit Returns Resulting from Force Majeure Events.**

TAAHP recommends that the definition of force majeure be consistent with the already defined term for in the TDHCA HOME Loan documents.

Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner: acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events ; explosion; vandalism; orders or acts of military authority; litigation; changes in law, rules, or regulations, national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. Force Majeure events must make construction activity impossible or materially impede its progress. ~~for a duration of at least 90 days, whether consecutive or not.~~

### **RECOMMENDATION #2**

#### **§11.8 (b)(2)(A) Pre-Application Threshold Criteria.**

TAAHP recommends that the section be revised as follows:

(A) 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 as of the beginning of the Application Acceptance Period or that the Applicant has knowledge of as of the date of pre-application submission. It is the responsibility of the Applicant to identify all such Neighborhood Organizations.

### **RECOMMENDATION #3**

#### **§11.9 (c ) (4)(B) Opportunity Index.**

TAAHP recommends supporting the Rural Rental Housing recommendations regarding reducing the educational requirement from 77 to 76. Additionally, we agree that rural communities are often serviced by one set of amenities for the entire town and recommend that the standard measurement from the proposed development to amenities be changed from one linear mile to two (2) linear miles in each category.

### **RECOMMENDATION #4**

#### **§11.9 (c ) (5) Educational Excellence.**

TAAHP recommends excluding qualified elderly developments combined with rehabilitation and supportive housing from the educational excellence requirement and providing additional options for scoring. Additionally, we would suggest lowering the performance index score from 77. The recommendation would be to use either 77 or the average per region whichever is lower. With regards to points TAAHP recommends awarding 1 point for each school that achieves the appropriate rating.

(A) ~~The Development Site is within the attendance zone of an elementary school and either a middle or high school with the appropriate rating~~ then 1 point for each. (2+ points);

(B) The Development Site is within the attendance zone of an elementary school with the appropriate rating (1 point).



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**RECOMMENDATION #5**

**§11.9 (c ) (7) Tenant Populations with Special Housing Needs.**

As mentioned in the introduction of our comments, TAAHP recommends that the Section 811 be removed from the scoring criteria and be administered under a separate process. Should the program remain in scoring we would suggest that it apply very narrowly to those large cities within each of the MSA's. This would then address the needs of the residents to remain near public transportation and services. In addition, TAAHP recommends removing supportive housing from the requirement because the affordable index will exceed the Integration Rule of not allowing more than 25% of the total units to be set aside or have an occupancy preference for persons with disabilities, including Section 811 PRA units.

**RECOMMENDATION #6**

**11.9(d)(2) Commitment of Development Funding by LPS.**

Regional instrumentalities that serve more than one city or county may qualify for points under this scoring item so long as (i) the Development Site is located within the boundaries of the city or county served by the regional instrumentality, (ii) 100% of the governing board of the instrumentality is appointed by the elected officials of the cities or counties served by the regional instrumentality, and (iii) the board member of the city or county in which the Development Site is located votes to approve the commitment of Development funding to the Development.

**RECOMMENDATION #7**

**§11.9 (e ) (2) Cost of Development per Square Foot.**

The cost of construction continues to rise. The costs are escalating in areas like Houston at approximately .75% per month. Labor costs are the number one concern; we have heard stories of contractors having to hire security guards not to protect their materials but to protect workers from getting poached. TAAHP recommends adding \$20 per square foot to each of the categories included under this section.

*Chapter 10. Subchapter B – Site and Development Requirements and Restrictions:*

**RECOMMENDATION #8**

**§10.101 (a) (3) (C), (D) and (I) Undesirable Site Features.**

TAAHP recommends the following revision to the staff's recommended language:

(C) Development Sites located within ~~500~~ 300 feet of heavy industrial or dangerous uses such as manufacturing plants, fuel storage facilities (excluding gas stations), refinery blast zones, etc.

AND

D) Development Sites located within one (1) 2 miles of potentially hazardous uses such as nuclear plants, or large refineries (e.g. oil refineries producing more than 10,000 barrels of crude oil daily) , or large oil field operations;

Additionally, TAAHP recommends that section (I) be deleted in its entirety and that the HUD requirements should be used as the standard for what is acceptable with regards to pipelines.



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#### **RECOMMENDATION #9**

##### **§§10.101 (a) (4) (B)(ii) Undesirable Neighborhood Characteristics.**

TAAHP members oppose the use of Neighborhood Scout's scoring of neighborhood crime statistics. This is due in part to the propriety and the lack of transparency of the data behind the scoring system. In its place, we propose the use of a ratio of violent crimes (only) to the population, or violent crimes per 1000 people. By way of example, the Rivers Oaks area of Houston would score a 31. Under the proposed rules, one of the highest income neighborhoods in the state would not score high enough to qualify as a high opportunity area.

#### **RECOMMENDATION #10**

##### **§§10.101 (b)(5) (C)(xxxi) Green Building Features.**

TAAHP recommends adding the following to the options for Green Building:

1. Locate Water fixtures within 20 feet of hot water heater. *Reason: conserves electricity*
2. Implement a construction waste program
3. Drip irrigate at non-turf areas
4. Over 75% of property Xeriscape
5. Radiant barrier decking on new construction or "cool" roof materials
6. Shading devices for windows with solar orientation
7. Energy Star certified insulation products
8. Spray foam insulation full cavity in walls.
9. Energy star rated windows
10. Merv 8 or better ac filters
11. Floor score certified flooring
12. HVAC duct sealing with mastic sealant
13. Granite countertops
14. Sprinkler system with rain sensors
15. Polished concrete floors in community laundry rooms
16. NAUF (No Added Urea Formaldehyde) cabinets

#### **RECOMMENDATION #11**

##### **§§10.101 (b)(6) (B) Unit and Development Features.**

TAAHP recommends keeping the deleted 2014 QAP language and scoring regarding thirty (30) year shingles or metal roofing. Additionally, the language allowing 2 points for greater than 30% percent stucco or masonry should be added back into the section.

*Chapter 10. Subchapter C – Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rues or Pre-clearance for Applications:*

#### **RECOMMENDATION #12**

##### **§§10.203 Public Notifications.**

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 and proof thereof must not be older than three (3) months prior to the date Parts 5



TAAHP

TEXAS AFFILIATION OF AFFORDABLE HOUSING PROVIDERS | 221 E. 9<sup>th</sup> street, ste. 408 | Austin, TX 78701  
tel 512.476.9901 fax 512.476.9903 taahp.org texashousingconference.org

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 threshold, then no additional notification is required at Application even if additional Neighborhood Organizations have become of record between the beginning of Application Acceptance Period and 30 days prior to the Full Application Delivery Deadline.

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 or a 5 percent change in density (calculated as units per acre) as a result of a change in the size of the Development Site. 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.

**RECOMMENDATION #13**

**§§10.205 (5) (B) Site Design and Development Feasibility Report.**

Plats must include evidence that it has been recorded with the ~~from an~~ appropriate local entity official that, as of the date of submission, it and is the most current plat.

One final comment, TAAHP continues to encourage that the QAP bring parity between general population and elderly developments. We support the recommendation that certain regions no longer be prevented from proposing elderly developments; however we would like to see the scoring criteria not put elderly applications at a disadvantage statewide.

Thank you for your service to Texas.

Sincerely,

Debra Guerrero  
Co-Chair TAAHP  
TAAHP QAP Committee

Darrell Jack  
Co-Chair  
TAAHP QAP Committee

Joy Horak-Brown  
Chair TAAHP Section 811  
Ad Hoc Committee

cc: Tim Irvine – TDHCA Executive Director  
Cameron Dorsey – TDHCA Staff  
Jean Latsha – TDHCA Staff  
TAAHP Membership

(20) Alyssa Carpenter

October 17, 2014

Teresa Morales  
Texas Department of Housing and Community Affairs  
221 E 11<sup>th</sup> St  
Austin, TX 78701

RE: Comments on Proposed 2015 Multifamily Rules and QAP

Dear Ms. Morales:

Thank you for the opportunity to provide comment on the proposed 2015 TDHCA Multifamily Rules and QAP. Please see my comments below.

### **Uniform Multifamily Rules**

#### **Section 10.3 Definitions (19) Colonia**

The proposed definition is still too subjective and in fact could become even broader with the addition of the “two (2) square miles” language. As evidenced in the 2014 application round and challenge process, there was conflicting documentation from the same source as to whether an undeveloped proposed application site had the “characteristics of a Colonia.” I suggest that staff further clarify this item. One suggestion would be to adopt language that would consider a site to have the “characteristics of a Colonia” if it is located within 50 feet, boundary to boundary, of an existing Colonia as recorded and mapped by the Texas Office of the Attorney General. Such a definition would not have any subjectivity and would be clear for staff to review.

#### **Section 10.101(a)(3) Undesirable Site Features**

Under item (C), please clarify “fuel storage facilities.” This could include anything from a gas station to farms to businesses that store propane for their own use on the premises. It would be helpful to describe what type of “fuels” would be considered dangerous and how much defines a “facility.” Furthermore, in cases where a property encompasses many acres but the fuel storage is contained on a small section of the property, I suggest that this item be revised to measure from the proposed development site to the actual fuel storage tanks.

Under item (D), the use of “potentially hazardous” is very broad and could invite challenges.

Under item (I), as written, any pipeline located on a site would deem the site unacceptable due to the “unless the pipeline is natural gas” language. TDHCA has historically been unconcerned with natural gas, crude, or petroleum pipelines. Considering that HUD does not consider underground pipelines that transmit hazardous substances to be a hazard under 24 CFR Part 51 Subpart C if they comply with applicable safety standards, I question why TDHCA is completely eliminating all such sites. I understand there are concerns about pipelines that carry highly volatile liquids (HVLs), and suggest that, if TDHCA feels that it must include such an ineligibility item, that it only pertain to sites that carry highly volatile liquids (HVLs).

#### **Section 10.101(a)(4) Undesirable Neighborhood Characteristics**

Under section (B), I would ask for consideration for any “high opportunity” tracts that might exhibit such characteristics.

Under item (B)(ii), I strongly object to the use of a third-party, proprietary, and costly crime assessment tool that and appears to be based on a nationwide comparison with unknown parameters and seemingly does not consider differences between urban, rural, and border areas. Neighborhoodscout.com gives the

cities of Austin and Houston a “5” out of “100” crime index while “high opportunity” census tracts in the Houston area have crime indexes in the low 20s. I commend TDHCA’s consideration of crime data in the QAP; however, this item should be more thoroughly studied. A quartile system based on regions or MSA and county areas similar to the opportunity index would be an option.

#### **Section 10.101(b)(5)(C)(xxxi)(I)(-b-) Limited Green Amenities**

I propose that this section be revised to read “native and adaptive trees and plants” and also specify a percentage for all landscaping installed on the property, such as 75%.

#### **Section 10.101(b)(6)(B) Unit and Development Features**

I am concerned about the deletion of choices for this point item with no new options. The loss of those two selections, including a selection worth 2 points, now will force many applicants to choose a feature that has specific long term operating expenses such as in-unit washers and dryers or high speed internet. I suggest that the deleted items be reinstated or additional options that do not require specific yearly operating costs be added.

#### **Section 10.203 Public Notifications**

Would like to see re-notification only be triggered by a change in density that results in an increase in density. We do not believe that a decrease in density is something that would concern the community and rise to the level of necessitating additional notification.

*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 or a 5 percent increase in density (calculated as units per acre) as a result of a change in the size of the Development Site.*

#### **Qualified Allocation Plan**

##### **Section 11.4(a) Credit Amount**

Currently, an entity or individual listed as having no more than 10% developer fee of an application is not required to include that application’s credit request in the \$3 million calculation. I propose the language be changed to require any developer or applicant, regardless of percentage of developer fee or ownership, that is using its experience certificate in an application be required to include that application’s credit request in the \$3 million calculation.

##### **Section 11.8(b)(2)(A) Notifications Certification**

This section currently states that, for the pre-application, “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 as of the date of pre-application submission.” I propose that the language “as provided by the local elected officials, or that the Applicant has knowledge of as of the date of pre-application submission” be deleted completely because the requirement to request a list from the local officials was deleted prior to 2014 and the governing statute only requires notification of entities on record with the county or state (not whether the application has knowledge of any). Furthermore, the question of whether an Applicant had knowledge of a specific neighborhood organization was the subject of a 2014 challenge and staff’s determination was ultimately decided on whether the organization was “on record” per statute.

##### **Section 11.9(c)(4) Opportunity Index**

I agree with the current language that requires an elementary rating of 77 or greater for certain point selections. This is based on the current TEA average and the use of another number would be arbitrary.

**Section 11.9(c)(5) Educational Excellence**

I agree with the current language that requires an elementary rating of 77 or greater for certain point selections. This is based on the current TEA average and the use of another number would be arbitrary.

**Section 11.9(c)(7)(A) Tenant Populations with Special Housing Needs**

I request that any unit requirements for the Section 811 program be at a level that does not require Davis-Bacon, such as 8 units. The addition of Davis-Bacon will have a profound impact on construction costs and require more Housing Tax Credits for proposed developments than would otherwise be required, potentially leading to fewer awards and less geographical distribution of credits.

**Section 11.9(d)(2) Commitment of Development Funding by Local Political Subdivision**

I propose that the funding amount multipliers based on population be lowered. A city such as Frisco will not have the same financial resources as a city such as Dallas; however, they would need the same amount of funding under this point item as currently proposed. A multiplier of 0.06 would require a city of 250,000 to contribute \$15,000 per unit, which would make more sense than a city of 100,000 at a multiplier of 0.15.

Thank you for your consideration. Please contact me with any questions.

Regards,



Alyssa Carpenter  
S Anderson Consulting  
1305 E 6<sup>th</sup>, Ste 12  
Austin, TX 78702  
512-789-1295  
ajcarpen@gmail.com

(21) Randy Plitt

**From:** [Randy Plitt](#)  
**To:** [teresa.morales@tdhca.state.tx.us](mailto:teresa.morales@tdhca.state.tx.us)  
**Subject:** Rule Comments  
**Date:** Monday, October 20, 2014 10:12:32 AM

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One additional comment:

**§10.101(b)(4) Mandatory Development Amenities / §10.101(b)(6)(B) Unit and Development Features**

Items (A), (B) and (C) under the Mandatory Development Amenities being required for New Construction, Reconstruction and Adaptive Reuse should be available for points under Unit and Development Features for Rehabilitation Developments. While these amenities are not required for Rehabilitation Developments, those amenities would most certainly benefit the tenant if available.

Thank you.

Randy Plitt

Executive Vice President

15950 N. Dallas Parkway, Suite 300

Dallas, TX 75248

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[rplitt@dalcorcompanies.com](mailto:rplitt@dalcorcompanies.com)

**From:** [Randy Plitt](#)  
**To:** [teresa.morales@tdhca.state.tx.us](mailto:teresa.morales@tdhca.state.tx.us)  
**Subject:** Rule Comments  
**Date:** Friday, October 17, 2014 3:50:15 PM

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The TAAHP letter covered all comments I would offer, but I wanted to reiterate these two in particular.

§§10.101 (a)(4)(B)(ii) Undesirable Neighborhood Characteristics

The validity of the crime index published by Neighborhood Scout is dubious as the algorithm used is proprietary and there has been no independent authenticating study; the ratio of crimes to the population, or crime rate per 1000 people is a proven metric.

§§10.101 (b)(6)(B) Unit and Development Features

Any feature that enhances the quality or integrity of the structure, or prolongs its life improves the quality of life for the tenant. Therefore, the 30-year shingle or metal roof and the greater than 30% stucco or masonry features should be left in this section.

Thank you.

Randy Plitt

Executive Vice President

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[rplitt@dalcorcompanies.com](mailto:rplitt@dalcorcompanies.com)

(22) Housing Authority of the  
City of El Paso

**From:** [Olvera, Juan](#)  
**To:** ["teresa.morales@tdhca.state.tx.us"](mailto:teresa.morales@tdhca.state.tx.us)  
**Subject:** Public Comments - 2015 Draft QAP  
**Date:** Friday, October 17, 2014 3:41:14 PM  
**Importance:** High

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## §11.5 HTC Set-Asides

### (3) At-Risk Set-Aside

[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 qualifying under §2306.6702(a)(5)(B), only a portion of the subsidy must be retained for the proposed Development, ~~but no less than 25 percent a fair and reasonable portion~~ of the proposed Units must be public housing units supported by public housing operating subsidy. (§2306.6714(a-1))

Regards,

**Juan A. Olvera**

**Director of Development & Capital Projects**



**HACEP - Housing Authority of the City of El Paso, Texas**

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immediately at the e-mail, telephone, or address listed above

(23) Sallie Burchett



October 17, 2014

Teresa Morales

[teresa.morales@tdhca.state.tx.us](mailto:teresa.morales@tdhca.state.tx.us)

Re: Multifamily Rules§10.101.Site and Development Requirements and Restrictions amendment comments

### **Quality Building Materials**

Removing the 30 year shingle, metal roofing, and masonry requirements is at odds with the high opportunity requirements. Numerous municipalities are embracing demanding masonry requirements as well as design standards. Removing this opportunity to be rewarded for using quality materials penalizes the developments that are required to build this way. Additionally, the long term energy and maintenance savings of utilizing masonry and quality roofing far outweighs the short term savings during construction. This proposed amendments contradicts best practices for sustainable communities and does a disservice to future Texans as well as Operations and Maintenance budgets.

### **Full Perimeter Fencing**

Closing off the projects with a full perimeter fence should be prohibited, rather than worth one point. Blocking pedestrian access inhibits walking to nearby (required) community assets. The Department of State Health Services reports that [two-thirds of Texans are overweight or clinically obese](#). The positive correlation between low income and obesity is well established. Best land use development practices for mental and physical health require projects be primed to encourage walking with sidewalks, building orientation, etc, including no perimeter fencing.

### **Quartile Calculation**

When calculating the quartiles the Department rounds down. For example, if a census tract doesn't fall exactly at the 25%, 50%, or 75% mark it automatically defaults to the lower quartile. By simply rounding up rather than down the intent of the High Opportunity requirement is served and it opens up several more census tracts for High Opportunity points.

Thank you for considering our suggestions.

Sincerely,  
Sallie Burchett

**(25) Greater East End District**



**GREATER  
EAST END  
DISTRICT**

THE PEOPLE BEHIND  
THE PROGRESS

Taryn Sims  
Wulfe Management Services Inc.  
Board Chair

Marjorie Pena  
Neighborhood Centers, Inc.  
Vice-Chair

Craig Rohden  
Space City Credit Union  
Treasurer

Nory Angel  
SER Houston  
Secretary  
Resident

Dr. Daniel Jenkins, III  
Harrisburg Eye Clinic  
Assistant Secretary

Blanca Blanco  
Chase Bank  
Resident

Erin Dyer  
Lovett Commercial

Bolivar Fraga  
NCI - Ripley House  
Resident

Mary Margaret Hansen  
Resident

Domenic Laurenzo  
El Tiempo Cantina

Sally Lehr  
Resident

William McConnell  
Solvay, Inc

Karen Niemeier  
UT Health Science Center  
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October 16, 2014

Ms. Teresa Morales  
Rule Comments  
P.O. Box 13941  
Austin, TX 78711-3941

Re: Public Comments to 2015 Draft QAP and 2015 Draft Uniform Multifamily Rules

Ms. Morales:

The Greater East End Management District respectfully submits the attached comments to the 2015 Draft QAP and 2015 Draft Uniform Multifamily Rules. If you have any questions or require any further information please contact Robert Fiederlein of my staff at [rfiederlein@greatereastend.com](mailto:rfiederlein@greatereastend.com) or at the address and phone number below.

Sincerely,

Diane Schenke  
President

xc: Neal Rackleff, Director, Housing and Community Development, City of  
Houston

## Greater East End Management District Comments

### Draft QAP

- 11.9(c)4 – Opportunity Index: GEEMD has concerns with the fundamental concepts behind the Opportunity Index.

The intent of this section is unequivocally to advantage developments not located in socioeconomically challenged areas. A map of census tracts with individual poverty rates in excess of 15% shows more than two-thirds of the City of Houston to be “low” opportunity areas. Included in these areas are many of the historically minority areas of Northside, 5<sup>th</sup> Ward, East End and Third Ward.

GEEMD recognizes that due to legal requirements in the Dallas area the use of the Opportunity Index is required. GEEMD does not believe it should be applied across the state including in regions where it is not legally required nor where there is a proven history of discrimination (certainly not of a clear intent to discriminate). GEEMD would prefer that the Opportunity Index be limited to the Dallas area.

GEEMD also does not believe there is an evidence-based justification for using such an approach. The evidence in support of moving poor people out of poor areas via publicly subsidized housing is certainly mixed. HUD’s “Moving to Opportunity” program, perhaps the only program undertaken with a discernible control group, showed no differences between the study’s groups with respect to adult employment or student educational outcomes.

One aspect of this issue which seems to receive little attention is what happens to the “origin neighborhoods” – the neighborhoods and schools the relocated people leave behind. Additionally, a policy which advantages affordable housing outside of economically depressed areas is at cross purposes with numerous state-sponsored efforts to revitalize those very same areas. (See also comments on “Community Revitalization Plan” below.)

- 11.9(c)5 – Educational Excellence: GEEMD has concerns with the fundamental concept behind this section.

In urban communities, school performance and socioeconomic conditions are highly correlated. Awarding additional points on the basis of TEA ratings further compounds the effects of utilizing poverty rates to disadvantage and penalize poor neighborhoods in the scoring of LIHTC applications. Also, as with neighborhoods, consideration should be given to impacts on “origin” and “destination” schools. Origin schools may be further disadvantaged by the loss of students. Enrollment declines in HISD neighborhood schools have led to the closure of schools in economically disadvantaged areas further compounding the challenges in trying to turn these communities around. As reported in the Houston Chronicle, this has led to community members filing complaints with the Department of Education’s Office of Civil Rights.

- 11.9(d)7 Community Revitalization Plan: GEEMD believes the criteria for what constitutes a Community Revitalization Plan is overly strict.

The criteria in this section is narrowly and specifically tailored that it could be interpreted to exclude numerous state-chartered economic development programs including, but not limited

to, tax increment reinvestment zones (Chapter 311 Texas Tax Code) and municipal management districts (Chapter 375 Local Government Code). These programs have long and demonstrated histories of promoting not only community economic redevelopment but community revitalization. I would invite TDHCA staff to visit Houston and speak with the boards and staffs of the numerous management districts and TIRZ's that have helped to revitalize areas such as Midtown, East End and OST/Almeda. Their success in community revitalization is plainly evident.

GEEMD would recommend that this section be clarified to allow staff to determine if an appropriate revitalization plan or combination of plans pursuing the objective of revitalization is in place for the proposed site.

Draft Uniform Multifamily Rules  
Chapter 10, Subchapter B

- 10.101(a)3 Undesirable Site Features: GEEMD does not support the new proposed Subsection (D) to the section.

Specifically, given the historical development patterns in Houston, significant development has occurred adjacent to and near major industrial facilities. Using a 2 mile radius equates to defining all potential projects within an area over 12 square miles as "undesirable". Depending on the definition of "potentially hazardous uses" this could relegate much of East Houston to "undesirable" status. One could argue that by withdrawing affordable housing dollars from these areas the State is compounding the environmental injustice that has been done to these communities. GEEMD would recommend that a trigger for evaluation be considered for such sites utilizing a 1 mile radius. Such a radius equates to just over a 3 square mile area and by allowing staff to make a determination of whether a site is potentially hazardous it would allow for evaluation of the many potentially hazardous uses which are possible.

- 10.101(a)4(B) Undesirable Neighborhood Characteristics: GEEMD does not support the addition of Subsections (i) and (ii) to this section.

With respect to Subsection (i), GEEMD first would question the use of 35% as the appropriate poverty level when HUD's own definition of concentrated poverty is 40%.

Secondly, utilizing 35% poverty rates as undesirable neighborhood characteristic is effectively "redlining" these communities from LIHTC investment when taken in conjunction with the added points for being a "high" opportunity area. This also effectively neutralizes the potential points given to these neighborhoods if the area is the subject of a community revitalization plan (see above).

With respect to (ii), GEEMD understands the benefit of utilizing an objective score for determining neighborhood crime characteristics but question the use of a proprietary system that does not publish its scoring methodology (at least that I could find on the website). I also note that in their terms and conditions, they disclaim the accuracy of the data. The determination of whether a neighborhood is adversely impacted by crime is likely best left up to a case-by-case determination of staff.

In summary, taken together, the proposed QAP and multifamily rules appear to have adopted the philosophy that it is better to move poor people out of poor neighborhoods as opposed to trying to improve the neighborhoods in which they live. This philosophy is misplaced for several reasons. First, it assumes people want to leave their current neighborhoods. In the East End and many of Houston's other poor, minority neighborhoods, you will find families that have old and deep roots in the communities including their churches and schools. Given the choice of moving into clean, affordable housing in their current neighborhoods or a neighborhood located outside of their community, many would vote to stay in their community. To conjecture otherwise would be paternalistic. Secondly, this philosophy, in part, relegates these communities to further years of decline and decay. It is not tenable over the long term for the state (via its chartered cities) to effectively write-off square miles of its territory within its corporate limits when they are geographically-defined entities. And lastly, in rapidly redeveloping areas such as are found in Houston (the largest city in the US without zoning), LIHTC-funded affordable housing is often the only option for funding affordable or mixed-income projects in these areas. Given the often brief window in which these projects are viable in a rapidly redeveloping area, effectively redlining these areas will mean there will be no affordable or mixed-income projects in the redeveloped areas. This is the potential situation we find in the East End today.

We would encourage TDHCA to consider the positions it has previously adopted with respect to high opportunity areas, education excellence and community revitalization plans and to reject the adoption of proposed changes to undesirable site features and undesirable neighborhood characteristics discussed above.

(26) Sarah Andre

**From:** [Sarah Andre](#)  
**To:** [Jean Latsha](#); [Kathryn Saar](#)  
**Cc:** [Teresa Morales](#); [Sallie Burchett](#)  
**Subject:** Final QAP/ Rule Comments  
**Date:** Monday, October 20, 2014 8:44:47 AM

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Hi Jean,

I have a few final comments on the QAP and rules. I am guessing you have heard all these before, but here goes:

### **FLOOD INSURANCE**

Do not require Flood Insurance, as you know this can be difficult to obtain if you are not in a flood plain.

### **UNDESIRABLE FEATURES**

Please continue to use 500 feet versus 300 feet as the standard for undesirable features. 300 feet knocks out numerous sites.

### **SUPPORTIVE HOUSING**

The definition of supportive housing should include an exclusive focus on a population that has supportive housing needs and not allow an application to claim points for 5 or 10 units within a larger development.

### **CRIME DATA/UNDESIRABLE AREAS**

I prefer the use of local data and something along the order of "Incidences per 100 people" or per capita rates of crime. The database/service proposed is a poor source of data.

### **APPLICATION FORMS**

Please amend the development cost worksheets so that the General Contractor Overhead and Profit etc reflect 6% of total costs and not 6% of basis - it makes us look over the limit right now.

### **HIGH OPPORTUNITY POINTS**

Senior deals should also be able to obtain 7 or 5 points for "high opportunity" if they are in a First or Second Quartile census tract. There is no evidence to support that family deals are preferable in *all* markets and this basically knocks senior deals out of numerous markets. Even with the "ban" lifted.

### **811 DEALS**

Allow those participating in the 811 pilot to have a high cost per square foot allowance, as well as a lower percentage of "leverage" to qualify for points under the cost per square foot and the leverage items.

### **COST PER SQUARE FOOT**

Historic rehab should be considered a "high cost" development.

Thanks and have a great week!

Sarah Andre  
Structure Development  
702 San Antonio Street  
Austin, Texas 78701  
512/698-3369 mobile

(27) City of Houston



**CITY OF HOUSTON**  
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**Annise D. Parker**

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October 17, 2014

Ms. Jean Latsha  
Director of Multifamily Finance  
Texas Department of Housing & Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78701

Re: Public comment on Revisions to 2015 Qualified Allocation Plan (QAP) and Multifamily Rules

Dear Ms. Latsha,

Thank you for the opportunities you have given us to provide comments on the TDHCA 2014 Qualified Allocation Plan (QAP) at the TDHCA July Board Meeting and at the Round Table discussion. Please consider this letter, and the recommendations outlined below, the City of Houston (COH)—Housing and Community Development Department's (HCDD)'s suggestions of language to align the State's Low Income Housing Tax Credit (LIHTC) selection criteria with two critically important programs of COH.

- 1) Providing Permanent Supportive Housing (PSH) units in Region 6 to serve the most vulnerable citizens (including the chronically homeless) is a multi-year, cooperative activity of the City of Houston, Harris County, Houston Housing Authority, Harris County Housing Authority, and the Continuum of Care, among other local entities. Using a Housing First model (see <http://www.thewayhomehouston.org/about-us/>) these agencies have come together issuing joint RFPs, reviewing applications, sharing information and resources to bring capital, supportive services, and vouchers together with the development of a Coordinated Access System to most efficiently serve this population.

TDHCA's criteria to address Tenant Populations with Special Housing Needs have been designed to encourage funding requested from the Department's Section 811 Project Rental Assistance Program. The 811 program will apply to any project that has 10 or more units committed to this program and those units must not receive any other source of project based rental or operating assistance. This could be in direct conflict with the PSH program which serves an equally valid purpose. Therefore we request that the PSH program be allowed the same points as the Section 811 program as an alternative to Section 811 so that both targeted populations can be served.

- 2) Comprehensive revitalization of target neighborhoods (Near Northside, Lower Fifth Ward and OST/South Union) that were selected based on the extensive planning process which was undertaken for the commitment of Hurricane Ike Disaster Recover Round 2 (DR2) funds is a major initiative of the COH. After thirteen community meetings gathering input from over 500 unduplicated individuals, these underserved neighborhoods were selected because investment in these communities would Affirmatively Further Fair Housing and prioritize quality housing for people of moderate and low income. They are close to the Central Business District and

demographic, market and economic data shows that they are the most likely to integrate economically, socially and racially.

Without continued investment in revitalized housing, the positive momentum in each such neighborhood could stall or reverse. Also, private-market forces could lead to gentrification and displacement of the original residents, their institutions and their culture, unless affordability is maintained through public sector investment. COH is committed to Affirmatively Furthering Fair Housing through place-based investment strategies and is therefore also investing in economic development, single family home repair and reconstruction, as well as infrastructure, in these neighborhoods to achieve comprehensive revitalization and to foster the socioeconomic and racial integration of each Disaster Recovery neighborhood.

HCDD looks forward to the opportunity to work closely with TDHCA to facilitate the use of LIHTC to promote these critical priorities of the City of Houston and the State of Texas. It is our intention that these recommendations allow COH to leverage its extensive investment with TDHCA LIHTC. The recommendations below quote the language in the September 19, 2014 draft QAP and show a red-line suggestion of changes for the 2015 QAP.

**Recommendation #1:** Eliminate the requirement for Developments participating in City of Houston's Permanent Supportive Housing ("PSH") to qualify for points related to the Opportunity Index and eliminate the requirement that Units restricted for Persons with Special Needs be limited to 18% or less of the total Units.

**§11.9. Competitive HTC Selection Criteria.**

**(c) Criteria to serve and support Texans most in need.**

(3) Tenant Services. (§2306.6710(b)(1)(I) and §2306.6725(a)(1)) A Supportive Housing Development qualifying under the Nonprofit Set-Aside or Developments participating in the City of Houston's Permanent Supportive Housing ("PSH") program may qualify to receive up to eleven (11) points and all other Developments may receive up to ten (10) points. A Development participating in the PSH program and electing eleven (11) points under this paragraph must have applied for PSH funds by the Full Application Delivery Date, must have a commitment of PSH funds by Commitment, ~~must qualify for five (5) or seven (7) points under paragraph (4) of this subsection, and must not have more than 18 percent of the total Units restricted for Persons with Special Needs as defined under paragraph (7) of this subsection.~~ 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 the minimum. 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.

**Rationale:** The chronically homeless, whom the PSH program serves, require intensive supportive services. Most of these service providers are located in the urban core and not in the suburbs where the Highest Opportunity Areas are incentivized and located. This population requires access to the intensive supportive services targeted to this population in order to help them change their lives. Ironically this requirement marginalizes the homeless population in a way contrary to Affirmatively Furthering Fair Housing. Furthermore, this places an undue burden on PSH that is not placed on the Section 811 Program participants. Regarding the maximum Special Needs population, services for PSH are best delivered on site. The critical mass for such services is 25 persons which is likely to exceed the 18% maximum. Certain properties containing PSH may serve a larger number of special needs residents if targeting to specific needs.

**Recommendation #2:** Allow developments participating in Houston's PSH program to receive the same points as the Section 811 Program with the only criteria for these points being participation in the City of Houston's/Harris County's PSH program.

**§11.9.Competitive HTC Selection Criteria.**

**(c) Criteria to serve and support Texans most in need.**

(7) Tenant Populations with Special Housing Needs. ((§42(m)(1)(C)(v))An application may qualify to receive two (2) points by serving Tenants with Special Housing Needs. Points will be awarded as described in subparagraphs (A), ~~and~~ (B) and (C) of this paragraph.

*(C) (This is a new paragraph)* Application may qualify to receive two (2) points to meet the needs of the chronically homeless in Region 6 if the developer is a participant in the City of Houston's Permanent Supportive Housing program. Applications meeting all of the requirements in clauses (i) - (iv) of this subparagraph are eligible to receive two (2) points by committing to participate in the City of Houston's Permanent Supportive Housing program. Applicants must commit the specified number of units in the proposed Development. Participation in the PSH Program will require execution of a PSH Loan Agreement with the City of Houston and other required documents on or before HTC Commitment. Applicants who have applied to participate under the 2014 PSH Program RFP prior to their Application submission and receive an award prior to July 1, 2015 may use units identified in that PSH application to qualify for points under this paragraph with the same number of units as would be required for the new Application. The same units cannot be used to qualify for points in more than one HTC Application. Once elected in the Application, Applicants may not withdraw their commitment to participate in the PSH Program. If commitment is withdrawn, these points shall be forfeited. Should an Applicant receive an award of HTCs, the Department may allow Applicants to substitute alternate units in an existing Development in the Applicant's or Affiliates' portfolio, consistent with the City's PSH program: such properties require approval by the Department to commit the same number of units in an existing Development in the Applicant's or an Affiliate's portfolio that will qualify as PSH Program participating units. Applicants must commit at least 10 Units for participation in the PSH Program.

(i) The Development **may be** a Qualified Elderly Development;

(ii) The Development must not be originally constructed before 1978;

(iii) The units committed to the PSH Program in the Development **may have** other sources of project-based rental or operating assistance; and

(iv) The Development Site must be located in Houston-The Woodlands-Sugar Land MSA.

**Rationale:** The PSH program of COH is distinct from the Department's Section 811 Project Rental Assistance Demonstration Program (Section 811 Program) and equally valid. Please see the website for the Continuum of Care's plan to end homelessness:

<http://www.thewayhomehouston.org/about-us/>

TDHCA's criteria to address Tenant Populations with Special Housing Needs have been designed to encourage use of funding under the Department's Section 811 program. They will apply to any project that has 10 or more units committed to this program but no more than 18% of the total units; those units must not receive any other source of project based rental or operating assistance. This is in direct conflict with the structure of the PSH program which is designed to have a critical mass of qualified residents in order to provide intensive supportive services on site. In most cases about 20 residents is the critical number for on-site services. Furthermore, PSH developers are specifically offered vouchers to guaranty that rents will be available for these tenants. Therefore the City respectfully requests that the PSH program be a third program offering the same points as the Section 811 program..

1. In Houston many of the most chronically homeless are victims of the Vietnam era which is coming of age to live in communities of senior citizens. It could be more efficient to deliver services to this population in such senior communities which have services geared to the elderly.
2. PSH provides housing for the most vulnerable, and most difficult to house, many of whom are chronically homeless. The 811 Program provides support for up to 24 months so that those in the program may transition to other housing. PSH is for individuals who may or may not ever transition out of PSH.
3. Supportive Services in the 811 Program are generally provided off site. In PSH onsite case work is a critical component of the Supportive Services.

We believe there is room for both types of programs to address the housing needs of the most vulnerable. **Please allow the support of HTC to include the PSH developers in Houston who are addressing this need.**

**Recommendation #3: Allow COH's definitions of Community Revitalization Areas (as defined in the Hurricane Ike Disaster Relief Round 2 Plan) to receive the same points as Community Revitalization Areas.**

**§11.9.Competitive HTC Selection Criteria.**

**(d) Criteria promoting community support and engagement.**

**(7) Community Revitalization Plan**

(B) For Developments located in Urban Areas outside of Region 3 **except those within the City of Houston**

(C) *(This is a new paragraph)* Developments in the City of Houston (the City) Community Revitalization Areas (CRAs) and CRA outreach areas.

(i) An Application may qualify for up to four (4) points if it is located in one of Houston's CRAs, and for up to three (3) points if it is located in one of the CRA outreach areas. This is based upon the following factors:

(I) The City developed a plan for investment of DR2 funds;

(II) The City held public hearings and numerous community meetings to solicit input from the community regarding revitalization;

(III) The City commissioned an extensive Planning Study which considered community input, economic trends, economic investment, demographic factors, impediments to revitalization and national best practices for including affordable housing with revitalization. The Planning Study identified three (3) specific target areas for revitalization (the CRAs) which received the support of fair housing advocates and are consistent with requirements to affirmatively further fair housing;

(IV) The outreach areas are an extension of the CRAs where single family reconstruction will take place under DR2;

(V) The City has made investment of DR2 funds in these CRAs based upon recommendations made in the Planning Study and efforts to affirmatively further fair housing;

(VI) In addition to investment of DR2 funds in the CRAs, no less than \$50 million has been or will be invested in each of the CRAs by entities such as the City, the Houston Independent School District, TIRZ and management districts, various charter schools, the Metropolitan Transit Authority, Harris County, the Houston Public Library System, private organizations and real estate developers, and the YMCA;

(ii) Applications may receive (2) points in addition to those under item (i) of this clause if the Development is explicitly designated by the City of Houston as a Significant Development in the revitalization efforts of a specific Houston CRA. The City will not designate more than four (4) such Significant Developments per year, and there will be no more than two (2) designated annually in any one CRA.

(D) ~~(C)~~ For Developments Located in a Rural Area

**Rationale:** As discussed, the current QAP draft sets criteria that do not meet Affirmatively Furthering Fair Housing (AFFH) goals established by the City of Houston. The criteria used for the DR 2 study meet the needs of residents and meets the AFFH burden because the City of Houston developed its strategies in the Planning Study toward place-based investments to provide socioeconomic and racial integration. As a City with a population of more than 2.3 million people covering 650 square miles, Houston has more than one geographic area that needs to be revitalized and should therefore not be forced to limit its support to a single geographic area nor to a single project within each area that is designated as Significant. Houston has identified three CRAs and other CRA Outreach Areas pursuant to the Planning Study and is targeting investments, efforts, time and other resources toward revitalization efforts in three areas representing cases in Transit-Oriented Development, Historic Redevelopment and Urban Renewal.

**Recommendation #4: Add definitions for Community Revitalization Area, CRA Outreach and Permanent Supportive Housing. (Numbering will change as definitions are added.)**

**Chapter 10 Subchapter A**

**§10.3 Definitions.**

(a)(22) **Community Revitalization Area (CRA)**--The areas defined for deep revitalization by the City of Houston's Disaster Relief Round 2 (DR2) Planning Study. Map is available at:

[http://www.houstontx.gov/housing/ninepercent/CRA\\_Outreach\\_Maps.pdf](http://www.houstontx.gov/housing/ninepercent/CRA_Outreach_Maps.pdf)

(a)(31) **CRA Outreach Area**—The extended areas defined by the City of Houston's DR2 Planning Study for single family rehabilitation and reconstruction. Map is available at:

[http://www.houstontx.gov/housing/ninepercent/CRA\\_Outreach\\_Maps.pdf](http://www.houstontx.gov/housing/ninepercent/CRA_Outreach_Maps.pdf)

(a)(89) **Permanent Supportive Housing (PSH)**--An affordable housing development that links a range of services for vulnerable tenants to ensure housing stability. Any unit identified as PSH is one that is deeply affordable and targeted to extremely low income households and coupled with direct, facilitated access to a comprehensive array of services. Services can include, but are not limited to, case management, medical, mental health, substance use treatment, employment and life skills counseling, eviction prevention programs, social and recreational events, and tenant advocacy. The services are voluntary to the tenant, while service and property management staff focuses on housing stability. The unit is tied to a lease and tenants are expected to adhere to the conditions of the lease. Therefore, group housing and transitional housing are not included in this definition.

The City of Houston is proud to be a national leader in best-practices regarding both Permanent Supportive Housing and utilization of Community Development Block Grant funds to Affirmatively Further Fair Housing through neighborhood revitalization. We look forward to a continued partnership with TDHCA to further advance these initiatives. Thank you for your consideration.

Sincerely yours,



Eta Paransky  
Assistant Director  
Housing and Community Affairs Department  
601 Sawyer  
Houston, TX 77007  
713-868-8449

Cc: Neal Rackleff, Veronica Chapa, David Kim, Stedman Grigsby, Susan Speer, Tim Irvine, Cameron Dorsey, Teresa Morales, Kathryn Saar

## (28) Sonoma Advisors

**From:** [Kathryn Saar](#)  
**To:** [Teresa Morales](#)  
**Subject:** FW: Public Comment on the QAP  
**Date:** Monday, October 20, 2014 10:26:30 AM

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**From:** Bill Fisher [mailto:bill.fisher@sonomaadvisors.com]  
**Sent:** Saturday, October 18, 2014 6:20 PM  
**To:** jean.latscha@tdhca.state.tx.us; Kathryn Saar; cameron.dorsey@tdhca.state.tx.us  
**Cc:** Melissa Adami  
**Subject:** FW: Public Comment on the QAP

I want to stress things of significance in addition to what I provided in September below, which I would like you to consider as public comment for all purposes:

1. We cannot have prohibitions of any affordable housing development period. It is a bad practice. Use your scoring tools to guide the allocations of 9% credits. A prohibition can only be used properly if it is for market conditions such as overbuilding or lack of demand or infeasibility. Collin County is zero vacancy for special needs housing and prohibitions in these market conditions cannot be justified under Statute or any other rational. Understand I fully support you using the scoring tools in the 9% credit allocation process to encourage family housing as you deem appropriate, specifically including Collin County.
2. You MUST understand you need separate rules for 4% developments. You are catering to these advocates legal arguments. You do not ALLOCATE an unlimited resource like 4% credits. We are legally entitled to them under 142 by doing affordable units. You must be clear in your rules that you are only determining feasibility to protect the State's tax exempt bond volume cap use for MF. It is pure folly for the advocates to claim you allocated any 4% credits. In fact, you would have the option to simply cost cert the 4% credits at the point you issue 8609's. You could go so far as to rely on the FA's underwriting of the project if you even choose to issue a 42 M (whatever you provide as evidence of 4% HTC).
3. You are running yourselves into this problem and you do not have to do it. If the concern of fair housing, which it is, require the 4% projects to ask HUD for a determination or approval of their fair housing affirmative marketing plans and get out of the matter altogether. It shifts the fair housing burden to HUD and takes you out of harm's way in the use of tax exempt bond volume cap.
4. If you really want to use 4% credits to further fair housing, use all your HOME money for 4% projects almost exclusively. 9% projects at current pricing and debt cost rarely need your HOME money.
5. Look at the new overlay on HOA, this is a redline disaster happening. At least in region 3. You must be flexible on the definition of poverty % within the margin of error. You are excluding real HOA by using the highest number available. It is not necessary. If it is a second quartile tract and the poverty rate is under 15% using the posted margin of error we MUST and need to count those tracts. You are forcing us to smaller and smaller areas which drive up land costs and hurt housing choice in the long run. I would go so far as to suggest we go to a school ranking criteria and quartile and ignore poverty %. If the schools are excellent, the income is second quartile or higher, we should be building there. I can argue these high

performing school areas of upper income with some poverty in them are providing the housing choice we need. Remember metrics always have their issues. Right now you do not show any HOA of significance in Plano or Richardson. Two wonderful areas, we need to build in with good schools and all any family could want. How do I know this when your metrics suggest otherwise?: Toyota relocating from California to Plano, Raytheon relocation of their headquarter to Richardson and State Farm building a facility for 8,000 workers in Richardson. We must start using our brains in addition to metrics to determine these fair housing areas. You can do this effectively. Build yourselves some discretion to engage reasonable judgment. At least in region 3.

#### REA Rules

6. Along the lines of #4 above, REA must start applying a minimum loan standard to underwriting or a better minimum loan standard. Too many applicants are using out of market, high priced debt packages to show gaps for HTC and HOME when it is not needed. If a developer cannot get reasonable market debt and reasonable HTC pricing, their deal should be rejected. We thrive on competition, so the weak that cannot bring resources consistent with the market should not get extra funds to make their deal work.

These are in addition to the comments below I sent prior to the public comment area, please include those too in the public record.

For the record, ICP principals know TDHCA did not commit a fair housing violation in region 3 due to 4% projects in QCT's. They know why developers do these projects in QCT's and it is totally about financial feasibility, not about anything else. They know that by consulting for SWH at the time for a fee. I was a SWH employee and development team leader. 9% credits are all you ever allocated in region 3 in that timeframe. The 4% deals did not work financially for the sponsor outside a QCT at that time. ICP knows that and representing otherwise is not correct.

Thanks

Bill

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**From:** Bill Fisher [<mailto:bill.fisher@sonomaadvisors.com>]

**Sent:** Thursday, September 04, 2014 2:15 PM

**To:** [jean.latscha@tdhca.state.tx.us](mailto:jean.latscha@tdhca.state.tx.us); Kathryn Saar ([kathryn.saar@tdhca.state.tx.us](mailto:kathryn.saar@tdhca.state.tx.us))

**Subject:** Public Comment on the QAP

1. For districts with district wide enrollment, like Garland, which has a district rating of 80+, we need to use the district wide rating or the school rating closes to the site. NOT the lowest available. What parent would send their child anywhere but closes or in the event of a commute to the best. They simply don't. using the closes one makes sense since that is the non-district wide rule!!
2. We are hurting our ability to put housing in good schools with this 'lowest scoring school' approach. This approach works and is consistent with the rest of the rule and the intent of the ICP agreement.
3. I understand clearly the advocates want to put the families in the suburbs but we cannot ignore the metro areas. So this flexibility will help with district wide.
4. We do not need EASY rules. We need effective rules, so the "average rating" for school performance should be related to their MSA; not every area of the state by you are using for this 77 average. Some minimum is required of course for but we can only do the best schools in our metro area.
5. On the census data for first and second quartile, if you want hard data, use the census data. If you want to use the community survey data (which is fine) you need to go with the margin of error. We exclude too many areas for high opportunity by again using the least desirable data. Specifically as it relates to the poverty index in major MSA's. Staff is excluding great areas an ignoring the data provided which clearly shows a margin for error.
6. I encourage you to make significant differences in 4% and 9% projects now and in the future until all the bond cap is being utilized to produce housing. Our state has a housing crisis in many areas and affordability is getting blown away. We need affordable housing and we are only go to get it in large numbers if we use the 4% bond cap in QCT's.
7. If you are making an "amendment to the rules" on seniors in Collin County please make it effective upon approval by the board. We should not need waivers if the board approves this policy change now.

Your consideration is always appreciated.

Bill

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## MEMORANDUM

**TO:** Texas Department of Housing and Community Affairs  
**FROM:** Cynthia Bast  
**DATE:** October 20, 2014  
**RE:** PUBLIC COMMENTS ON RULES – **CHAPTER 11, QUALIFIED ALLOCATION PLAN**

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On behalf of **Hettig-Kahn Development**, please find comments to draft Chapter 11, Texas Administrative Code (“**TAC**”), Qualified Allocation Plan.

### **Section 11.6(5)**

**Issue:** We sincerely appreciate TDHCA's recognition that certain events, beyond an owner's control, should allow an owner to return tax credits for reallocation. However, as currently drafted, the proposed language in the "Force Majeure" definition would not capture the delays and hardships resulting from the extreme labor shortages in today's market. These shortages are well-documented. See, for instance, the article attached to this memorandum. In addition, other legitimate "force majeure" events are not captured in the definition, as currently drafted.

### **Recommended Change:**

TDHCA has a definition of "force majeure" that it uses in its HOME program activities. This definition is more inclusive and should be applied in the context of Section 11.6(5) of the QAP, as well. For draft language, please see attached.

### **Reasoning:**

TDHCA recognizes the benefit of rules, consistently applied across various programs, by adoption of the Uniform Multifamily Rules. The use of the proposed definition, already employed in the HOME program, would be in harmony with this stance. It is important to note that, with a broader definition, it will give TDHCA more flexibility to offer relief to those owners who truly deserve it. Ultimately, TDHCA retains the discretion on awarding the relief, so a broader definition will not open the door to abuse, without TDHCA's acquiescence.

**Current Proposed language for QAP Section 11.6(5):**

Force Majeure events are sudden and unforeseen fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events. Force Majeure events must make construction activity impossible or materially impede its progress for a duration of at least 90 days, whether consecutive or not.

**Language currently used in TDHCA's HOME Loan Agreement:**

A Force Majeure Event shall include, but not be limited to: acts of God; fire, explosion; vandalism; storm or similar occurrences; orders or acts of military authority; litigation; changes in law, rules or regulations outside the control of the affected party; national emergencies or insurrections; riots; acts of terrorism; supplier failures; or shortages.

**Proposed revised text for QAP Section 11.6(5):**

Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner: acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; litigation; changes in law, rules, or regulations, national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. Additionally, for a Development using HOME or CDBG funds and subject to Section 3, delays resulting from governmental administration or failure to act. Force Majeure events must make construction activity impossible or materially impede its progress ~~for a duration of at least 90 days, whether consecutive or not.~~

## DEVELOPMENT

# As construction booms, 'it's a catfight' for workers



**A worker takes a water break while working at The Susanne, a luxury apartment complex in the Montrose neighborhood. While construction is booming in the area, the labor shortage is hurting development.**

Mayra Beltran / Houston Chronicle

### Skilled-labor shortage hurts area development as companies struggle to fully staff projects

By Nancy Sarnoff

On a conference call earlier this month, the president of Houston-based developer Camden Property Trust described what it's like building apartments in markets where construction is booming and skilled workers are in short supply.

"It's a catfight to get subcontractors to fully staff at your jobs," said D. Keith Oden. He added, "It's hand-to-hand combat."

The labor shortage has become so severe that the company recently started putting guards on job sites to keep its workers from being poached by competitors willing to pay more.

"We've had specific instances where people would come on site and try to round up workers," Camden's chief executive Ric Campo said in an interview. "During the World Cup, we actually put big screens on our sites to get people to stay."

Camden, which builds luxury apartments across the country, has staffed security guards at construction sites in Austin and Denver. When it starts a project here in Midtown this fall, the company plans to have onsite protection, as well.

That scenario is just one example of how the tight market for construction workers is impacting developers and real estate projects across the Houston area, one of the hottest building markets in the country. The labor shortage is leading to scheduling delays and significant cost overruns, too, developers **Building continues on B3**

# Building boom hits wall

*Building from page B1*

say: For workers with the most sought-after skills, wages are up and profit margins are getting thicker.

"We're seeing it basically everywhere," Brian Dinerstein, president of the Dinerstein Cos., a national multifamily development firm, said of the shortage.

It is even a problem in slower markets still recovering from the recession, he said.

When development came to a standstill in many parts of the country at the end of 2008, workers fled the construction industry for more stable work and have not returned.

The Texas construction industry has seen employment fall drastically since the recession.

One report cited a 13 percent decline between 2007 and 2010.

Many skilled laborers left traditional commercial and residential projects to work on energy-related developments along the Texas Gulf Coast or in the state's booming shale plays.

"During the downturn in 2009 to the middle of 2012 a lot of people were laid off and they've gone into other industries ... a lot of them looked for other opportunities in the oil field," said Houston construction veteran Pat Kiley, now a consultant to the industry.

With the number of new petrochemical facilities planned, demand for those who work on such projects is getting stronger.

Dennis Donahou, executive secretary treasurer of the Southern States Millwright Regional Council, said the union has beefed up its recruitment and marketing staff to entice workers to this area and places like Beaumont and Baton Rouge and Lake Charles, La.

"They're all in the same situation for manpower," he said.

## Union migration

The need for workers comes at a time when the Houston area is seeing record amounts of new real estate development.

Multiple sectors are experiencing growth, including the office market, hotels, apartments and single-family housing. Medical facilities and schools are also seeing significant expansion.

Through the first half of the year, the city had already permitted \$4.2 billion in construction projects, the Greater Houston Partnership said. Last year, Houston didn't surpass the \$4 billion mark until September.

For the 12 months that ended in June, permits topped \$7.5 billion, mark-



Mayra Beltran / Houston Chronicle  
The Susanne, a luxury apartment complex in the Montrose neighborhood.

ing the highest 12-month total in the city's history, said Patrick Jankowski, the partnership's vice president of research.

Kiley, principal of Kiley Advisors said licensed trades are in high demand: "electrical, mechanical, plumbers, sheet metal workers, iron workers, operating engineers, certified crane operators. These are all crafts in short supply," he said.

Labor unions are recruiting workers.

"You're getting people moving here from out of state like they did in the '60s, '70s and '80s," Kiley said. "The unions have brought in people."

Ed Vargoko, business manager of the Iron Workers Local 84, said the amount of construction taking place in the Houston area is attracting workers from other parts of the country where development remains slow.

"A lot of them come from California and quite a few from Detroit," he said.

In some cases, the shortage is evident in higher wages.

## Immigrant issues

Between the first quarter of 2010 and the first quarter of 2014, the average weekly wage in the local construction industry rose 24.5 percent, Jankowski said, citing the Quarterly Census of Employment and Wages. That's higher than the 19.9 percent boost in the overall average weekly wage here over the same period.

The wage and benefit package for millwrights will increase by 4 percent for each of the next few years, Donahou said.

"It's a strong market out there," he said. "Everybody's going after the same people."

Still, a segment of the construction worker population, mostly immigrants, is underpaid and facing other problems.

A report on the challenges facing the construction industry in Texas, released last year by the Workers Defense Project and the University of Texas, found that the state's construction industry is characterized "by dangerous working conditions, low wages, and legal violations that hurt workers' families and undercut honest businesses."

The report cited a widespread practice of payroll fraud, where more than 40 percent of construction

employees were misclassified as independent subcontractors.

In such cases, employers avoid paying payroll and unemployment taxes and workers are deprived of overtime and other employment benefits.

## Damaged image

That gives an unfair cost advantage to companies that don't abide by employment rules, said construction veteran Stan Marek, CEO of the Marek Family of Companies.

Marek cited the high number of undocumented immigrants working in construction.

"Many are working through various ways in an underground economy — off the books, working for cash, etc.," he said in an email.

Those workers are earning low wages and are not receiving training or other benefits.

So-called "labor brokers" are poaching workers from one job site to another.

Marek said the workers who are leaving have no loyalty because they're independent employees.

That has hurt the image of the blue-collar construction job and made it harder to recruit people to the trade, Marek said.

Developers bemoan how the labor shortage increases their project costs. "Often times the contracts you've signed have to be renegotiated," Campo said.

In 2010, Camden spent around \$135,000 per unit to build an apartment complex in Midtown. That included land, materials, labor and other associated costs. Today, that figure would be more like \$190,000 per unit, Campo said.

The increase, he said, "It's mostly labor."

Rising land values, combined with higher construction and material costs, are compressing the returns investors can make on development.

Campo expects to see the pace of construction slow.

Kiley agrees.

"You're seeing schedule delays and seeing cost escalation that at the margin could cause some projects to be canceled or postponed until this furor settles," he said.

# (30) Marque Real Estate Consultants

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October 19, 2014

Mr. J. Paul Oxer, Chairman and  
Board Members of the  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701

Re: Draft of 2015 QAP and Uniform Multifamily Rules (9.19.14 Release Date)

Dear Chairman Oxer and Members of the TDHCA Governing Board:

Please accept the following as our formal comments and recommended changes to the Draft of the 2015 Qualified Allocation Plan (QAP) and Uniform Multifamily Rules (Rules) approved by the TDHCA Governing Board on September 4, 2014. Our comments are targeted and meant to enhance the intended outcome of certain scoring categories and/or clarify provisions of the QAP and Rules in order to address issues arising out of the 2014 competitive round.

**A. Draft of 2015 QAP:**

1. **§11.7. Tie Breaker Factors.** If the intent of the tie breaker factors is to de-concentrate the location of affordable housing then it should be unique to the type of housing being proposed. We therefore recommend that the second tie breaker factor be revised as follows:

(2) Applications proposed to be located the greatest distance from the nearest Housing Tax Credit assisted Development, servicing the same Tenant Population.

2. **§11.8. Pre-Application Requirements (Competitive HTC Only).**

(b) Pre-Application Threshold Criteria.

(2)(A) 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 as of the date of pre-application submission.~~ **as provided by the local elected officials, or that the Applicant has knowledge of as of the date of pre-application submission.**

3. **§11.9. Competitive HTC Selection Criteria.**

a. **(b) Criteria promoting development of high quality housing.** The intent of this scoring category is to incentivize the production of “high quality housing” by requiring that (i) the units meet

minimum sizes and include high quality amenities and features, and (ii) that the sponsors of the housing meet certain characteristics that provide opportunities for HUBs or Qualified Nonprofit Organizations to participate in the development of such housing. Our recommendation is to include one (1) additional point under this scoring category to those sponsors that do not have instances of noncompliance that remain uncorrected with the Department and for which the applicable period for corrective action has expired. Our recommendation to §11.9(b)(2) is as follows:

(2) Sponsor Characteristic. An Application may qualify to receive up to two (2) points.

(A) An Application may qualify to receive one (1) point provided the ownership structure contains a HUB ....., or Qualified Nonprofit Organization.....; and (B) one (1) point may be added to the points in this subparagraph if, as of the Application Acceptance Period, the Applicant has no reported instances of noncompliance that remains uncorrected and for which the applicable period for corrective action has expired in connection with any existing affordable housing Development assisted by the Department. Only Applicants with existing affordable housing Developments assisted by the Department would be eligible for the one (1) point under subparagraph (B) of this paragraph.

b. **(c) Criteria to serve and support Texans most in need.**

1. (5) Educational Excellence. An Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of a school district (ISD) or public schools (whichever is higher) that have achieved a 76 77 or greater on index 1 of the performance index related to student achievements by the Texas Education Agency (or 73 or greater for Developments in Region 11), provided that the ISD or the schools also have a Met Standard rating. If the ISD includes schools with district wide possibility of enrollment or no defined attendance zones (commonly known as school choice programs), an Applicant may use the rating of the ISD or the public schools (whichever is higher). In districts with district-wide enrollment, if the Applicant elects to use the rating of the public schools (elementary, middle and high schools), such schools must be those located nearest to or within 1 mile of the Development Site and the ISD must provide confirmation that the children of the Development will be able to either select or automatically attend such schools. 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 an Applicant may muse the lowest rating of all elementary, middle, or high schools, respectively, which may possibly be attended by the tenants. The applicable ISD or school rating will be the 2014 accountability rating assigned by the Texas Education Agency.....

(A) The Development Site is within the ISD or the attendance zone of an elementary school, middle school and a high school with appropriate rating (3 points); or

2. (7) Tenant Populations with Special Needs. We recommend that an Applicant have the option of qualifying for points under this scoring category if meeting the requirements of either subparagraph (A) or (B), or that subparagraph (A) (Section 811 Program) be removed from this scoring category. One year after its first introduction, the Section 811 Program is still a pilot program without final guidelines and requirements. It would be unfair to impose the uncertainty of this program (short and long term) on Applicants proposing general population developments, many of whom do not have the expertise necessary to support this specialized population. If we want the 811 program to be successful in Texas, we recommend the program be first made available to those non-profits and

housing authorities with existing or proposed developments in our 5 largest cities of Houston, Dallas, San Antonio, Fort Worth and Austin through an RFP process, whereby the awards would be based, at a minimum on, (i) the experience of the applicant/sponsor in housing, and in providing services unique to a special needs population, and (ii) the location of the development to transportation that will allow the tenant to access medical services and other required resources, not otherwise provided by the applicant/sponsor.

c. **(d) Criteria promoting community support and engagement.**

1. **(1) Local Government Support.** We suggest that if the Department is striving to de-concentrate housing even in those counties with less than one million in population, then in addition to changes recommend above in the educational excellence scoring category, that the Department consider adjusting the points in this scoring category such that seventeen (17) points remains the maximum points an Applicant may qualify to receive but allowing an Applicant to qualify for one (1) additional point if the Governing Body of the municipality or county (as applicable) explicitly identifies a particular Application or Development as one of significant importance to the municipality or county (as applicable). Similar to revitalization, a municipality or county may only identify one single Development or Application during each Application Round for the additional point. If multiple Applications submit resolutions under this sub-clause then none of the Developments or Applications will be eligible for the additional point.

2. **(2) Commitment of Development Funding by Local Political Subdivision.** We suggest that this scoring category be revised to include the following:

“Regional instrumentalities that serve more than one city or county may qualify for points under this scoring item so long as (i) the Development Site is located within the boundaries of the city or county served by the regional instrumentality, (ii) 100% of the governing board of the instrumentality is appointed by the elected officials of the cities or counties served by the regional instrumentality, and (iii) the board members of the city or county in which the Development Site is located votes to approve the commitment of Development funding to the Development.”

d. **(e) Criteria promoting the efficient use of limited resources and applicant accountability.**

1. **(4) Leveraging of Private, State and Federal Resources.** We recommend the following change to this scoring category to avoid future confusion on how this calculation is determined by the Department:

(B) The calculation of the percentage stated in subparagraph (A) of this paragraph will be based strictly on **the calculation shown in the Finance Scoring Schedule of the Application the figures listed in the Funding Request and Development Cost Schedule.**

B. Draft of 2015 Rules:

1. **§10.3. Definitions.** To qualify as a Colonia and therefore be eligible for points under **§11.9(c)(6) – Underserved Area**, the Development Site must be located in an area that meets either (A)

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the qualifications of an “*economically distressed area*” under Section 17.921 of the Texas Water Code, or (B) has the “*physical and economic characteristics*” of a Colonia, as determined by the Department.

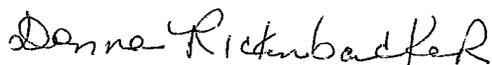
Staff modified subparagraph (B) by adding that the area must *encompass no more than two (2) square miles* when determining whether the Development Site has the physical and economic characteristics of a Colonia. We do not understand the intent of this change by Staff and given that any modification to the definition of a Colonia impacts a scoring category and the success of an Application in our border regions, we recommend that Staff more narrowly define what factors the Department will use when determining whether an area has the physical and economic characteristics to be considered a Colonia. We suggest the following:

(B) has the physical and economic characteristics of a colonia, as determined by the Department. The factors to be considered by the Department will include the proximity of the Development Site to the existing Colonia communities, and the ability or inability of the Colonia communities to access basic utilities to meet the minimal needs of the residents.

Lack of access to utilities should be a key distinction when comparing the physical and economic characteristics of a Colonia to the area where the Development is proposed to be located, and therefore to the granting of Underserved Area points to the Application.

We appreciate the Board’s consideration of these comments and recommended changes to the 2015 QAP and Rules. Thank you for all of the hard work that you do for affordable housing in Texas.

Sincerely,



Donna Rickenbacker

cc: Tim Irvine, Executive Director  
Cameron Dorsey, Deputy Executive Director  
Jean Latsha, Director of Multifamily Finance  
Kathryn Saar, HTC Program Administrator

**(31) South Texas Collaborative  
for Housing Development**



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October 20, 2014

Ms. Teresa Morales  
Rule Comments  
P.O. Box 13941  
Austin, Texas 78711-3941

Re: Comments on 2015 Qualified Allocation Plan

Dear Ms. Morales:

We would like to offer the following modification for draft 2015 Qualified Allocation Plan scoring criteria.

**Sponsor Characteristics**

The draft plan qualifies an application eligible for one point provided the ownership structure contains a HUB or Qualified Nonprofit Organization, provided the application is under the Nonprofit set aside. We believe that it is the intention of the program to promote Qualified Nonprofit organizations to play a major role in the Low Income Housing Development as it is evidenced in TDHCA's policy of allowing local governments and Nonprofit Organizations to develop rental properties under the HOME program and the First Right of Refusal by Nonprofit Organizations for the multifamily developments with expiring tax credit affordability. Nonprofits with CHDO designation doing LIHTAC developments are scarce and it is a good idea to establish policies to promote such development. It is worth noting some of the meaningful developments undertaken by the nonprofits in the Austin and Houston areas and throughout the state of Texas.

We recommend that the Qualified Nonprofit Organization that submits a Community Housing Development Organization Designation (CHDO) application

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along with the tax credit application be eligible for two (2) points under the 2015 QAP.

### **Educational Excellence**

The draft plan qualifies a development to receive up to 3 points for a development site located within the attendance zone of public schools that have achieved a 77 or greater on index 1 of the performance index related to student achievement by the TEA. It is our understanding that the score of 77 was selected as a threshold as it is the state average score. It is also our understanding that the average score in Region 11 is 68. We thoroughly understand the reason for adopting a higher standard to bring about better opportunities for low income residents. TDHCA Board has taken special conditions existing in Region 11 into consideration to address the unique poverty level existing in the area. The poverty level has a direct effect on the achievement of the students and resulting scores which requires special consideration of the Board.

We recommend that the QAP be changed to qualify a development in urban areas to receive 3 points provided that at least two of the schools achieve a 74 or greater on the index 1 and for rural areas a score of 67 or greater. This will offset the program to be compliant with the Fair Housing Requirements of the program. Please keep in mind that we are not proposing any dilution in the rule to encourage developments in High Opportunity Areas.

### **Underserved Area**

The State and TDHCA developed programs to offer opportunities for colonia residents. It is not practical to relocate all colonia residents out of colonias. Good quality development in close proximity to a colonia will offer choices for colonia residents to go to the same school they are attending now and to keep the job they may have close by.

We recommend that the language be expanded to read as:  
“ A Colonia or area within ½ mile from a Colonia;”

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Thank you for the opportunity to submit our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Sunny K. Philip". The signature is fluid and cursive, with the first name "Sunny" and last name "Philip" clearly distinguishable.

Sunny K. Philip  
Executive Director

(32) Daniel & Beshara

**Daniel & Beshara, P.C.**  
**3301 Elm Street**  
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October 20, 2014

email to [teresa.morales@tdhca.state.tx.us](mailto:teresa.morales@tdhca.state.tx.us)

email to [Pamela.cloyde@tdhca.state.tx.us](mailto:Pamela.cloyde@tdhca.state.tx.us)

To: Texas Department of Housing and Community Affairs

From: Daniel & Beshara, P.C. on behalf of the Inclusive Communities Project, Inc.

**Re: Comments on 2015 Draft Qualified Allocation Plan,11.3.(e) and Proposed Uniform Multifamily 10.101(a)(3), (4).**

We represent the Inclusive Communities Project, Inc. (ICP). This comment on some of the proposed 2015 QAP and Uniform Multifamily rules is filed on behalf of ICP.

**Comment on 2015 Draft Qualified Allocation Plan,11.3.(e) Elimination of Developments in Certain SubRegions and Counties.**

ICP is opposed to lifting the eligibility restriction against Qualified Elderly units in Collin and Denton counties. § 11.3.

The 2014 Qualified Elderly eligibility restriction did not produce a balance between Elderly only designated LIHTC units and General LIHTC units in Collin and Denton counties. Nor did it produce a balance between Elderly only designated LIHTC units and General LIHTC units in the Dallas area. Qualified Elderly units from which families are excluded continue to be a disproportionate share of all LIHTC units in the area. The Qualified Elderly LIHTC units also still constitute a disproportionate share of LIHTC units in majority White, non-Hispanic areas. If TDHCA eliminates the Qualified Elderly eligibility restriction, that will continue the perpetuation of racial segregation and give rise to an inference that TDHCA has intentionally discriminated on the basis of race.

First, ICP has presented statistical and comparative evidence that may give rise to an inference of discriminatory intent. ICP alleges that TDHCA is more likely to approve LIHTC developments in Caucasian neighborhoods if the likely tenants are Caucasian. ICP highlights the fact that, in Caucasian neighborhoods, elderly LIHTC housing is approved more often than non-elderly LIHTC housing, and elderly residents are more likely to be Caucasian. According to TDHCA data,

from 1999 to 2008, TDHCA approved tax credits for 70.2% of the proposed elderly units in 90% or greater Caucasian census tracts. TDHCA approved just 37.4% of proposed non-elderly units in the same tracts. *Inclusive Communities Project, Inc. v. TDHCA*, 749 F.Supp.2d 486, 502 (N.D. Tex. 2010).

Qualified Elderly restricted LIHTC units are disproportionately occupied by White non-Hispanic residents. The following Qualified Elderly LIHTC projects in Collin and Denton counties have at least a 80% White non-Hispanic tenant population:

Country Lane Seniors Community,  
Grand Reserve Seniors Community,  
Grand Texan Seniors Community,  
Evergreen at Plano Independence Senior Community,  
The Plaza at Chase Oaks,  
Villas of Mission Bend,  
Autumn Oaks of Corinth,  
Primrose at Sequoia Park,  
Evergreen at Lewisville Senior Apartment,  
Lakeside Manor Senior Community, and  
Evergreen at Morningstar.

Only one Qualified Elderly LIHTC project in Collin or Denton county is less than 60% White non-Hispanic. That project is Villas at Raiford. The non-elderly, General, LIHTC units in Collin and Denton counties are disproportionately minority in occupancy. Only Leuty Avenue Apartments, Pilot Point Apts, Lakeview Court Apts, Waterford at Spencer Oaks, and the Princeton Arms are 50% or greater White non-Hispanic in occupancy. TDHCA, 2013 Housing Sponsor Report, pages 104-111,166-177.

Qualified Elderly LIHTC units remain a disproportionate percentage of the LIHTC units in Collin and Denton counties compared to the elderly population in need of the LIHTC housing. The disproportionate provision of LIHTCs to Qualified Elderly units remains even after the 2014 9% allocation awards. Elderly renter households are 12% of all renter households in the Collin and Denton county population with incomes less than 50% of the area Median Family Income and rent burdens greater than 30% of income. HUD, 2007-2011 CHAS data.<sup>1</sup> This is the approximate percentage for the elderly population in need of LIHTC units in Collin and Denton counties. 28% of all LIHTC units in Collin and Denton counties are Qualified Elderly units restricted to elderly only households.<sup>2</sup> Thus Elderly restricted LIHTC units are more than double

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<sup>1</sup> The CHAS data and TDHCA Inventory data are set out in the attached EXCEL file "CHAS 0711 Collin Denton Combined Table 7 Housing Cost Burden 30 and Perc of HAMFI 50.xlsx."

<sup>2</sup> The elderly households in General occupancy LIHTC units add to this disproportion. From 5% to 10% of the units in many of the Collin and Denton county general

the percentage of the elderly population in need of those units. The extent of the oversupply of elderly restricted LIHTC units is also shown by the statistics of the non-elderly population in need of LIHTC units. Non-elderly renter households are 88% of all renter households in the Collin and Denton county population with incomes less than 50% of the area Median Family Income and rent burdens greater than 30% of income. HUD, 2007-2011 CHAS data. General LIHTC units, not restricted to elderly, are only 72% of the LIHTC units in Collin and Denton counties.<sup>3</sup>

Qualified Elderly designated LIHTC units also remain disproportionately located in majority White non-Hispanic census tracts in Collin and Denton counties when compared to General LIHTC units. 53% of elderly restricted LIHTC units are in majority White non-Hispanic census tracts in those counties. Only 41% of general LIHTC units are in majority White non-Hispanic census tracts in those counties.

Allocating any substantial part of the area's 9% tax credit share to Qualified Elderly designated LIHTC unit in Collin and Denton counties will exacerbate and perpetuate racial segregation in the General designated units. There are still 19,511 General tax credit units in the City of Dallas minority concentrated areas as of 2013. This is 97% of the General LIHTC units in the City of Dallas. TDHCA Property Inventory, January 2014.

If TDHCA chooses to eliminate the Qualified Elderly eligibility restriction for Collin and Denton counties, TDHCA should also eliminate the Opportunity Index points, educational excellence points, and the Opportunity Index basis boost for Qualified Elderly restricted unit applications in Collin and Denton counties. Adding these points to the already favored, White non-Hispanic occupied Qualified Elderly units so that more of these projects can be developed in White non-Hispanic areas shoves the predominantly minority occupied General units to the bottom of the list. This is clear. If awarded these points, Qualified Elderly restricted LIHTC units are likely to duplicate the earlier disproportionate allocation of housing tax credits to elderly units in majority White non-Hispanic areas compared to non-elderly units in those tracts. See above finding in *ICP v. TDHCA*.

**Comment on some Proposed Uniform Multifamily Rules.**

ICP supports the proposed changes in 10.101(a)(3).

ICP supports the proposed site and area eligibility restrictions based on conditions of

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renter LIHTC units are elderly. TDHCA, 2013 Housing Sponsor Report, pages 104-111,166-177.

<sup>3</sup> The CHAS data and TDHCA Inventory data are set out in the attached EXCEL file "CHAS 0711 Collin Denton Combined Table 7 Housing Cost Burden 30 and Perc of HAMFI 50.xlsx."

slum and blight in 10.101(a)(4)(A), (B), (C), (D).

### **Poverty rate indicator**

The use of the 35% poverty as indicator for further review is needed to prevent further concentrations of LIHTC units in racially concentrated areas of poverty in the Dallas area. Proposed 10.101(a)(4)(B)(i).

The harm to children and other persons from living in concentrated poverty is indisputable.

Of the nearly 3,800 census tracts in this country where more than 40 percent of the population is below the poverty line, about 3,000 (78 percent) are also predominantly minority. Racially or ethnically concentrated areas of poverty merit special attention because the costs they impose extend far beyond their residents, who suffer due to their limited access to high-quality educational opportunities, stable employment, and other prospects for economic success. Because of their high levels of unemployment, capital disinvestment, and other stressors, these neighborhoods often experience a range of negative outcomes such as exposure to poverty, heightened levels of crime, negative environmental health hazards, low educational attainment, and other challenges that require extra attention and resources from the larger communities of which they are a part. Consequently, interventions that result in reducing racially and ethnically concentrated areas of poverty hold the promise of providing benefits that assist both residents and their communities. HUD, Affirmatively Furthering Fair Housing, 78 Fed. Reg. 43710, 43714, July 19, 2013.

In the City of Dallas, the LIHTC units are already disproportionately concentrated in census tracts with poverty rates 35% and higher. 33% of the LIHTC General units in the City of Dallas are in such tracts. The attached maps show the location of LIHTC units in areas of minority concentrations, high poverty and high U.S. Treasury Department's distress indicators.

The presence of LIHTC units in high poverty tracts has not led to decrease in poverty or to an improvement in the neighborhood conditions of slum, blight and distress in those tracts. The poverty rate increased in 15 of 17 total 40% and greater poverty tracts in the City of Dallas with LIHTC units from 2000 to 2012.<sup>4</sup> The neighborhoods remain blighted, distressed, and

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<sup>4</sup> In only two of these tracts with these high poverty rates has the poverty level decreased from 2000 to 2012. In U.S. Census 2000 census tract 102, with 152 tax credit units, the poverty rate decreased from 79% in 2000 to 59% in 2012 (U.S. Census 2010 census tract 205). In census tract 115, with 511 tax credit units, the poverty rate decreased from 62% in 2000 to 60% in 2012.

minority concentrated low income, high poverty areas. This is shown in the following examples.

- City of Dallas census tract 16 contains the following four LIHTC projects listed by name, year of LIHTC allocation, and total LIHTCs: Bryan Place (1993) (\$294,410), Treymore at Cityplace (1995) (\$4,205,050), Roseland Townhomes (1999) (\$7,765,650), and Roseland Estates (2002) (\$6,384,880). The tract is 38% White not Hispanic. The poverty rate for this tract increased from 28% in U.S. Census 2000 to over 40% in ACS 2005-09 through 2008-2012 American Community Survey 5-Year Estimates (ACS 2008-2012), with a high of 46% in 2006-2010 American Community Survey 5-Year Estimates (ACS 2006-2010). Housing choice vouchers are 34% of renter occupied units in this tract. The LIHTC units are 39% of renter occupied units in this tract. The CDFI Distress Indicator Index for the tract is the most distressed, level 4. The City of Dallas blight indicator<sup>5</sup> shows that 80% or more of the housing units in the census tract are blighted. The UNT composite Blight indicator<sup>6</sup> for the census tract is 4, Blighted.
- City of Dallas census tract 27.01 contains three properties that received LIHTC allocations: Frazier Fellowship (2004) (\$5,537,800), Wahoo Frazier Townhomes (2005) (\$9,259,600), and Mill City Parc (2006) (\$5,300,000). The percent White not Hispanic population remained the same, 1%, from Census 2000 to Census 2010. The population of the tract decreased by 25% from Census 2000 to Census

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<sup>5</sup> The City of Dallas established several criteria to determine the extent of adverse neighborhood characteristics such as the percent of blighted units, crime levels, and tax foreclosed properties. The City applied these criteria to the Community Development Block Grant eligible census tracts as of October 2012. City of Dallas, "LIHTC & Neighborhood Investment Program Updates, A Briefing to the Housing Committee," Housing Community Services Department, October 15, 2012, page 35. The rankings for various characteristics for specific census tracts referred to as City of Dallas blight indicators are from this City of Dallas report and underlying data analysis.

<sup>6</sup> The Dallas Area Habitat for Humanity commissioned a report by the University of North Texas Department of Public Administration to determine the impact of blight on neighborhoods in the City of Dallas. The report was released on July 12, 2013. Department of Public Administration University of North Texas, From Blight to Light Assessing Blight in the City of Dallas Final Report 07/12/2013. The report collected and analyzed data on a variety of blight related characteristics and calculated an overall blight Composite Index indicator for each census tract in the City of Dallas. This indicator ranged from 1 if no blight to 3 if "Moderate Blight" and 4 if "Blighted". The indicators included factors such as conditions of structures, foreclosures, demolitions, crime, tax delinquencies, and demographic factors of each census tract. The data used was local or national government data. Blight, pages 22-40. The UNT Blight indicators cited in this comment are taken from this report.

2010. The percent below poverty fluctuated between 54% in Census 2000 to 63% in ACS 2008-12, with a high of 71% in ACS 2006-10. Housing choice vouchers are 50% of renter occupied units, and the LIHTC units are 43% of renter occupied units in the tract. The CDFI Distress Index is level 4. The UNT composite Blight indicator for the census tract is 4, Blighted.

- City of Dallas census tract 93.04 contains four LIHTCs: Las Lomas (1996) (\$3,853,040), Rosemont at Pemberton Hill (2001) (\$8,373,640), Grove Village (2004) (\$4,023,290), and Pleasant Village (2004) (\$3,701,520). The percent White not Hispanic for the tract decreased by 1%, from 3% in Census 2000 to 2% in Census 2010. The poverty rate for the tract was 43% in Census 2000 and increased to a high of 61% in 2007-2011 American Community Survey 5-Year Estimates (ACS 2007-11). Housing choice vouchers are 43% of renter occupied units, and the LIHTC units are 64% of renter occupied units in the tract. The CDFI Distress Index is level 4. The City of Dallas blight indicator shows that 70% to 79% of the structures are blighted. The UNT Composite Blight indicator for the census tract is 4, Blighted.

- City of Dallas census tract 166.05 contains five LIHTCs: Greens of Hickory Trail (1998) (\$6,342,040), Rosemont at Timbercreek (2001) (\$5,557,570), Hickory Trace (2002) (\$7,627,500), Rose Court at Thorntree (2002) (\$11,112,760), and West Virginia Apartments (2003) (\$6,869,610). The percent White not Hispanic population in the tract declined by 19%, from 27% in Census 2000 to 8% in Census 2010. The poverty rate increased from 20% in Census 2000 to 37% in ACS 2006-10, with a high of 39% in ACS 2007-11. Housing choice vouchers are 32% of renter occupied units, and the LIHTC units are 45% of renter occupied units. The CDFI Distress Indicator Index is level 4. The City of Dallas blight indicator shows that 70% to 79% of the structures are blighted. The UNT Composite Blight indicator for the census tract is 4, Blighted.

TDHCA's standard requires at least additional analysis for LIHTC units proposed in high poverty locations. This is appropriate given the existing concentrations of LIHTC units in high poverty and minority concentrated areas.

### **Crime indicator**

ICP supports the use of the Crime indicator to require further review as a condition of eligibility. Proposed 10.101(a)(4)(B)(ii).

High crime rates are an obvious and much used source of information on the viability of a neighborhood. For example, HUD requires an analysis of the crime rate in the area of proposed HUD insured mortgages.

This includes a review of the crime rate in the area, its impact on the proposal and how the impact, if any, can be addressed through design or staffing. HUD,

Multifamily Accelerated Processing (MAP) Guide, page 12 of 51.

Property insurance companies certainly use crime statistics data providers in determining risks from neighborhood crime. See <http://www.corelogic.com/products/crime-risk.aspx>; <http://www.locationinc.com/crime-risk-data>.

TDHCA's proposed use of neighborhoodscout.com as the basis for the indicator for additional analysis based on crime rates is appropriate. This is a third party source in the business of providing crime and other information for use in housing related decisions. The indicator does not on its own determine eligibility but only the need to look at more information. The existing overconcentration of LIHTC family units in racially or ethnically concentrated areas of poverty could have been prevented by the use of the indicator and the subsequent review triggered by the cutoff of a safety index far below 40. The average neighborhoodscout.com crime index for the General LIHTC projects in the City of Dallas is 16.8. TDHCA may want to consider the use of a indicator number lower than 40 in order to mitigate the objections to the use of any index or indicator. Evidence of high crime rates shown by police department crime and offense reports should also be included as an indicator of the need for additional analysis.

### **Environmental indicator**

ICP supports the use of the presence of facilities listed on the databases and within the ASTM-required search distances. 10.101(a)(4)(B)(iii). ICP suggests that TDHCA also include the data base of TCEQ voluntary cleanup sites. State voluntary cleanup sites are already part of the ATSM E1527 - 13 8.2.1 Standard Federal, State, and Tribal Environmental Record Sources for review. Many hazardous areas avoid listing on the federal databases by entering the TCEQ Voluntary Cleanup program. The governing federal regulation on the review needed to establish the innocent landowner defense also includes these state records. 40 CFR § 312.26. There is no reason not to subject sites located within .5 mile from such hazardous areas to the heightened review provided in 10.101(a)(4)(C) and (D).

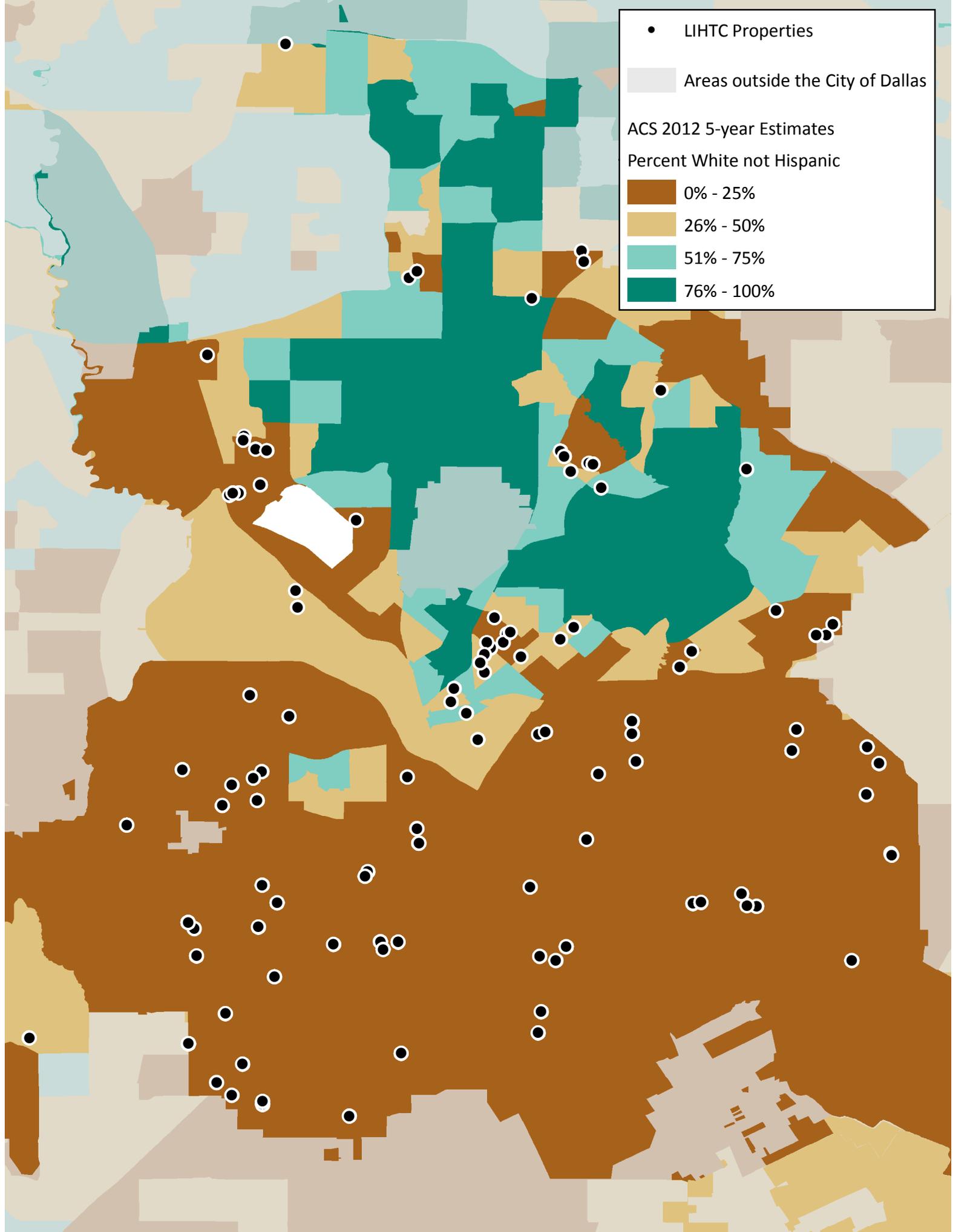
Had this or a similar standard been in effect, LIHTC projects in high poverty, minority concentrated areas within the specified distances would have been subject to heightened scrutiny. Examples of these LIHTC projects include Arbor Woods, Ewing Villas, and Taylor Farms.

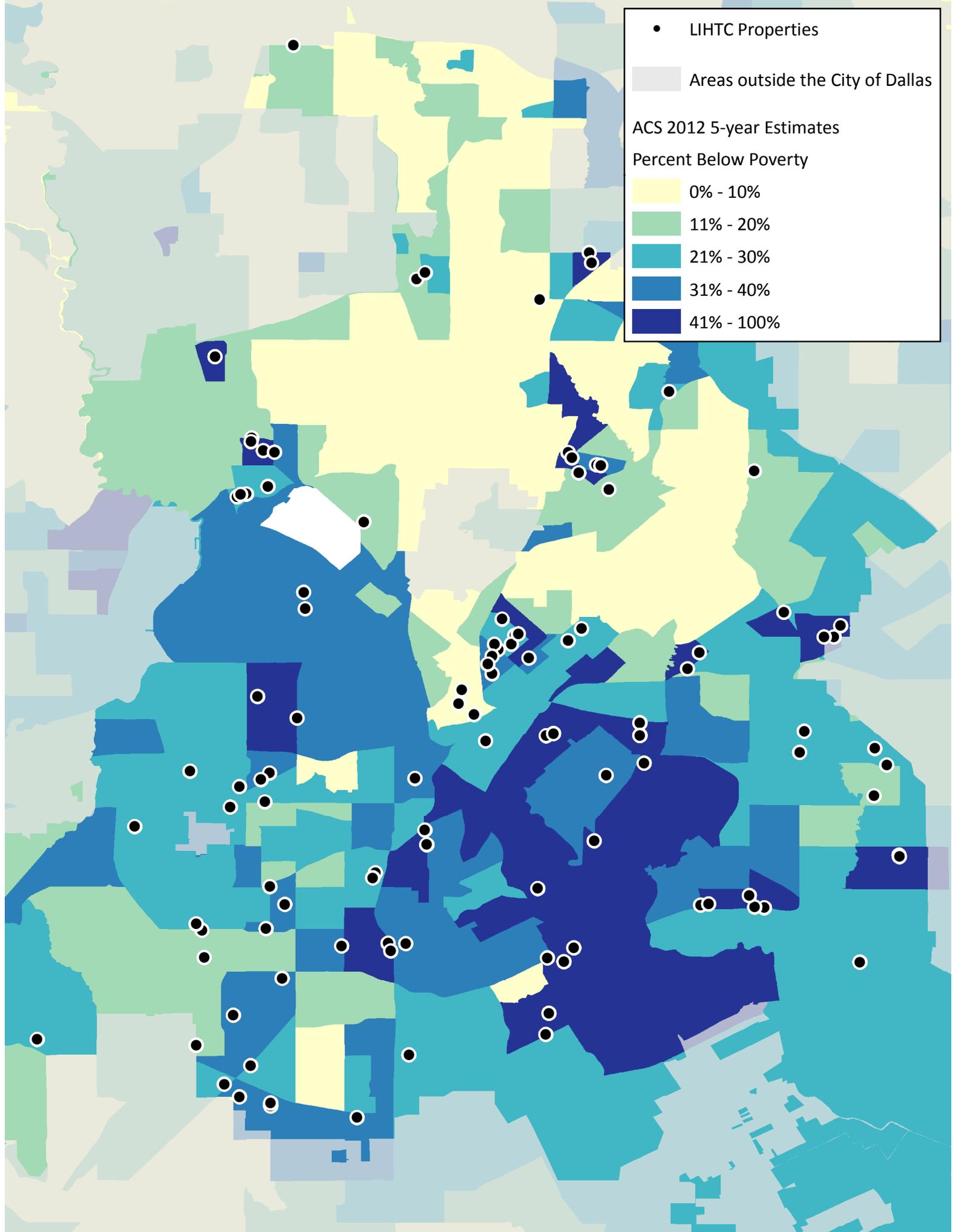
Michael M Daniel  
Laura B. Beshara

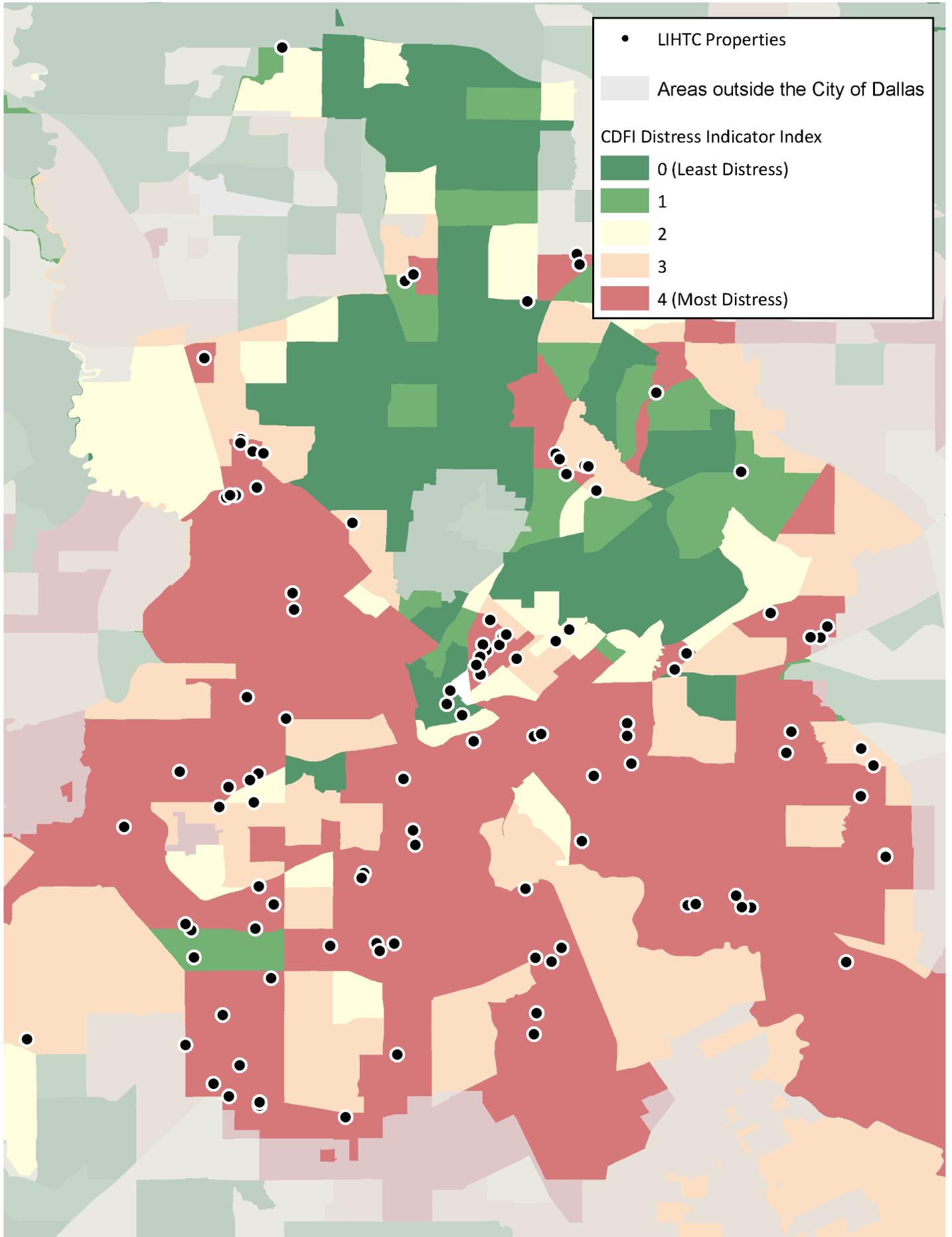
<i>live version: see sheet "CHAS Table 7", AW1:BA7</i>	Collin and Denton Counties	All Renter Occupied	All with HH Income <=50% of HAMFI	AND housing cost burden is greater than 30%	As Perc of All with HH Inc <50% and Cost Burden >30%	<i>live version: see sheet "2014 Collin Denton Inventory", V1:AC13</i>
	Large & Small Family	73990	18545	16630	42%	
	Non-Family Non-Elderly	71035	19385	18425	46%	
	All General	145025	37930	35055	88%	
	Elderly Family	4870	1100	845	2%	
	Elderly Non-Family	10295	4570	3900	10%	
	All Elderly	15165	5670	4745	12%	
	Total			39800		
Set 1	Elderly as Perc of Renter Occupied w <50% of HAMFI and Housing Cost Burden >30%	12%				
	Elderly as Perc of All Units	28%				
	Elderly as Perc of All Units in Maj White Tracts	34%				
Set 2	General as Perc of Renter Occupied w <50% of HAMFI and Housing Cost Burden >30%	88%				
	General as Perc of All Units	72%				
	General as Perc of All Units in Maj White Tracts	66%				
Set 3	Perc of All Units in Maj White Tracts	44%				
	Perc of Elderly Units in Maj White Tracts	53%				
	Perc of General Units in Maj White Tracts	41%				
Set 4	Perc of All Units in Non Maj White Tracts	56%				
	Perc of Elderly Units in Non Maj White Tracts	47%				
	Perc of General Units in Non Maj White Tracts	59%				
Set 1	All Renter Occupied w <50% of HAMFI and Housing Cost Burden >30%	39800				
	Elderly Renter Occupied w <50% of HAMFI and Housing Cost Burden >30%	4745				
	Elderly as Perc of Renter Occupied w <50% of HAMFI and Housing Cost Burden >30%	12%				
	Total Units	8814				
	Elderly Units	2474				
	Elderly as Perc of All Units	28%				
	Total Units in Maj White Tracts	3891				
	Elderly Units in Maj White Tracts	1318				
	Elderly as Perc of All Units in Maj White Tracts	34%				
Set 2	All Renter Occupied w <50% of HAMFI and Housing Cost Burden >30%	39800				
	General Renter Occupied w <50% of HAMFI and Housing Cost Burden >30%	35055				
	General as Perc of Renter Occupied w <50% of HAMFI and Housing Cost Burden >30%	88%				
	Total Units	8814				
	General Units	6340				
	General as Perc of All Units	72%				
	Total Units in Maj White Tracts	3891				
	General Units in Maj White Tracts	2573				
	General as Perc of All Units in Maj White Tracts	66%				
Set 3	Total Units	8814				
	Units in Maj White Tracts	3891				
	Perc of All Units in Maj White Tracts	44%				
	Elderly Units	2474				
	Elderly Units in Maj White Tracts	1318				
	Perc of Elderly Units in Maj White Tracts	53%				
	General Units	6340				
	General Units in Maj White Tracts	2573				
	Perc of General Units in Maj White Tracts	41%				
Set 4	Total Units	8814				
	Units in Non Maj White Tracts	4923				
	Perc of All Units in Non Maj White Tracts	56%				
	Elderly Units	2474				
	Elderly Units in Non Maj White Tracts	1156				
	Perc of Elderly Units in Non Maj White Tracts	47%				
	General Units	6340				

General Units in Non Maj White Tracts	3767				
Perc of General Units in Non Maj White Tracts	59%				









## (33) Foundation Communities



3036 South First Street  
Austin, TX 78704

October 20, 2014

tel: 512-447-2026  
fax: 512-447-0288

www.foundcom.org

Jean Latsha  
Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, TX 78711-3941

Dear Jean:

Thank you for the opportunity to comment on the DRAFT 2015 Housing Tax Credit Draft Qualified Allocation Plan and Multifamily Rules. We very much appreciate the TDHCA staff for their careful thought and collaboration regarding potential changes to the QAP and rules. We would also like to commend the TDHCA staff for the creative expansion of programs and systems that promote Supportive Housing, green building, targeting of lower incomes, and developments located in urban areas.

In this vein, we want to express our concerns with changes to the QAP or Multifamily Rules that would impact the ability for providers to compete successfully for the development of true Supportive Housing models. Hand in hand, TDHCA and the Supportive Housing advocacy community have worked diligently over the past 10 years to make changes to the QAP and Rules that would encourage the development of Supportive Housing in our state. Foundation Communities, in partnership with TDHCA, has developed four Supportive Housing communities with three more in design and construction. In total, these projects will serve 765 individuals who are chronic homeless, homeless, disabled, and work in low wage jobs. This number seems substantial, but not in relation to overall need across the State. We make this plea to not advance our own cause, but to protect the ability for other quality providers to add to the State's Supportive Housing stock.

We have three main comments on the QAP that we feel have an extreme impact on the 9% LIHTC Program. Please find our comments below:

1. **Section 11.9(c)(7) – Tenant Populations with Special Housing Needs** – We strongly urge TDHCA to reconsider the eligibility of Supportive Housing to provide units for the Section 811 program under Section 11.9(c)(7)(A). While some have argued that Supportive Housing may have an advantage for the provision of Section 811 units, the exact opposite is true. Upon analyzing all of Supportive Housing communities in Foundation Communities' portfolio, we have found that not one, otherwise eligible property, would qualify to provide Section 811 units due to violation of the Integrated Housing Max Percentage of 25% that will be placed on Supportive Housing for purposes of the 811 Program. According to 10 TAC Section 1.15, Supportive Housing designed for special needs populations is exempt from the Integrated Housing Rule. We understand that the HUD rule does not allow such exemption.



a Partner Agency of



As Supportive Housing with no third party debt, it is critical to seek sources of gap funding from the City of Austin and the Federal Home Loan Bank in addition to TDHCA. Supportive Housing is not financially feasible without these gap sources. All of these funding sources come with their own required set-asides. TDHCA requires units to be set-aside for persons with Special Needs to be competitive, the City of Austin requires units for homeless Persons with Disabilities to be competitive and the Federal Home Loan Bank requires units for PWD to be competitive. If you do not set-aside units, your application is not competitive and therefore not financially feasible.

In addition to units set-aside for funding sources, Foundation Communities also has MOU's in place at each of our properties with a variety of different service agencies for which we set aside units for homeless individuals with a disability.

***PROPOSED SOLUTION: Change Section 11.9(c)(7)(A) to add:***

***(v) The Development must not be a Supportive Housing Development.***

There are two more minor comments that we would like to make on the Section 811 program in regard to the Draft Property Management Agreement Provisions:

- There is a requirement to “make the first initial vacancies available to Section 811 applicants.” With a 9% LIHTC property in lease-up, the goal is to get units tagged for credits as soon as possible to meet projected lease-up. We believe the language is okay as long as the units just need to be “made available” as opposed to “set-aside” for Section 811 applicants.
- We strongly urge TDHCA to make sure vacancy payments are a part of the Section 811 program. We receive vacancy payments for most of our voucher programs and that payment is essential to keep the property revenue in the black. In a market like Austin, our vacancies are immediately leased, so holding units vacant without payment would be a fiscal blow to a property.

2. **Section 11.9(e)(4) – Leveraging of Private, State and Federal Resources** – This category has a major impact on Supportive Housing projects that have no permanent debt. With no debt, a Supportive Housing project must raise the gap between the tax credits awarded and the total development cost. Sources include local, state and federal soft loans/grants, as well as private foundation grants and owner contributions. A Supportive Housing applicant is always going to apply for the maximum amount of credits in order to help bridge the gap that can't be supported with debt. This structure ensures that Supportive Housing will almost always have a larger percentage of tax credits to total development costs.

In the current 2014 QAP, CDBG, HOPE VI, RAD or Choice Neighborhood funding is excepted and allowed to go up to a 9% leverage rate. These projects are eligible for hard debt. It does not seem equitable that these projects are allowed this exception when Supportive Housing is not. Supportive Housing projects must raise their entire gap from sources that often include federal pass-through dollars from the City or State.

We would recommend raising the leveraging percentages by 1 percent for non-profit housing deals and Supportive Housing deals with no permanent debt.

**PROPOSED SOLUTION: Change Section 11.9(e)(4) to read as follows:**

***(A)(i) the Development leverages CDBG Disaster Recovery, Hope VI, RAD or Choice Neighborhoods funding OR the Development is Supportive Housing and the Housing Tax Credit Funding Request is less than 9 percent of the Total Housing Development Cost (3 points).***

3. **Section 11.9(e)(2) – Cost of Development per Square Foot** – We have two comments in this section. First, the removal of the 50 square feet of common area in the cost per square foot calculation for Supportive Housing creates a major disproportion in this category for single room occupancy Supportive Housing. We acknowledge that the 2014 QAP added a separate “high cost development” category that included Supportive Housing, but unfortunately this still does not cover the discrepancy in building costs on a single room occupancy Supportive Housing development versus a general or elderly development. A single room occupancy Supportive Housing development is very typically “elevator-served” so it will already fit the “high cost development” consideration. However, in ADDITION, single room occupancy Supportive Housing will have a higher cost per square foot because the same amount of mechanical, electrical and plumbing goes into a project but the total square feet of the project is much less than a family for elderly project. Each unit is typically less than 500 square feet, but has an individual AC unit, bathroom and kitchen.

We would request that Section 11.9(e)(2) reinstate the common area square footage when calculating the cost per square foot for single room occupancy, Supportive Housing projects.

**PROPOSED SOLUTION: Change Section 11.9(e)(2) to read as follows:**

***(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 twelve (12) points based on either the Building Cost or the Hard Costs per square foot of the proposed Development, as originally submitted in the Application. For purposes of this paragraph, Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Hard Costs will include general contractor overhead, profit, and general requirements. Structured parking or commercial space costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking or commercial construction, as applicable. The square footage used will be the Net Rentable Area (NRA). If the proposed Development is a Supportive Housing Development, the NRA will include 50 square feet of common area per Unit. The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule.***

Second, costs of construction have continued to sky rocket in Austin. Due to the vast difference in construction cost between a four-story, elevator served family product and a single room

occupancy Supportive Housing community, we ask considering making the two categories distinct.

**PROPOSED SOLUTION: Change Section 11.9(e)(2)(B) to read as follows:**

**(B) Applications proposing New Construction or Reconstruction will be eligible for twelve (12) points if one of the following conditions is met:**

- (i) The Building Cost per square foot is less than \$85 per square foot;**
- (ii) The Building Cost per square foot is less than \$95 per square foot, and the Development meets the definition of a high cost development;**
- (iii) The Building Cost per square foot is less than \$125 per square foot, and the Development meets the definition of both a high cost development AND a single room occupancy Supportive Housing development;**
- (iv) The Hard Cost per square foot is less than \$105 per square foot; or**
- (v) The Hard Cost per square foot is less than \$120 per square foot, and the Development meets the definition of high cost development;**
- (vi) The Hard Cost per square foot is less than \$150 per square foot, and the Development meets the definition of both a high cost development AND a single room occupancy Supportive Housing development.**

We have three main comments on the **Uniform Multifamily Rules** that we feel have an extreme impact on the development of Supportive Housing. While the changes may have been well-intended, they would actually impede the ability to develop Supportive Housing. Please find our comments below:

1. **Section 10.3(a)(124) – Supportive Housing** – We feel very strongly in the mantra, “if it ain’t broke, don’t fix it.” We do not feel that the Supportive Housing definition needs a major overhaul. The definition proposed in the draft struck the debt-free language and just left debt that is non-foreclosable or non-cash flow contingent. This language could be problematic since funding from the City of Austin IS foreclosable if affordability restrictions were to be violated. The same is true for funding awarded through the Federal Home Loan Bank. Leaving the debt-free language is a better alternative that catches exceptions of the MULTIPLE funding sources used for Supportive Housing.

**PROPOSED SOLUTION: Change Section 10.3(a)(124) to read as follows:**

**(124) 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 include established funding sources outside of project cash flow that require certain populations be served and/or certain services provided. The developments are expected**

~~to be free of foreclosable debt or have debt that is subject to cash flow repayment~~ **free of permanent debt or have no permanent foreclosable or noncash flow debt.** *A Supportive Housing Development financed with tax-exempt bonds with a project based rental assistance contract for a majority of the Units may be treated as Supportive Housing under all subchapters of this chapter, except Subchapter D of this chapter (relating to Underwriting and Loan Policy). The services offered generally include case management and 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.*

2. **Section 10.101(a)(2)(U-Y) – Mandatory Community Assets** – As a leader in the development of Supportive Housing in Texas, we were surprised to see (U)-(Y) added to the list of Mandatory Community Assets for Supportive Housing. We strongly believe that all Supportive Housing developments should meet (T) – close to public transit. However, being within a mile of (U)-(Y) is not critical. For Supportive Housing, it is having ACCESS to services. For FC’s Supportive Housing communities, most of the services in (U)-(Y) are delivered on-site by partnerships with qualified providers. There are, exceptions, however. For example, Austin Recovery – the primary treatment provider for alcohol and drug addiction – is purposefully located 15 miles out of town to offer solace to those in recovery. Another example is our Skyline Terrace property that is located across the street from Lonestar Circle of Care – a community health center that serves persons of limited financial means. For many of our residents, Lone Star Circle of Care is their medical home and the location is absolutely convenient. However, many of our residents have other medical homes and so being right next to Lone Star Circle of Care is of no benefit to them. What is essential is that we have a bus stop located within walking distance that gives residents easy access to their medical provider.

We are not proposing any change to the language, just pointing out that proximity to services listed in U-Y isn’t as important to residents of Supportive Housing as having ACCESS to those services. FC will likely always choose (T) for our Supportive Housing communities. A negative implication of the list is that a provider is able to meet the assets because they are located within proximity to only one of the services in (U)-(Y), but residents have no public transportation assistance to the other services. Just food for thought.

3. **Section 10.101(b)(7)(R)– Tenant Supportive Services** – While we feel that services in (U) to (Y) are very good additions, we strongly urge staff to consider the changes made to (R) for case management “offered through external, contracted parties.” Foundation Communities has licensed social workers on staff at each of our Supportive Housing communities who are the primary case manager at the property. Changes to this section would preclude us from counting these case managers! At each property, we also have case managers with other partner agencies, but these vary by property. We do not feel that requiring case management to be third-party has any benefit to the actual Supportive Housing residents or do we feel that it further defines the service. Any developer can just as easily contract out for case management and that doesn’t mean the third party provider is providing a more qualified service.

***PROPOSED SOLUTION: Change Section 10.101(b)(7)(R) to read as follows:***

***(R) specific case management services offered by a qualified Owner or Developer or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (1 point);***

We have a few comments that we feel, while important, are not as critical. We also feel that these issues will be picked up by other folks in the developer community with greater detail.

1. In Section 10.101(a)(1) of the Rules, it was added that "All Developments must be able to obtain flood insurance." This statement is very gray. Not sure if it means that all Developments must obtain flood insurance OR that they just have to be able to? If flood insurance is required, it would cost the property between \$2 to \$3k extra a year. Seems like a waste of money if the property is not in a floodplain.
2. Please consider adding 30 year shingle and metal roofs back into Section 10.101(b)(6)(B) Unit and Development Features. We feel these are selections that greatly contribute to the long-term durability of the roofing system which reduces future roofing capital improvements.
3. Somehow limit the number of projects in small communities. For example, not three deals in Alton (or Liberty Hill, or Buda or many other areas).
4. We strongly believe that affordable housing should be built in locations with good transit connectivity and ask that you consider adding a point in urban regions for proximity to public transit. One option may be a point for being in a TOD in areas within Dallas, Fort Worth, San Antonio, Housing and Austin. The TOD's should be designated by the LPS and have a regulating plan or something similar. The regulating plan should outline the area and have specific development guidelines to facilitate TOD development (i.e. mixed-use, high density, parking reductions, pedestrian access, etc.)
5. If you are a rural region that gets the minimum \$500k set aside in credits, then that should be the max allowed for any deal. Each year there are credits lost in the collapse (and therefore to urban areas) to fund deals in these regions that are substantially over the \$500k. In theory, statute already "over" allocates to these rural regions by establishing the \$500k minimum.
6. Cap at-risk deals at \$1.5M. Just one \$2M at-risk deal can pull substantially from the collapse and therefore impacting urban areas.

Thanks so much for your time and consideration of our comments. Please do not hesitate to contact our team with any questions.

Sincerely,



Jennifer Hicks

*Director of Housing Finance*

# (34) New Hope Housing



October 20, 2014

Ms. Jean Latsha  
Texas Department of Housing and Community Affairs  
P. O. Box 13941  
Austin, Texas 78711-3941  
*Sent via email*

Dear Jean,

This letter brings with it my appreciation and that of New Hope Housing's Board of Directors and staff. Because of the Department's support for Supportive Housing, we have been able to build 635 single room occupancy (SRO) studio apartments in four buildings with tax credit financing and 133 SRO units in 2005 with the TDHCA's HOME program. Through the Department's financing, we are able to offer housing + services to Houston's neediest citizens, those who would otherwise be without appropriate housing or any housing at all.

As a two decade provider of Supportive Housing, working with the most challenging populations, we look forward to a continued, fruitful relationship with the TDHCA. New Hope is building a permanent institution and intends to place hundreds of additional units on the ground, shattering the stereotype of affordable, supportive housing and having a real human impact.

As always, we confer with Foundation Communities (FC), whose mission is similar to ours. I wish to state my support of the letter sent to you by Jennifer Hicks, Director of Housing Finance for FC.

Please accept New Hope's comments on the 2015 Qualified Allocation Plan and Multifamily Rules.

#### **1. Definition of Supportive Housing**

We join Coats Rose and Foundation Communities in proposing the following definition:

Proposed Language:

*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 include established funding sources outside of project cash flow that require certain populations be served and/or certain services provided. The developments are expected to be ~~free of foreclosable debt or have debt that is subject to cash flow repayment debt free, or have no permanent foreclosable or noncash flow debt.~~ A Supportive Housing Development financed with tax-exempt bonds with a project based rental assistance contract for a majority of the Units may be treated as Supportive Housing under all subchapters of this chapter, except Subchapter D of this chapter (relating to Underwriting and Loan Policy). The services offered generally include case management and 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.*

**2. Undesirable Neighborhood Characteristics – Removal of Neighborhood Scout**

We request that the Neighborhood Scout Crime Index score be removed entirely from Undesirable Neighborhood Characteristics, which in our opinion does not serve the intended purpose.

New Hope staff spent considerable time reviewing the capability of Neighborhood Scout and has come to the conclusion that it does not look at a neighborhood holistically. For example, we have tested zip codes and addresses, which would otherwise be considered ‘High Opportunity,’ and we found that even those neighborhoods did not score a 40 or higher on the crime index. In fact, not one single neighborhood, where any of our own executive staff live, scores above a 40. Additionally, the crime index is well below 40 in the affluent Houston inner-loop neighborhood of South Shepherd Drive & Inwood Drive in the 77019 zip code, where the median home price is nearly \$1,000,000.

**3. Section 11.9(c)(7) – Tenant Populations with Special Housing Needs – Section 811**

We request that the 811 program be removed from the scoring criteria entirely to allow interested and willing developers to apply under a separate NOFA. Should the Department elect to keep the 811 program as part of the 2015 9% cycle, we request that Supportive Housing be exempt from this requirement.

Supportive Housing developments already serve vulnerable populations, among them those populations served by the 811 program. We *implore the Department* to add language to the QAP that removes supportive housing from this requirement. We join with Foundation Communities in offering this proposed language:

*(v) The Development must not be a Supportive Housing Development*

Supportive Housing is inherently incompatible with the Section 811 program. We conducted a detailed analysis of our portfolio of seven developments. We found that we currently have no qualifying communities. Each of our properties meets the amenities requirement, and would have the appropriate services to bolster what is offered to residents by the 811 Program. However, each complex exceeds the 811 Integrated Housing Maximum Percentage of 25%.

We have a moral obligation to residents who have deep needs, and we must not disregard our service partners in the community who depend on our units for placement of their clients and who use specialized HUD funding to do so. Additionally, the City of Houston’s Permanent Supportive Housing program is a nationally recognized initiative that we feel compelled to participate in through our mission.

In addition, a supportive housing project would be financially infeasible without the ability to gap fill with Federal Home Loan Bank and other federal funding through the Local Participating Jurisdictions, each of which have their own competitive set aside requirements.

**4. Section 11.9(e)(2) – Cost of Development per Square Foot**

In recent years the cost of multifamily development in Texas has risen dramatically, particularly in the major cities. Even the for-profit multifamily giant, Camden Living, is challenged to keep their long standing subcontractors on their own jobs because of the housing boom and the increase in labor costs. As a direct result of this activity, overall costs are escalating. Houston has seen a

dramatic 20% increase in multifamily construction costs over the past two years and will likely see a .75% rise each month over the coming twelve months.

As a result of these increases, Supportive Housing is at an even greater disadvantage. With significantly larger than average community spaces, increased numbers of offices, and resident-centered amenities – all designed to help keep the vulnerable individuals and families stably housed – we respectfully request the Department to reinstate the 50 additional square feet per unit in the Net Rentable Area for Supportive Housing.

We support the addition of the following language, drafted by Foundation Communities:

***Section 11.9(e)(2) addition:***

***If the proposed Development is a Supportive Housing Development, the NRA will include 50 square feet of common area per Unit.***

Below is our recommendation based on recent pricing projections of new construction by Camden Builders.

***Section 11.9(e)(2)(B)***

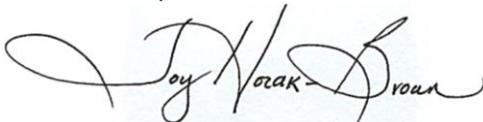
***(B) Applications proposing New Construction or Reconstruction will be eligible for twelve (12) points if one of the following conditions is met:***

- (i) The Building Cost per square foot is less than \$90 per square foot;***
- (ii) The Building Cost per square foot is less than \$95 per square foot, and the Development meets the definition of a high cost development;***
- (iii) The Building Cost per square foot is less than \$125 per square foot, and the Development meets the definition of both a high cost development AND a single room occupancy Supportive Housing development;***
- (iv) The Hard Cost per square foot is less than \$110 per square foot; or***
- (v) The Hard Cost per square foot is less than \$120 per square foot, and the Development meets the definition of high cost development;***

***The Hard Cost per square foot is less than \$150 per square foot, and the Development meets the definition of both a high cost development AND a single room occupancy Supportive Housing development.***

Thank you in advance for carefully considering these comments.

Sincerely,

A handwritten signature in black ink that reads "Joy Horak-Brown". The signature is fluid and cursive, with the first name "Joy" being the most prominent.

Joy Horak-Brown  
Executive Director

(35) Cheryl Worth

**From:** [cherylworth1@aol.com](mailto:cherylworth1@aol.com)  
**To:** [Teresa.Morales@tdhca.state.tx.us](mailto:Teresa.Morales@tdhca.state.tx.us)  
**Subject:** 2015 QAP for HTC - public comment  
**Date:** Monday, October 20, 2014 2:58:11 PM

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2015 QAP for HTC  
public comment

I have done over 100 hours of research in relation to the Housing Tax Credit program. I have spoken with HUD representatives and TDHCA representatives. The HTC program effected me personally. It has had a detrimental impact on myself and my family. Any development receiving HTC should be made by law to comply with the federal Uniform Relocation Act.

Currently, developers that receive HTC funds alone are not required to comply with the federal Uniform Relocation Act of 1970 (URA). The HUD website summarizes the objectives of URA. It applies to persons "displaced in connection with federally funded projects." "To ensure relocation assistance is provided to displaced persons to lessen the emotional and financial impact of displacement." It is my understanding that the exemption is due to tax credits being considered indirect funding. Direct funding versus indirect funding. Both types of funding are of value to the developer, otherwise they would not attempt the project. It is a play on words that plays with peoples lives.

Developments that receive only HTC and displace persons, especially persons who are low income, negates the purpose of HTC. The TDHCA website states that the HTC program is designed to promote the "development and preservation of affordable rental housing for low income households." If a developer is not required by law to comply with URA, then they will not do the right thing out of the kindness of their heart. These developments are orchestrated to make the highest profit possible.

If they are not required to comply with URA, then it creates a domino effect in which those low income households who are financially harmed due to the displacement seek out federal assistance or seek additional federal assistance programs. It adds unnecessary stress on programs that have finite means. I myself reached out for assistance after my displacement and was told by multiple agencies that funding had been completely exhausted and no help was available. The developer directly benefits from my financial loss and HTC exemption from URA was the catalyst.

Numerous studies have been done that shed light on the ramifications of displaced families. "Involuntary resettlement . . . may cause severe long term hardship, impoverishment..." (Brookings.edu) There will be ramifications for years to come. CDC.gov has an article entitled "Health Effects of Gentrification". Gentrification can cause long term residents to be displaced. Special populations such as the poor, elderly, minorities, women, and children are at "increased risk for negative consequences . . . these populations have an unequal share of residential exposure to hazardous substances such as lead paint. Other health effects include limited access to or availability of the following: affordable healthy housing, healthy food choices, transportation choices, quality schools, bicycle and walking paths, exercise facilities, etc., social networks. Changes can also occur in: stress levels, injuries, violence and crime, mental health." URA was created to protect and as a measure to prevent the negative consequences of displacement. However, there is a huge loop hole that developers have found. Developers get rewarded for displacing persons when they are awarded HTC by THDCA (if they are only applying for HTC).

Although not required by federal law, URA needs to be applicable to HTC. TDHCA needs to take action to protect existing low income housing. I propose that 2015 QAP immediately begin implementation of 100% compliance with URA for any HTC funds that are awarded.

My displacement has been one of the most difficult events of my life. I do not want anyone else to experience this kind of unnecessary loss. Please consider making this change to how Texas protects its communities and citizens.

Thank you,

C. Worth

(36) S Anderson Consulting

October 19, 2014

Teresa Morales  
Texas Department of Housing and Community Affairs  
221 E 11<sup>th</sup> St  
Austin, TX 78701

RE: Comments on Proposed 2015 Multifamily Rules and QAP

Dear Ms. Morales:

Thank you for the opportunity to provide comment on the proposed 2015 TDHCA Multifamily Rules and QAP. Please see my comments below.

### **Uniform Multifamily Rules**

#### **Section 10.3 Definitions (19) Colonia**

The proposed definition is still too subjective and in fact could become even broader with the addition of the “two (2) square miles” language. As evidenced in the 2014 application round and challenge process, there was conflicting documentation from the same source as to whether an undeveloped proposed application site had the “characteristics of a Colonia.” I suggest that staff further clarify this item. One suggestion would be to adopt language that would consider a site to have the “characteristics of a Colonia” if it is located within 50 feet, boundary to boundary, of an existing Colonia as recorded and mapped by the Texas Office of the Attorney General. Such a definition would not have any subjectivity and would be clear for staff to review.

#### **Section 10.101(a)(3) Undesirable Site Features**

Under item (C), please clarify “fuel storage facilities.” This could include anything from a gas station to farms to businesses that store propane for their own use on the premises. It would be helpful to describe what type of “fuels” would be considered dangerous and how much defines a “facility.” Furthermore, in cases where a property encompasses many acres but the fuel storage is contained on a small section of the property, I suggest that this item be revised to measure from the proposed development site to the actual fuel storage tanks.

Under item (D), the use of “potentially hazardous” is very broad and could invite challenges.

Under item (I), as written, any pipeline located on a site would deem the site unacceptable due to the “unless the pipeline is natural gas” language. TDHCA has historically been unconcerned with natural gas, crude, or petroleum pipelines. Considering that HUD does not consider underground pipelines that transmit hazardous substances to be a hazard under 24 CFR Part 51 Subpart C if they comply with applicable safety standards, I question why TDHCA is completely eliminating all such sites. I understand there are concerns about pipelines that carry highly volatile liquids (HVLs), and suggest that, if TDHCA feels that it must include such an ineligibility item, that it only pertain to sites that carry highly volatile liquids (HVLs).

#### **Section 10.101(a)(4) Undesirable Neighborhood Characteristics**

Under section (B), I would ask for consideration for any “high opportunity” tracts that might exhibit such characteristics.

Under item (B)(ii), I strongly object to the use of a third-party, proprietary, and costly crime assessment tool that appears to be based on a nationwide comparison with unknown parameters and seemingly does not consider differences between urban, rural, and border areas. Neighborhoodscout.com gives the cities of Austin and Houston a “5” out of “100” crime index while “high opportunity” census tracts in the Houston area have crime indexes in the low 20s. I commend TDHCA’s consideration of crime data in the QAP; however, this item should be more thoroughly studied. A quartile system based on regions or MSA and county areas similar to the opportunity index would be an option.

### **Section 10.101(b)(5)(C)(xxxi)(I)(-b-) Limited Green Amenities**

I propose that this section be revised to read “native and adaptive trees and plants” and also specify a percentage for all landscaping installed on the property, such as 75%.

### **Section 10.101(b)(6)(B) Unit and Development Features**

I am concerned about the deletion of choices for this point item with no new options. The loss of those two selections, including a selection worth 2 points, now will force many applicants to choose a feature that has specific long term operating expenses such as in-unit washers and dryers or high speed internet. I suggest that the deleted items be reinstated or additional options that do not require specific yearly operating costs be added.

### **Section 10.203 Public Notifications**

Would like to see re-notification only be triggered by a change in density that results in an increase in density. We do not believe that a decrease in density is something that would concern the community and rise to the level of necessitating additional notification.

*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 or a 5 percent increase in density (calculated as units per acre) as a result of a change in the size of the Development Site.*

### **Qualified Allocation Plan**

#### **Section 11.4(a) Credit Amount**

Currently, an entity or individual listed as having no more than 10% developer fee of an application is not required to include that application’s credit request in the \$3 million calculation. I propose the language be changed to require any developer or applicant, regardless of percentage of developer fee or ownership, that is using its experience certificate in an application be required to include that application’s credit request in the \$3 million calculation.

#### **Section 11.8(b)(2)(A) Notifications Certification**

This section currently states that, for the pre-application, “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 as of the date of pre-application submission.” I propose that the language “as provided by the local elected officials, or that the Applicant has knowledge of as of the date of pre-application submission” be deleted completely because the requirement to request a list from the local officials was deleted prior to 2014 and the governing statute only requires notification of entities on record with the county or state (not whether the application has knowledge of any). Furthermore, the question of whether an Applicant had knowledge of a specific neighborhood organization was the subject of a 2014 challenge and staff’s determination was ultimately decided on whether the organization was “on record” per statute.

#### **Section 11.9(c)(4) Opportunity Index**

I agree with the current language that requires an elementary rating of 77 or greater for certain point selections. This is based on the current TEA average and the use of another number would be arbitrary.

#### **Section 11.9(c)(5) Educational Excellence**

I agree with the current language that requires an elementary rating of 77 or greater for certain point selections. This is based on the current TEA average and the use of another number would be arbitrary.

#### **Section 11.9(c)(7)(A) Tenant Populations with Special Housing Needs**

I request that any unit requirements for the Section 811 program be at a level that does not require Davis-Bacon, such as 8 units. The addition of Davis-Bacon will have a profound impact on construction costs and require more Housing Tax Credits for proposed developments than would otherwise be required, potentially leading to fewer awards and less geographical distribution of credits.

**Section 11.9(d)(2)(B) Commitment of Development Funding by Local Political Subdivision**

The funding amount multipliers based on population should be lowered. A city such as Frisco will not have the same financial resources as a city such as Dallas or Houston; however, they would need the same amount of funding under this point item as currently proposed. A multiplier of 0.06 would require a city of 250,000 or more to contribute \$15,000 per unit, which would make more sense than a city of 100,000 at a multiplier of 0.15. See proposed multipliers below:

(B) 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 Site's Rural or Urban Area designation is derived.

(i) eleven (11) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of ~~0.15~~ 0.06 in funding per Low Income Unit or \$15,000 in funding per Low Income Unit;

(ii) ten (10) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of ~~0.10~~ 0.04 in funding per Low Income Unit or \$10,000 in funding per Low Income Unit;

(iii) nine (9) points for a commitment by a Local Political Subdivision of the lesser of population of the Place multiplied by a factor of ~~0.05~~ 0.02 in funding per Low Income Unit or \$5,000 in funding per Low Income Unit;

(iv) eight (8) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of ~~0.025~~ 0.004 in funding per Low Income Unit or \$1,000 in funding per Low Income Unit; or

(v) seven (7) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of ~~0.01~~ 0.002 in funding per Low Income Unit or \$500 in funding per Low Income Unit.

Thank you for your consideration. Please contact me with any questions.

Regards,



Sarah Anderson  
S Anderson Consulting  
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## (37) Versa Development



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## MEMORANDUM

**TO:** Texas Department of Housing and Community Affairs  
**FROM:** Cynthia Bast  
**DATE:** October 20, 2014  
**RE:** PUBLIC COMMENTS ON RULES – **CHAPTER 11, QUALIFIED ALLOCATION PLAN**

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On behalf of **Versa Development Corporation**, please find comments to draft Chapter 11, Texas Administrative Code (“**TAC**”), Qualified Allocation Plan.

### **Section 11.6(5)**

**Issue:** We sincerely appreciate TDHCA's recognition that certain events, beyond an owner's control, should allow an owner to return tax credits for reallocation. However, as currently drafted, the proposed language in the "Force Majeure" definition would not capture the delays and hardships resulting from the extreme labor shortages in today's market. These shortages are well-documented. See, for instance, the article attached to this memorandum. In addition, other legitimate "force majeure" events are not captured in the definition, as currently drafted.

### **Recommended Change:**

TDHCA has a definition of "force majeure" that it uses in its HOME program activities. This definition is more inclusive and should be applied in the context of Section 11.6(5) of the QAP, as well. For draft language, please see attached.

### **Reasoning:**

TDHCA recognizes the benefit of rules, consistently applied across various programs, by adoption of the Uniform Multifamily Rules. The use of the proposed definition, already employed in the HOME program, would be in harmony with this stance. It is important to note that, with a broader definition, it will give TDHCA more flexibility to offer relief to those owners who truly deserve it. Ultimately, TDHCA retains the discretion on awarding the relief, so a broader definition will not open the door to abuse, without TDHCA's acquiescence.

**Current Proposed language for QAP Section 11.6(5):**

Force Majeure events are sudden and unforeseen fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events. Force Majeure events must make construction activity impossible or materially impede its progress for a duration of at least 90 days, whether consecutive or not.

**Language currently used in TDHCA's HOME Loan Agreement:**

A Force Majeure Event shall include, but not be limited to: acts of God; fire, explosion; vandalism; storm or similar occurrences; orders or acts of military authority; litigation; changes in law, rules or regulations outside the control of the affected party; national emergencies or insurrections; riots; acts of terrorism; supplier failures; or shortages.

**Proposed revised text for QAP Section 11.6(5):**

Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner: acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; litigation; changes in law, rules, or regulations, national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. Additionally, for a Development using HOME or CDBG funds and subject to Section 3, delays resulting from governmental administration or failure to act. Force Majeure events must make construction activity impossible or materially impede its progress ~~for a duration of at least 90 days, whether consecutive or not.~~

<http://www.propertymanagementinsider.com/multifamily-texas-update-apartment-executives-focus-next-wave-texas>

# Multifamily Texas Update: Apartment Executives Focus on the Next Wave in Texas



By [Tim Blackwell](#) | Sep 24, 2014

With a strong cycle behind, apartment executives focus on the next wave in Texas.

The Texas apartment industry's recent turn signaled optimism that high demand will continue for the next few years.

Industry leaders offered updates on leasing, management, and operations at September's 3rd Annual Interface Multifamily Texas Conference in Dallas. Discussions centered on new supply delivery, healthy rents and fast lease-ups that many are experiencing, and what the next wave of apartments will bring.

Executives at companies who have a big stake in the Lone Star State agreed that the first cycle has fared well and that the focus now needs to be on how well projects coming on line after the first of the year will fare in terms of rent growth and occupancy.

All eyes have been on Texas, which has been a pacesetter in apartment demand ahead of Atlanta and Washington D.C. in recent months. Among the top six apartment markets identified by MPF Research that are gaining momentum in the second quarter of 2014, Houston and Dallas topped the list. Houston ranked first with 15,400 units absorbed in the past year, and Dallas second at 12,300 units. Occupancy rates in both cities were slightly better than 94 percent.

## So far so good with the first cycle

Steve Hallsey, president and CEO of AMLI's management group, said demand and lease-ups for a large project that delivered in Austin, has exceeded expectations. Austin, an area where supply is growing, finished the second quarter with 3,100 new apartments, boosting its 2014 total to 8,700.

"The cycle has been very good," says Hallsey. "We find that it's been encouragingly well received through this cycle. Obviously a second wave of new construction will be hitting at the beginning of next year and it will be interesting to see how that new wave of supply impacts rents, concessions and absorption." AMLI Residential has developed several assets in Dallas, Houston and Austin and so far so good.

Concessions haven't played much into lease-ups and it may be a while before they do. Hallsey said his company hasn't seen the usual industry wave of move outs that chase concessions following lease-ups. In fact, renewal ratios and percentages have been higher on new developments than stabilized assets.

Hallsey believes AMLI's retention performance is indicative of more sophisticated managers and developers who are using pricing systems to help determine rental rates.

"We're not seeing concessions impacting renewals or market rents, and I think people are being more strategic in terms of how they're pricing their units," he said. "They're being smarter and I think they are really pricing the market well. There's not the panic that we see in other cycles."

High pricing at the top end has given firms like The Milestone Group room to boost rents in their segment, too. "Leases are still coming up stronger and we're not getting pushback, and I think that will remain for the foreseeable future," said COO Steve Lamberti.

## Construction delays the only real slowdown in momentum

Developers say the only real hiccup is with the construction process, which has slowed the delivery of units. Even though construction spending nationally hit its highest level in July in five and half years, build-out times have taken longer because crews have been noticeably slimmer.

According to the [Associated General Contractors of America](#), construction employment has been on the rise, but it is not keeping pace with construction demand. A recent survey revealed that 25 percent of construction firms are turning down work because of labor shortages. Gary Mann, a senior vice president for Trammell Crow Co., said a big challenge has been getting new product released in time from builders. Nonetheless, Trammell Crow Co. is looking past what may be only growing pains in a changing economy, to a seemingly bright future in the Lone Star State.

"We're excited about the next few years here in the Dallas area and Austin and Houston," Mann says. "We think the momentum and the job growth is there. And we're bullish on the State of Texas."

## Time to get away from urban myths and legends

Pinnacle President/CEO Rick Graf says leasing velocity, absent of any construction delays, is ahead of budget at many of the company's projects under way in Texas and nationally. The story could be different, however, depending on what lies around the corner and just how high rents may climb.

He says the real challenge is what form the second wave will take, how will the product look and how will it mesh with affordability. Because of this, marketing strategies may need to shift away from urban myths regarding the ideal type of renter.

Companies like AMLI Management Co., are looking ahead and tweaking marketing efforts to focus on more established renters by choice rather than Millennials who want to be in downtown urban areas.

Hallsey says, "The industry spends too much time talking about product type and what kind of renter it wants to attract that we kind of talk ourselves into a certain demographic that we want inhabiting our assets.

We build these sophisticated marketing plans around this phantom renter who is going to be coming in to occupy these units. That is not proving out statistically."

"So, I think we need to kind of get away from some of these urban legends and the myths we've been trying to attract."

(38) Hogg Foundation for  
Mental Health

**From:** [Lea, Jemila](#)  
**To:** [teresa.morales@tdhca.state.tx.us](mailto:teresa.morales@tdhca.state.tx.us)  
**Cc:** [Horton, Colleen L](#)  
**Subject:** 2015 Draft Qualified Allocation Plan Rules Comment  
**Date:** Monday, October 20, 2014 3:28:07 PM  
**Attachments:** [image001.png](#)  
[image004.png](#)

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Attn:  
Texas Department of Housing and Community Affairs  
Teresa Morales  
Rules Comments

Subject: 2015 Draft Qualified Allocation Plan Rules Comment

The 811 Project Rental Assistance(PRA) Program should be supported with the scoring option in the 2015 Housing Tax Credit Qualified Allocation Plan (QAP) for owners that choose to participate through application on an existing property. Affordable housing is a primary barrier for individuals with disabilities living in the community. The 811 Demonstration program is modeled on the Project Access Program that has served to transition individuals from institutions. There are still many individuals on the Project Access voucher waitlist waiting to be relocated into the community. This program could assist many individuals with disabilities living in institutions, individuals with serious mental illness and youth with disabilities exiting foster care.

Allowing points for developers who participate in the Section 811 PRA Program will support the targeted population for this demonstration project in accessing affordable housing in their communities, including individuals with serious mental illness that are engaged in services but face challenges due to housing instability. Developers receiving tax credits should be encouraged to continue the mission of preservation of affordable housing for low-income individuals through participation points in the 811 PRA program allocated in the QAP.

**Jemila Lea, J.D.**  
Policy Fellow  
Hogg Foundation for Mental Health  
[The University of Texas at Austin](#)  
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(39) Texas Council for  
Developmental Disabilities

Email Transmission Only

Email: [teresa.morales@tdhca.state.tx.us](mailto:teresa.morales@tdhca.state.tx.us)  
Teresa Morales, Rule Comments  
Texas Department of Housing and Community Affairs

Date: October 20, 2014

From: Belinda Carlton, Public Policy Specialist  
[Belinda.carlton@tcdd.texas.gov](mailto:Belinda.carlton@tcdd.texas.gov)

RE: Public Comment - TRD-201404298  
Chapter 11. Housing Tax Credit Program Qualified Allocation Plan  
**10 TAC §§11.1 -11.3, 11.5 -11.10**

The Texas Council for Developmental Disabilities (TCDD) is established by federal law and is governed by a 27 member board, appointed by the Governor, 60% of whom are individuals with developmental disabilities or family members of individuals with disabilities. The Council's purpose in law is to encourage policy change so that people with disabilities have opportunities to be fully included in their communities and exercise control over their own lives.

The proposed 2015 Qualified Allocation Plan, among other things, attempts to incentivize low income housing developers who participate in the housing tax credit program to set-aside new or existing multi-family developments for a new project rental assistance (PRA) option for extremely low income individuals with disabilities and youth aging out of the state foster care system. The new HUD Section 811 PRA will create the opportunity for extremely low income persons with disabilities to live as independently as possible through the coordination of voluntary services and providing a choice of subsidized, integrated rental housing options.

The TDHCA staff have held two meetings with developers, state agency long term services and protective services staff and disability advocates to consider how to incentivize tax credit developers to participate in the 811 program. Low income housing developers held misconceptions that they were responsible for provision of long term services and supports, myths about the people that will benefit, and concerns with the burdensome requirements for a provider of project rental assistance. The proposed new scoring criteria in the draft 2015 Housing Tax Credit Program Qualified Allocation Plan, Section 11.9(7) (A) & (B) are directed at incentivizing developers to participate in the Section 811 program.

TCDD supports: ***§11.9. Competitive HTC Selection Criteria. (7) (A) & (B) Tenant Populations with Special Housing Needs.***

(41) Avenue CDC

**From:** [Jason Holoubek](mailto:Jason.Holoubek@tdhca.state.tx.us)  
**To:** [Teresa.morales@tdhca.state.tx.us](mailto:Teresa.morales@tdhca.state.tx.us)  
**Subject:** Comments Draft 2015 QAP and Multifamily Rules  
**Date:** Monday, October 20, 2014 3:49:19 PM

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Attached are Avenue Community Development Corporation's comments to the Draft 2015 QAP and Multifamily Rules.

Draft QAP comments

§11.3.Housing De-Concentration Factors. (e) was eliminated this year, which would have prohibited Seniors projects in Region 6 (and other areas –

this includes Houston). This along with new language in,

§11.9.Competitive HTC Selection Criteria. (7), Tenant Populations with Special Housing Needs, which requires family projects to participate in TDHCA's Section 811 Project Rental Assistance Demonstration Program, will encourage applicants to once again submit applications for seniors projects (as many people are unhappy with the proposed demonstration program and can receive just as many points without participating if they do a seniors project instead).

Transit-oriented development

The QAP needs language to encourage develop needed affordable housing in communities that have access to mass transit. This is of great importance in cities like Houston, where the combined cost of car transportation and housing is a great burden for lower income households (Houston is among the top 10 most expensive cities in America for moderate-income families when considering combined housing and transportation costs, according to Losing Ground, an October 2012 study by the Center for Housing Policy. The combined cost of housing and transportation consumed an average of 60% of household income for moderate income households in Houston, compared to 51% in Washington DC, and 54% in Minneapolis). Developments located within one mile (or half-mile) radius of an existing light rail stop (or other mass transit) should receive extra points in the scoring process.

By encouraging the siting of 9% tax credit developments near transit, we can reduce these cost burdens on lower income households while also creating long-term affordable housing in area areas that will become higher income in the near future. One intriguing way to encourage such developments would to increase the QAP definition of high opportunity areas to include

sites located near rail transit or transit centers, since these areas are experiencing significant reinvestment, even if the current income levels are not in the upper quartiles.

## Draft Uniform Multifamily Rules Comments

10.101(a)3 Undesirable Site Features: (C) Development Sites located adjacent to or within 500 feet of heavy industrial or dangerous uses such as manufacturing plants, fuel storage facilities, refinery blast zones, etc.

This has been increased from 300 feet. TDHCA has never been able to provide us with a good definition of “heavy industry” . Staff says we should present them with our proposed sites, and they will handle on a case-by-case basis. This is time-consuming for TDHCA staff, and makes land purchase negotiations difficult.

(D) Development Sites located within 2 miles of potentially hazardous uses such as nuclear plants,

large refineries (e.g. oil refineries producing more than 100,000 barrels of crude oil daily), or large oil

field operations;

Given the historical development patterns in Houston, significant development has occurred adjacent to and near major industrial facilities. Using a 2 mile radius is too large, and depending on the definition of “potentially hazardous uses” could relegate much of Houston to “undesirable” status.

10.101(a)4(B) Undesirable Neighborhood Characteristics: subsections (i) (ii) and (iii) are all new and unnecessary.

With respect to Subsection (i), why use of 35% as the appropriate poverty level when HUD’s own definition of concentrated poverty is 40%.

Secondly, utilizing 35% poverty rates as undesirable neighborhood characteristic is effectively “redlining” these communities from LIHTC investment when taken in conjunction with the added points for being a “high” opportunity area. This also effectively neutralizes the potential points given to these neighborhoods if the area is the subject of a community revitalization plan (receiving points for a community revitalization plan requires the neighborhood has many of the characteristics described as undesirable here).

With respect to (ii), I understand the benefit of utilizing an objective score for determining neighborhood crime characteristics but question the use of a proprietary system that does not publish its scoring methodology (at least that I could find on the website). I also note that in their (“terms and conditions” they disclaim the accuracy of the data. I think publicly available data should be used, and then only those neighborhood where the crime rate is significantly higher than the City average, should be used.

(iii) In many neighborhoods of Houston, it will be common for Phase I ESA to uncover one or more of these listings. The discovery of a listing within the ASTM-required search distances from the approximate site boundaries does not mean the site has any environmental issues at all.

Any problem described in one of the three subsection above will trigger an extensive review by TDHCA staff. The concern is staff will not have the time and resources to properly conduct this review.

Thank you for your time and service. If you have any questions or comments please do not hesitate to contact me.

Jason Holoubek

Director of Rental Housing and Economic Development

**Avenue Community Development Corporation**

Office 713.864.8099 ext. 226

Cell 713.894.4838

Fax 713.864.0027

(42) Local Initiatives Support  
Coalition (LISC)



October 20, 2014

Teresa Morales  
Texas Department of Housing and Community Affairs  
Rule Comments  
P.O. Box 13941  
Austin, Texas 78711-3941  
[teresa.morales@tdhca.state.tx.us](mailto:teresa.morales@tdhca.state.tx.us)

Dear Ms. Morales:

The Local Initiatives Support Corporation (LISC) is America's largest private community development support organization. LISC is dedicated to helping community residents transform distressed neighborhoods into healthy and sustainable communities of choice and opportunity — good places to live, work, do business and raise children. Since 1989, Houston LISC and affiliates have invested over \$187,000,000 in Houston real estate projects with over \$433,000,000 leveraged. The investment has created over 6,800 affordable homes and apartments and 1,400,000 square feet of commercial and community space. We have watched our partner nonprofits working throughout Houston neighborhoods wrestle with the most effective way to score competitively while remaining true to their revitalization efforts in underserved communities that have previously experienced years of neglect and disinvestment.

Our comments regarding the Draft Housing Tax Credit Qualified Allocation Plan and the Draft Uniform Multi-family Rules are outlined below:

**Draft Housing Tax Credit Qualified Allocation Plan**

- **11.9 (c) Criteria to serve and support Texans most in need (4) Opportunity Index (A) (page 19 of 38)**

**Add**

(v) any Development, regardless of population served, if the Development Site is located within one linear mile of a designated public transportation stop at which public transportation (not including "on demand" transportation) stops on a regular, scheduled basis. A site's eligibility for on demand transportation or transportation provided directly or indirectly by the Development Owner does not meet this requirement (2 points).

This will encourage development supported by public transit, which is an essential connectivity element for families earning as little as 30% of AMGI.

## **Draft Uniform Multifamily Rules**

- **10.101(a)4(B) – Undesirable Neighborhood Characteristics – (page 4 of 15)**

### **Change From**

- (i) The Development Site is located within a census tract that has a poverty rate above 35% for individuals (or 55% percent for Developments in regions 11 and 13).

### **Change To**

- (i) The Development Site is located within a census tract that has a poverty rate above 40% for individuals (or 55% percent for Developments in regions 11 and 13).

This will change the poverty rate from 35% to 40%, in line with what is commonly used in fields of policy and scholarship to define concentration of poverty.

### **Eliminate**

- (ii) The Development Site is located in a census tract that has a crime index of 40 or less, according to neighborhoodscout.com.

This index could be seen as arbitrary and inconsistent based on neighborhoodscout.com website, using their proprietary logarithm.

We recommend that TDHCA keep an eye on the continuum of affordable housing. In the allocation of points there seems to be favoritism of projects located in high-income areas and permanent supportive housing projects. Though we understand and support the intentions, we urge you to remember that most of the people in the communities served by our partners are working families looking for quality, affordable housing with a support system which allows them to work, live their lives, and care for their families. This is a support system of family, friends, and service agencies (public and nonprofit) which play important roles in the lives of these families. The access to people and organizations willing and able to support the families may not always equate high-income areas with high opportunity.

We also believe TDHCA should consider the direction and speed of change in neighborhoods and what may be called “gentrification risk,” which displaces current residents of lower incomes. In many neighborhoods which may be classified as “low opportunity” areas, there is a level of urgency when it comes to creating and preserving decent, quality affordable housing. The changing market conditions are displacing lower income residents and if we ignore this gentrification risk until the data reaches a point to qualify the neighborhood as “high opportunity”, it will be too late. The current and prospective residents who earn less than median income will not be able to rent or own in their own neighborhoods.

Thank you for considering these changes to the QAP and the Uniform Multifamily Rules. Please feel free to call me at 713-334-5700 if you have any questions or concerns.

Sincerely,

Amanda Timm  
Executive Director

(43) Star – Equities, LLC

# Star – Equities, L.L.C.

October 20, 2014

**VIA EMAIL** – [pcloyde@tdhca.state.tx.us](mailto:pcloyde@tdhca.state.tx.us)

Texas Department of Housing & Community Affairs  
Post Office Box 13941  
Austin, Texas 78711-3941  
Attention: Pam Cloyde

RE: Public Comment Concerning Subchapter C - 10 TAC §10.204

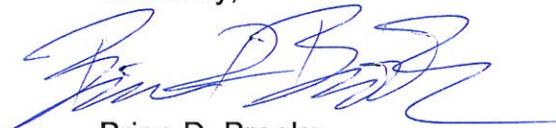
Dear Ms. Cloyde:

Please accept this letter as public comment regarding the proposed rules under 10 TAC Chapter 10, Subchapter C, §§10.201-10.207. In particular, we are providing comment regarding §10.204(14) Nonprofit Ownership. We believe the requirement under subsection §10.204(14)(A)(v) that an Application under the Nonprofit Set-Aside must submit a certification that the majority of the nonprofit's Board of Directors either principally reside in the state (if the development is located in a Rural Area) or not more than 90 miles from the development (if the development is not located in a Rural Area) should be eliminated. It would appear that the inclusion of such a requirement is to restrict participation in the Nonprofit Set-Aside to Texas-based nonprofits.

We believe this requirement unnecessarily eliminates numerous nonprofit entities which have a national development footprint, but which have a majority of its Directors principally located in other states, from competing for Housing Tax Credits in Texas under the Nonprofit Set-Aside. IRS Code §42(h)(5)(c) does not require such a restriction under the definition of Qualified Nonprofit Organization. There are numerous national nonprofit organizations that have a strong history of developing and operating successful affordable housing properties in multiple states. The residency requirement as listed in the Section 10.204(14)(A) essentially eliminates these national nonprofits from competing for Housing Tax Credits in Texas under the Nonprofit Set-Aside. Such elimination greatly reduces the pool of highly qualified nonprofits that could be developing and operating successful affordable properties in Texas. We believe the low-income residents in Texas will benefit from having more qualified nonprofit organizations developing quality affordable housing in the state.

Therefore, if it is within the ability TDHCA to do so, we suggest the elimination of the residency requirement of nonprofit Directors found under §10.204(14)(A)(v). Thank you for your consideration.

Sincerely,



Brian D. Brooks  
Manager

# (44) Mark-Dana Corporation

**MARK-DANA CORPORATION**

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October 20, 2014

Texas Department of Housing and  
Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701-2410  
Attn.: TDHCA Board Members  
TDHCA Staff

Re: Comments to 2015 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 4, 2014 Board Meeting

Ladies and Gentlemen,

We appreciate the opportunity to provide comments to the proposed 2015 QAP.

We have reviewed the proposed QAP, attended the TDHCA QAP meetings in Austin, and attended the September 4, 2014 THDCA Board meeting. We have also attended several TDHCA meetings regarding the Section 811 Program (via phone and in person).

We have participated in developing the TAAHP consensus comments that have been delivered to you and we support those comments.

We would like to emphasize our agreement with TAAHP's recommendation that the Section 811 Program be removed from the scoring criteria in the QAP and that it be administered through a separate Request for Proposal (RFP) process.

The 811 Program was removed from the scoring criteria in the 2014 QAP because the 811 Program was not clearly established at the time the 2014 QAP was put in place. While over the past year TDHCA staff has worked extremely hard on the 811 Program with HUD, the third party service providers, the 811 resident community, and the development community, it appears that there is still quite a bit of work to do to define and establish a working 811 program.

Examples of some of the open items that have been identified to date include:

- We understand that Sec 811 residents will need robust services. At the September 30, 2014 TDHCA 811 Roundtable, we learned that tenants and property management staff will only be able to access the third party service providers during business hours. We are concerned that the services that will be made available to 811 residents will not be

sufficient to provide the support that 811 residents and property management staff will need to ensure a successful program.

- Properties are not eligible if they are located in the 500 year flood plain. This is just an example of information that is just now beginning to be understood about the 811 Program and we are concerned that other constraints and restrictions may exist of which TDHCA and the development community are not aware.
- As of the September 30, 2014 TDHCA 811 Roundtable, the Cooperative Agreement between TDHCA and HUD remained to be finalized and executed. We understand that the Cooperative Agreement will serve as the rules and guidelines for the 811 Program.
- As of the September 30, 2014 TDHCA 811 Roundtable, the Program Manuals (including the Owner/Property Manager Manual), remained to be finalized.
- The parameters under which existing LIHTC properties can be used to be eligible for the Tenant Populations with Special Housing Needs remains unclear. We are also concerned that providing this option creates an uneven playing field for applicants because not all applicants will have existing LIHTC properties that will be eligible.

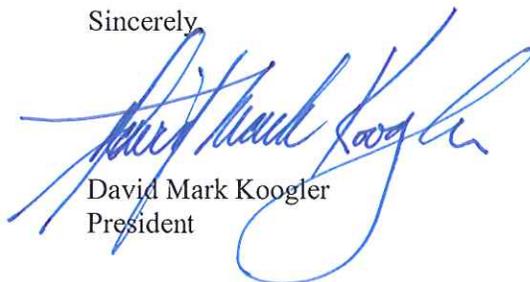
Agreeing to participate in the Section 811 Program in order to be eligible for the two points for Tenant Populations with Special Housing Needs under the QAP in the named Urban MSAs, will subject all of those properties to higher construction and development costs, increased time to complete development and construction, higher management and operating expenses (due to having to use HUD's Tenant Rental Assistance Certification System (TRACS) and Enterprise Income Verification (EIV) and HUD's Section 811 Model Lease) for the life of the property, and issues for the property management staff and 811 Program residents that are uncertain at this time.

We recommend that an RFP process be used for the Section 811 Program, at least until the 811 Program is established and TDHCA, the third party service providers, Section 811 qualified residents, and the development community can understand the details and requirements of the 811 Program.

We agree that the Section 811 Program is a very important program serving a specialized population and that population deserves good and affordable housing and services. Requiring the LIHTC program to include the Section 811 Program without fully understanding the Section 811 Program could very well create harmful issues for the affordable housing developments and the Section 811 residents.

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

(46) Texas Association of  
Community Development  
Corporations (TACDC)



ENHANCING COMMUNITIES  
THROUGHOUT TEXAS

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South Fair CDC

Delia Martinez  
El Paso Collaborative

Gary Lindner  
PeopleFund

Matt Hull  
Executive Director

October 20, 2014

Teresa Morales  
Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, TX 78711-3941

Dear Ms. Morales:

Please accept these comments from the Texas Association of Community Development Corporations regarding the 2015 Draft Qualified Allocation Plan and Multifamily Rules.

TACDC's members build affordable housing across Texas and are appreciative of the efforts TDHCA goes through to ensure equal access to federal funds administered by the agency. After reviewing the draft QAP and multifamily rules for 2015, conducting meetings with our members, and coming to consensus on a few top issues, we have a few concerns that we would like to see addressed.

First, our members are in agreement with the comments submitted by the Community Development Corporation of Brownsville regarding expanding the definition of high opportunity areas under 11.9(c)(4) in the regions along the border. Specifically, we find compelling the idea of allowing a project to meet the high opportunity area points if one of the schools in the feeder zone of a school where the project is located meets the threshold of a 77 on the index 1 of the performance index, related to student achievement.

Second, related to the Opportunity Index under 11.9(c)(4) we want to echo the call by other developers to add two points to encourage developments at or within a reasonable distance of transit oriented developments. Adding these points will help encourage affordability within new transit oriented development sites. This is a crucial step as larger cities in Texas create and expand new development opportunities around transit lines and mobility centers.

Related to the Draft Multifamily Rules, we encourage the agency to consider the following comments.

Under 10.101(A)(4) Undesirable Neighborhood Characteristics, we suggest eliminating (B)(2) as it relates to a crime index of 40. During the public input session regarding the draft QAP this issue was discussed and staff seemed to indicate that selecting 40 was arbitrary. We also have concerns with selecting and mandating a private company to provide the data for a fee to developers. For these two reasons we ask the agency to eliminate this section from the rules. However, we encourage the agency to work with either law enforcement or crime data experts to use a well-reasoned and publically available way to assess crime in an area.

Second, under the Undesirable Neighborhood Characteristics, we encourage the agency to raise the poverty rate for a census tract where the development is located from 35% to 40% to correspond to the rate federal agencies use as a measure of concentrated poverty.

Third, under 10.3(a)(124), TACDC supports the comments from Foundation Communities and other developers of supportive housing regarding the definition of supportive housing. We agree that the current definition is fine, however if the agency is interested in strengthening the definition, we support the following:



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Executive Director

*(124) 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 include established funding sources outside of project cash flow that require certain populations be served and/or certain services provided. The developments are expected to be ~~free of foreclosable debt or have debt that is subject to cash flow repayment~~ **free of permanent debt or have no permanent foreclosable or noncash flow debt.** A Supportive Housing Development financed with tax-exempt bonds with a project based rental assistance contract for a majority of the Units may be treated as Supportive Housing under all subchapters of this chapter, except Subchapter D of this chapter (relating to Underwriting and Loan Policy). The services offered generally include case management and 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.*

Lastly, we understand that several nonprofits have concerns with appraisals related to the LIHTC 15-year end of compliance and nonprofit right of first refusal for property purchases. The issue under Subchapter E rule 10.407 is one where property owners protest appraisals to the appraisal districts to keep property values as low as possible to minimize their tax obligations while they own the property, but then seek appraisals that seem based on market rate rents, not restricted rents at the end of the compliance period. When nonprofits have the right to purchase the property, the asking price is artificially high, often at levels that would require an amount of debt that cannot be supported with cash flow from rents. We encourage the agency to create a policy or strengthen existing policy that would encourage the sale of LIHTC properties at the end of the 15-year compliance period at or below the appraisal district's valuation of the property.

Thank you for your attention to our comments and please let me know if you have any questions.

Best,

Matt Hull

# (47) National Housing Trust



October 20, 2014

Mr. Cameron Dorsey  
Director of Multifamily Finance  
Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, TX 78711-3941

**Memo: Texas Draft 2015 Qualified Allocation Plan**

Dear Mr. Dorsey:

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 2015 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

## 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 2018:

- 27,292 assisted units in 386 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.**

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 2015 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. While we are encouraged to see that TDHCA makes the distinction between new construction/adaptive re-use and preservation projects in this regard, we want to emphasize that expanding opportunity housing must not be at the expense of existing low-income communities. **In the next two years, over 17,700 affordable Project-Based Section 8 units will have expiring contracts in Texas.** Prioritizing the preservation of these at-risk properties is crucial to maintaining these critical affordable units. **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.**

That is the essence of the Fair Housing Law, i.e., that resources be expended to increase the chances for opportunity ("pro integration") and that minorities residing in distressed neighborhoods, who want to stay and improve their homes, get fair access to federal resources to accomplish that ("anti-discrimination") 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.
- Build environmentally sustainable communities. Renovating an existing property provides an opportunity to create a healthier living environment, lower operating costs, and save taxpayer money. Renovating an existing building also consumed less energy than new construction.
- Use public resources efficiently, as preservation is more cost effective than new construction – rehabilitating an existing affordable apartment can cost one-third to one-half the cost of new construction.

### ***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 2015 QAP. I also urge you to continue to encourage the use of green building techniques and materials for rehabilitation and preservation.

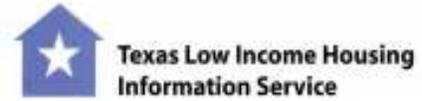
Thank you for the opportunity to comment on this important issue in the State of Texas.

Sincerely,

A handwritten signature in black ink that reads "Michael Bodaken". The signature is written in a cursive, flowing style.

Michael Bodaken  
President

(48) Texas Appleseed and  
Texas Low Income Housing  
Information Service



October 20, 2014

Texas Department of Housing and Community Affairs  
Teresa Morales, Rule Comments  
221 East 11<sup>th</sup> Street  
Austin, TX 78711

**Comments on the Proposed State of Texas 2015 Qualified Allocation Plan and Uniform Multifamily Rules**

Dear Ms. Morales:

Thank you for the opportunity to provide comments on the Proposed Qualified Allocation Plan (QAP) and Uniform Multifamily Rules published September 19, 2014. We appreciate the work the staff of TDHCA has put into these rules and the continued commitment of the Board and staff to the production and preservation of affordable rental housing in a way affirmatively furthers fair housing and maximizes the use of these resources to improve the lives of lower income families.

**Qualified Allocation Plan: Chapter 11 TAC**

*§11.3 Housing Deconcentration Factors*

We object to the Department's removal of §11.3(e), which determined areas in which the percentage of qualified elderly households residing in elderly-only restricted tax credit assisted units exceeded the percentage of the total Qualified Elderly eligible low income population for that area and made those areas ineligible (unless the application was made for a rural area) for Qualified Elderly Developments for the current tax credit cycle. Given the limited resources available to fund affordable rental housing and the overwhelming level of need in Texas<sup>1</sup>, it is not the most efficient or effective use of State resources to overbuild elderly-only housing even if it is the more politically palatable type of affordable housing in many jurisdictions. TDHCA

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<sup>1</sup> In addition to the cost burden on low and moderate income households documented by TDHCA itself, the National Low Income Housing Coalition's 2014 "Out of Reach" report, "in order to afford the FMR for a two-bedroom apartment, a minimum wage earner must work 93 hours per week, 52 weeks per year." <http://nlihc.org/oor/2014/TX>

should reinstate this provision and reevaluate which areas are ineligible for additional Qualified Elderly Developments each tax credit cycle.

Overbuilding elderly-only units while underserving families discriminates on the basis of familial status in violation of the Fair Housing Act (46 U.S.C. §3601 *et seq.*) In addition, because of the composition of the population of Texas – 65% of Texans over 65 are Non-Hispanic whites, but only 42% of the total population and 30% of Texans under 18 are Non-Hispanic whites<sup>2</sup> – the overproduction of elderly-only units may constitute discrimination on the basis of race, color, and national origin as well. This is particularly problematic if elderly units are more often built in higher opportunity areas. We note that while elderly households can live in family developments: families are by definition excluded from Qualified Elderly Developments.

More generally, any governing body approving a resolution allowing the allocation of additional Housing Tax Credits for a development that would further concentrate assisted housing under §11.3(b), (c), or (d) or §11.4(c)(1) should take seriously the guidance in §11.3(d)(2) to “consult its own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws” and the jurisdiction’s other fair housing and civil rights obligations. The historical concentration of assisted units in racially and ethnically concentrated areas of poverty is a serious impediment to fair housing choice, to opportunities for families, and to the revitalization of these communities. The investment of public resources solely in low-income rental housing, without significant and meaningful investment of both public and private resources in equalizing public services and facilities, educational and economic opportunities, and reducing exposure to hazardous conditions is not investment that results in true community revitalization.

#### *§11.6 Competitive HTC Allocation Process*

The addition of §11.6(5) allowing for the separate allocation of returned tax credits if the return resulted from a force majeure event is important and appropriate, and reflects hard-earned lessons about disaster recovery. Both in Texas and nationally, replacing lost affordable rental units has taken significant time, displaced populations with the fewest resources to find alternative housing, and further reduced an already insufficient supply of affordable housing. §11.6(5) will help ensure that more affordable units are constructed more quickly when they are most needed.

#### *§11.9 Competitive HTC Selection Criteria*

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<sup>2</sup>U.S. Census Bureau, Current Population Survey, Annual Social and Economic Supplement, Texas 3-year Average, 2012 - 2014

The Department's continued emphasis on locating developments in high opportunity areas is central to carrying out both its civil rights obligations and the purpose of Housing Tax Credit and multifamily programs. The current Board and Staff have inherited a portfolio of developments that are concentrated in racially and ethnically segregated and low-income areas and their commitment to balancing the current distribution with investments in high opportunity areas is necessary and important.

Specifically:

1. We strongly support the Section 811 Project Rental Assistance (PRA) program. This program would address a great need for housing, particularly for persons with disabilities leaving institutions for less restrictive settings. Affordable housing has been identified as the primary barrier for persons seeking to leave nursing homes and other institutions. The State of Texas is committed to moving individuals with disabilities from state institutions into the community, in accordance with the Americans with Disabilities Act (42 U.S.C. §12111 *et seq.*) and *Olmstead v. L.C.*, (527 U.S. 581 (1999) 138 F.3d 893). The United States Department of Justice and the United States Department of Housing and Urban Development have also emphasized the importance of integrated housing opportunities for individuals with disabilities. The Section 811 PRA program creates the opportunity for persons with disabilities to live as independently as possible through the coordination of voluntary services and the provision of a choice of subsidized, integrated rental housing options. The program would also help children aging out of the foster care system, who have lower high school and college graduation rates, higher poverty rates, and higher rates of homelessness. (See, e.g. <http://www.jimcaseyyouth.org/sites/default/files/documents/Cost%20Avoidance.pdf>) Stable housing and continued services improve outcomes for these children.
2. We generally support the proposed §11.9(d)(4), although we are concerned that awarding additional points for support from Neighborhood Organizations that have previously opposed HTC developments encourages discrimination against families with children and other protected classes under the Fair Housing Act, by incentivizing developers to propose, for example, elderly-only developments or developments that exclude supportive housing; types of developments that tend to trigger less NIMBYism. The breadth and fairness of local participation in many neighborhood associations can be difficult to evaluate, and the framework for local input must ensure the process is not a barrier to furthering the fair housing goals of the state.
3. We continue to oppose the provision of both positive and negative points for letters from State Representatives under §11.9(d)(6). This is the only scoring category that provides negative points, which is not mandated in the language of §2306.6710(b)(1)(K) or §2306.6725(a)(2). It is particularly troubling that the scoring awards more points to a letter from the State Representative over a resolution by the Local Governing Body that has been

passed after an open and public process.

4. The importance of a substantive and meaningful Community Revitalization Plan that “can reasonably be expected to revitalize the neighborhood” under §11.9(d)(7) cannot be overstated. The current provision recognizes that the allocation of HTC alone is not a meaningful investment in revitalization and a plan adopted by a municipality or county must be based on a process that includes public input; that carefully defines the boundaries of the areas; and “provide[s] a plan and budget specifically directed to identified issues.” Texas Appleseed and TxLIHIS would point to the City of Houston’s use of CDBG-DR and other resources to do targeted investments in three geographically limited Community Reinvestment Areas (CRAs) as an example of the kind of plan and ongoing investment that is substantive. The CRA’s were selected through a process that incorporated both community input and a detailed evaluative study of a number of neighborhoods; the City is making investments in both multifamily and single-family housing in the CRAs, but those investments are accompanied by significant infrastructure investments, including \$26 million in CDBG-DR funds; there is private investment in these areas; and the City has committed to make the CRAs a priority for the ongoing investment that can be expected to result in economically, racially, and ethnically integrated neighborhoods that provide equal opportunity to their residents.

*§11.9(d)(4)(D); (d)(5)(D); and §11.10 Challenges*

It is a serious deficiency in both the QAP and Uniform Multifamily Rules that there is no clear process for challenging Quantifiable Community Participation on the basis of unlawful discrimination under the Fair Housing Act, nor is it clear that all forms of Community Participation will be evaluated for evidence of unlawful discrimination. §11.9(d)(6)(D) states that “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,” but as written, this applies only to input from community organizations. Written statements of opposition from a Neighborhood Organization can be challenged under §11.9(4)(D), but only “if [the statement] is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Government Entity . . . the fact finder will not make determinations as to the accuracy of statements presented.”

The Department must make clear that all forms of Quantifiable Community Participation, including written statements from Neighborhoods Organizations, will be evaluated for evidence of unlawful discrimination and opposition motivated by a discriminatory bias. Statements of opposition, whether from Neighborhood Organizations or other entities, may not

on their face evidence unlawful discrimination, but additional information or background may provide such evidence. Federal courts, including the Eastern District of Louisiana in a fair housing case related to building affordable housing in St. Bernard Parish, have been clear that:

[R]eferences to “ghetto,” “crime,” “blight,” and “shared values” are similar to the types of expressions that courts in similar situations have found to be nothing more than “camouflaged racial expressions.” *Smith v. Town of Clarkton*, 682 F.2d 1055, 1066 (4th Cir. 1982) (affirming that statements about “undesirables,” and concerns about personal safety due to “new” people are “camouflaged racial expressions”); *Atkins v. Robinson*, 545 F. Supp. 852, 871-72 (E.D. Va. 1982) (finding statement that she “feared the projects ‘would degenerate to slum-like conditions, with an abundance of crime’ to be a veiled reference to race). In the Title VII hostile work environment context, “ghetto” is repeatedly associated with race. See e.g., *Turner v. Baylor Richardson Medical Center*, 476 F.3d 337, 348 (5th Cir. 2007)(noting isolated references to “ghetto children” as “perhaps racially inappropriate”); *Harrington v. Disney Regional Entm’t, Inc.*, 276 Fed.Appx. 863, 876-877 (11th Cir. 2007) (indicates “ghetto” was a racial slur); see also *Clark ex rel T.M.J. v. Pielert*, 2009 WL 35337 (D.Minn. 2009)(noting “ghetto” was a “racially charged term” in the §1983 context preventing summary judgment on qualified immunity).<sup>3</sup>

This kind of charged language (indicating bias against many classes of persons protected under the Fair Housing Act) frequently surrounds proposals to build affordable housing. During the 2014 HTC cycle, a proposal to build a tax credit property in a high-income neighborhood in the City of McAllen was met with statements from elected officials that indicated animus towards members of protected classes, including referring to such developments as “public housing tenements” that house “families with problems” who “bring with them the adversities that brought them there” resulting in issues that are “unmanageable.” Comments also indicated opposition to tenants’ children attending local schools, alleged that renters will not keep up the property, and alleged that the development will “set back our efforts to build strong communities.” Facially neutral reasons for opposition to affordable housing that are factually untrue are also frequently motivated by unlawful animus. It should be clear that staff will evaluate community participation for evidence of discriminatory intent, and there must be a process to challenge opposition to LIHTC developments that is motivated by discriminatory animus against members of protected classes based on race, color, national origin, sex, familial status, religion, or disability.

## **Uniform Multifamily Rules: Chapter 10 TAC**

### *§10.101 Site and Development Requirements and Restrictions*

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<sup>3</sup> *Greater New Orleans Fair Housing Action Center, et. al. v. St. Bernard Parish, et. al.*, Civil Action No: 06-7185, (E.D. LA., 2006) Order Granting Plaintiff’s Motion to Enforce Consent Order and Reasons, filed March 25, 2009 at 12-13.

We strongly support the changes to the Undesirable Site Features section, §10.101(a)(3), including:

1. An evaluation of whether the rehabilitation of a development with existing and ongoing federal assistance from HUD or USDA is consistent with the Fair Housing Act before the Board exempts a development from the Department's undesirable site features requirement. Extremely low-income tenants and potential tenants who rely on assisted housing have the fewest choices about where they live, because the supply of units available to families who earn 0-30% of Area Median Income is the tightest. A family that has been waiting two years for an assisted units they can afford (without sacrificing food, medical care, etc.) cannot refuse an available unit because it is close to an undesirable site feature like a refinery whose emissions will trigger their child's asthma. TDHCA's investment in rehabilitating an assisted development will force low-income families to live in that location for years to come. Past changes to the QAP that provide for the relocation of existing units under the At-Risk Set-Aside (§11.5(3)(C)) ensure that the choice is not between preserving units in a hazardous location or losing affordable units; and,
2. Clarification of the list of undesirable site features and the addition of features like (D) and (E). The 2014 HTC cycle presented several examples of proposed developments in close proximity to hazardous uses (that were appropriately terminated): the clarified rule will make it easier for developers to avoid using resources to propose these types of sites in the future and help ensure the health and safety of residents.

We also strongly support the Undesirable Neighborhood Characteristics (§10.101(c)). The provision sets out factors that trigger additional staff review and lays out the criteria staff will use to evaluate neighborhoods characteristics, as well as the basis on which the Board will make a decision on whether a site with undesirable neighborhood characteristics is eligible for Housing Tax Credits (HTC). The undesirable neighborhood characteristics that the provision lays out and the items staff will assess if further review is triggered are important and necessary in order for the Department to comply with its fair housing and civil rights obligations and for the Board to determine whether an investment is the best use of funding sources in alignment with the Department and State's goals. The goal of the LIHTC program, and of all the programs funded by TDHCA, is to create safe, decent, and affordable housing that enables families to access opportunity and improve their lives, not merely to produce more units. Regardless of the quality of a unit, its location is essential to achieving those goals. Specifically:

1. The inclusion of the requirement that "timelines that evidence a reasonable expectation that the issue(s) being addressed will be resolved or at least improved by the time the Development is placed in service" in §10.101(a)(4)(D) will help insure that proposed mitigation is concrete and realistic and reduce the risk that the Department will award HTCs to a development that would otherwise be ineligible; and,

2. The addition of contracted career training and placement partnerships, vocational counseling, and resident training programs on the list of Tenant Supportive Services in §10.101(b)(7) addresses a need repeatedly identified as a high priority by tenants and organizing groups that represent low-income communities.

#### *§10.901 Fee Schedule*

The \$500 per challenge processing fee required by §10.901(7) is almost certainly prohibitive for low-income community residents or tenants of assisted properties. The waiver language, “the Executive Director may grant a waiver or specific extenuating and extraordinary circumstances,” is not particularly encouraging; unfortunately, poverty is not extraordinary. Analogous to courts, who routinely grant waivers of fees and costs for persons on public assistance or who can demonstrate an inability to pay, we recommend that that fee waivers for indigent challengers be available, either under §10.901, or by Board waiver under §10.207(d). The families and communities most affected by a HTC application should have access to the process that determines whether the application is eligible, and are likely to have access to information that may not be readily available to the Department.

#### *§10.613 Lease Requirements*

We support the proposed §10.613(k), requiring a Development Owner to provide all applicants the Department’s brochure which includes information about Fair Housing and tenant choice. One of the Impediments to Fair Housing Choice identified in both the State’s Phase 1 AI and the Draft Phase 2 AI is the public’s lack of information about their fair housing rights, which provision of this brochure will help address for applicants to TDHCA funded properties.

#### *§10.617 Affirmative Marketing*

Affirmative marketing is necessary to further the objectives of Title VII of the Civil Rights Act of 1968 and Executive Order 13166, and we support TDHCA’s proposed revision of §10.617. The failure to effectively affirmatively market to persons least likely to apply can lead to the exclusion of certain classes of persons for an affordable housing property. One need look no further than the outcome of marketing efforts seen in the ethnic and racial composition documented in the Housing Sponsor Report to see the need for a more effective affirmative marketing effort. We note however the omission in TDHCA’s proposed rule of a critical data reporting requirement that is included in the HUD Affirmative Fair Housing Marketing Plan (AFHMP). This is the provision requiring collection and reporting of the race and ethnicity of all applicants for the housing; and race and ethnicity of all individuals who visit the project or subdivision in person. This is essential data that must be required under the proposed rule to be collected in order assess the effectiveness of the marketing plan and compliance with fair housing laws.

*Conclusion*

Fair housing and civil rights are not abstract legal concepts, nor are they merely another set of bureaucratic requirements for funding eligibility. “[W]here a family lives, where it is allowed to live, is inextricably bound up with better education, better jobs, economic motivation, and good living conditions.”<sup>4</sup> The QAP and Uniform Multifamily Rules are tools TDHCA can use to help communities eliminate disparities in opportunities for protected classes and create integrated and sustainable communities that benefit all their residents. The Department’s continued emphasis on increasing the supply of housing in high opportunity areas and changes to the QAP and Multifamily Rules that support fair housing choice not only help ensure that the State of Texas can lawfully certify that it administers its programs in compliance with Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), they provide real opportunities for Texans to have better lives.

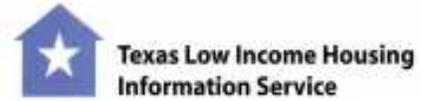
Sincerely,

John Henneberger, Co-Director  
Texas Low Income Housing Information Service

Madison Sloan, Director, Disaster Recovery  
and Fair Housing Project  
Texas Appleseed

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<sup>4</sup> 114 Cong. Rec. 2276-2707 (1968)



October 21, 2014

Texas Department of Housing and Community Affairs  
Teresa Morales, Rule Comments  
221 East 11<sup>th</sup> Street  
Austin, TX 78711

**Correction to Comments on the Proposed State of Texas 2015 Qualified Allocation Plan and Uniform Multifamily Rules**

Dear Ms. Morales:

We would like to make the following correction to the Comments on the Proposed State of Texas 2015 QAP and Uniform Multifamily Rules we submitted on October 20, 2014.

**Qualified Allocation Plan: Chapter 11 TAC**

*§11.9 Competitive HTC Selection Criteria*

While we do oppose the provision of both positive and negative points for letters from State Representatives under §11.9(d)(6), we understand that doing so is required by §2306.6710(f) and cannot be addressed by the QAP. The disproportionate number of points, however, providing an effective swing of 16 points allocated to State Representative letters versus between 8.5 and 17 points for resolutions of support from local governing bodies, remains a problem.

Sincerely,

John Henneberger, Co-Director  
Texas Low Income Housing Information Service

Madison Sloan, Director, Disaster Recovery  
and Fair Housing Project, Texas Appleseed

(49) Inclusive Communities  
Housing Development  
Corporation



Transmitted via email to: [cameron.dorsey@tdhca.state.tx](mailto:cameron.dorsey@tdhca.state.tx)

October 20, 2014

Mr. Cameron Dorsey  
Deputy Executive Director  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701

RE: Public Comment for the TDHCA 2015 Uniform Multifamily Rule

Dear Mr. Dorsey,

Thank you for the opportunity to provide public comment on the proposed changes to the 2015 Uniform Multifamily Rule and Qualified Allocation Plan (QAP). The Inclusive Communities Housing Development Corporation ("ICHDC") is a non-profit organization that works to foster the development of affordable housing opportunities, which will expand fair housing choice for low-income families. ICHDC was established by the Inclusive Communities Project (ICP), a fair housing organization committed to the creation and maintenance of racially and economically inclusive communities in North Texas.

As the executive director of ICHDC, I work in concert with housing developers, property owners, city officials, and other non-profit organizations to preserve and expand the supply of affordable housing in communities that offer economic opportunities, good schools, safe neighborhoods and healthy living environments.

ICHDC offers the following comments to the proposed rule change.

Uniform Multifamily Rule, Subchapter B § 10.101 (a)(3) – Undesirable Site Features

ICHDC supports the proposed changes to Undesirable Site Features. The rule as proposed improves the existing rule and increases the odds that the most vulnerable citizens are not exposed to environmental hazards and conditions which threatens the health and safety of children.

Uniform Multifamily Rule, Subchapter B § 10.101 (a)(4) – Undesirable Area Features

ICHDC supports the proposed changes to Undesirable Area Features. Over 99% of the LIHTC units in the City of Dallas are located in areas the US Treasury has determined to have the highest level of distress as established by the CDFI Distress Indicator Index. Additionally, over 80% of the LIHTC units are census tracts HUD determines to have intense poverty, environmental health hazards and little to no access to neighborhood

features commonly associated with opportunity such as educational excellence and access to employment. And finally, 45% the LIHTC units are located in neighborhoods that the Dallas Police Department has determined to be high crime “hot spots.”

Public policy that places or maintains LIHTC housing resources in high poverty, distressed areas, which do not offer opportunities related to education and employment should be justified; and housing units located in areas which pose a threat to the health, safety and over all well-being of its residents should be scrutinized. The changes proposed by the Department establish neighborhood characteristics that would (and should) trigger closer examination by staff to ensure the use of public resources is consistent with preserving and/or expanding affordable housing in decent and safe neighborhoods.

Qualified Allocation Plan § 11.3 Housing De-Concentration

ICHDC recommends continued use of the limitations on Qualified Elderly developments in Collin, Denton, Ellis and Johnson counties as the proportion of Qualified Elderly LIHTC units continues to exceed LIHTC units available for the general population.

Qualified Allocation Plan § 11.9(c)(5) – Educational Excellence

ICHDC supports the continued use of the “Met Standard” accountability standard with the 77 or higher score on the student performance index 1 of the performance index, related to student achievement, by the Texas Education Agency.

ICHDC recommends that only proposed projects which target the general population be eligible to receive Educational Excellence points. Proposed projects specifically designed for and occupied by elderly persons under the HTC program do not provide access to educational excellence for its residents because such projects exclude families with children. Awarding superficial points to senior projects in areas of high opportunity hinders the development of housing for families with children, as local governments reacting to NIMBY are more likely to support Qualified Elderly develops in lieu of projects for the general population. It also decreases the competitiveness of future applications for projects targeting the general population by eliminating the opportunity for such projects to receive points under § 11.9(c)(6)(C) – Underserved Area.

Thanks in advance for your consideration.

Sincerely,



Ann Lott  
Executive Director

(50) Bonner Carrington

October 20, 2014

Texas Department of Housing and Community Affairs  
Teresa Morales  
Rule Comments  
221 East 11th Street  
Austin, Texas 78701

**RE: 2015 Qualified Allocation Plan – Public Comment**

Enclosed please find public comment by Bonner Carrington LLC for the 2015 Qualified Allocation Plan (QAP). It should be noted, as we have said to the Texas Department of Housing and Community Affairs Board and staff, that we generally support leaving the QAP the same as the 2014 document. However, since TDHCA staff has made several changes reflected in the current draft of the QAP, most notably the imprudent inclusion of Section 811 apartment home units, we are submitting the following comments on the current draft for consideration.

**Comments on 2015 QAP New Items and Changes**

- 1. §11.9(c)(7) Tenant Populations with Special Housing Needs.** The Department should restore this scoring item to its 2014 QAP version, removing the Section 811 program language. The Section 811 program is a noble cause; however, it is unproven and should not be required until the Department can determine if it is feasible and compatible with the HTC program. TDHCA should leave this scoring item unchanged from the 2014 QAP. If this Section 811 language is to be present in the 2015 QAP, it should be optional or the Department should require it only for Developments that choose to serve the Supportive Housing population. Supportive Housing developments will be more suitable for Section 811 residents; the Developers and Property Managers of Supportive Housing properties will be better equipped to work with and will have more access to the resources necessary to properly serve Section 811 residents. The Department should instead propose a separate RFP, unrelated to the 9% HTC applications for Developers who wish to choose to participate in the Section 811 program. Lastly, the Section 811 population needs more services and support than most Developers can provide; and requiring the inclusion of these units would be a disservice not only to the Section 811 residents, but also to the other residents of the community, whose success is one of the primary purposes of the 9% HTC program and the Department.

The Section 811 program puts an unequal burden on the developers of properties in the MSAs selected for Section 811. Such located properties will have to compete with others in their same sub-region that do not qualify for Section 811 because of their county or other reason, and they can get the two points without the encumbrance of this new and unproven program. Additionally, counties in these MSAs accounted for over 60% of the allocation recommended for award during the 2014 HTC competitive application round,

even though they make up less than 20% of the counties in Texas. The average difference between the lowest scoring Development recommended for an award and the subsequent Application during 2014 is 2.0 points with over 70% of the sub-regions in 2014 being decided by two points or less, and therefore Developers are essentially required to select participation in the Section 811 program to get the its points.

By requiring the Section 811 program to be selected when applying for the HTC program in specific MSAs, TDHCA is requiring many levels of additional qualifications, education, and financial obligations for the Owners and Property Management Companies. This risk does not justify the additional expense of obtaining the HUD-required certification for use of the Enterprise Income Verification (EIV) system, additional reporting requirements, and additional workload.

In making this program a requirement, TDHCA is taking away part of the benefit to private Owners who do not want to build affordable communities without HUD's involvement. TDHCA is requiring Owners, who wish to build in specific MSAs, to work with HUD even though it is not in their original scope of work. In doing this, TDHCA is forcing Owners to obtain an EIV User Administrator, WASS Administrator, PIC User Administrator, and many WASS/TRAC users. HUD does provide webinars and some online training; however, many are outdated (2008, 2009, 2010) and do not contain needed clarification. This limited amount of training from HUD forces Owners to seek third-party training that can be quite costly and not guaranteed to provide accurate information. In addition to training, owners would also be required to create and maintain an EIV Policy and Procedures Manual and separate Tenant Selection Plans. In addition, larger housing providers that employ fifteen or more people and receive federal funds are required to have a Section 504 Coordinator and a Section 504 Policy Manual. All of these requirements will come at the Owner's expense and could be very time consuming and financially costly.

In addition, Owners and Property Management Companies will still be required to obtain the currently required third-party or first-hand verification for each Section 811 funded unit because THDCA Compliance Monitors do not currently have the HUD clearance to review the EIV documentation. Thus resulting in the Section 811 units having to be certified twice. Certifying the household twice will result in additional cost to the Owner and cause double work for onsite staff.

It is in TDHCA's and the owners' best interests to delay the requirement of selecting the Section 811 program within specific MSAs until TDHCA can outline specific ongoing compliance requirements and to give Owners time to obtain certifications and operational procedures that comply with HUD's guidelines. The Department should leave the Tenant Populations with Special Housing Needs scoring item the same as in the 2014 version of the QAP.

*Most Preferred Recommended Language:*

*Remove Section 811 language from this scoring item for 2015 and revisit in 2016.*

Secondly Preferred Recommended Language:

(A)... In order to be eligible for these points, an Application ~~is required~~ may choose to participate in the Section 811 Program, unless any one of the following provisions under clauses (i) – (iv) of this subparagraph are not met...

(B) Applications proposing Developments that do not meet the requirements of subparagraph (A) of this paragraph or choose not to participate in Section 811 may qualify for two (2) points for meeting the requirements of this subparagraph...

Thirdly Preferred Recommended Language:

(A)... In order to be eligible for these points, an Application is required to participate in the Section 811 Program, unless any one of the following provisions under clauses (i) – (iv) of this subparagraph are not met.

(i) The Development must not be a Qualified Elderly Development;

(ii) The Development is Supportive Housing;

(iii) The Development must not be originally constructed before 1978;

~~(iv)~~ The units committed to the Section 811 Program in the Development must not have any other sources of project-based rental or operating assistance;

~~(iv)~~ The Development Site must be located in one of the following areas: Austin-Round Rock MSA, Brownsville-Harlingen MSA, Dallas-Fort Worth MSA; El Paso MSA; Houston-The Woodlands-Sugar Land MSA; McAllen-Edinburg-Mission MSA; or the San Antonio-New Braunfels MSA.

2. **§11.2 Program Calendar for Competitive Housing Tax Credits.** The Pre-Application Final Delivery Date should be January 8, 2015. The Proposed date of January 13, 2015 does not give enough time between the Pre- and Full Applications. The due date for the site design and development feasibility report and all resolutions for housing de-concentration factors should be April 1, 2014. When Developers have more time to work with the local jurisdictions, the Applicant and the local jurisdiction benefit. This should not delay underwriting for the simple fact that the Local Government Support resolution and State Representative Input letters are also not due until April 1, 2015; which are primary determinants on whether an application will be competitive. In addition, it is helpful for the Applicant to have as much time as possible to analyze the Pre-Application and Application scoring logs to determine whether or not to proceed; when Applicants exercise discretion after analyzing the scoring logs, better applications are submitted and both time and money resources are not wasted by TDHCA or the Applicant in pursuing these sites or by reviewing applications that will not be competitive.

Recommended Language:

<b>Deadline</b>	<b>Document Required</b>
01/ <del>13</del> 08/2015	Pre-Application Final Delivery Date (including pre-clearance and waiver requests)
02/27/2015	Full Application Delivery Date (including Quantifiable Community Participation documentation, Environmental Site Assessments (ESAs), Property Condition Assessments (PCAs), and Appraisals; Primary Market Area Map; <del>Site Design and Development Feasibility Report; and all Resolutions necessary under §11.3 of this chapter (related to Housing</del>

04/01/2015	<p><del><i>De-Concentration Factors</i></del>.</p> <p><i>Final Input from Elected Officials Delivery Date (including Resolution for Local Government Support pursuant to §11.9(d)(1) of this chapter and State Representative Input pursuant to §11.9(d)(5) of this chapter (after opportunity to review materially complete Applications)).</i></p> <p><i>Market Analysis Delivery Date pursuant to §10.205 of this title.</i></p> <p><i>Site Challenges Delivery Date.</i></p> <p><u><i>Site Design and Development Feasibility Report and all Resolutions necessary under §11.3 of this chapter (related to Housing De-Concentration Factors).</i></u></p>
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- 3. §11.3(e) Developments in Certain Sub-Regions and Counties.** While the restriction in 2014 made some strides in equalizing the number of general population and senior communities, a disparity still exists and we support senior populations being ineligible in the same regions and counties as in 2014. In 2013, Elderly Developments made up 25.02% of TDHCA’s overall portfolio and 31.85% of the developments in the Certain Sub-Regions and Counties TDHCA deemed ineligible, as opposed to 21.04% of the developments in all other areas. After the 2014 cycle, Elderly Developments still made up 31.20% of the developments in the previously ineligible areas determined by TDHCA in 2014 (a decrease of only 0.65%), compared to 20.84% of the developments in all other areas. Clearly, the percentage of Elderly Developments in those Certain Sub-Regions and Counties are still disproportionate compared to the percentage of Elderly Developments in the rest of the State of Texas. We recommend the Department reinstate the restriction from the 2014 version of the QAP for Developments in Certain Sub-Regions and Counties.

*Recommended Language:*

*(e) Developments in Certain Sub-Regions and Counties. In the 2015 Application Round the following Counties are ineligible for Qualified Elderly Developments: Collin; Denton; Ellis; Johnson; Hays; and Guadalupe, unless the Application is made in a Rural Area. In the 2015 Application Round Regions five (5); six (6); and eight (8) are ineligible for Qualified Elderly Developments, unless the Application is made in a Rural Area. These limitations will be reassessed prior to the 2016 Application Round and are based on the fact that data evaluated by the Department has shown that in the ineligible areas identified above, the percentage of qualified elderly households residing in rent restricted HTC assisted units exceeds the percentage of the total Qualified Elderly-eligible population for that area.*

- 4. §11.9(b)(2) Sponsor Characteristics.** In addition to a HUB or non-profit, three years of developing HTC communities in Texas should give Applicants this one point. Evidence in the form of a Commitment, 8609 or Carryover Agreement should be acceptable.

Recommended Language:

(2) **Sponsor Characteristics.** (§42(m)(1)(C)(iv)) (1 point). An Application may qualify to receive one (1) point provided the ownership structure contains a HUB, as certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date, ~~or~~ Qualified Nonprofit Organization, provided the Application is under the Nonprofit Set-Aside, has some combination of ownership interest in the General Partner of the Applicant, cash flow from operations, and developer fee which taken together equal at least 80 percent and no less than 5 percent for any category, or a person with at least fifty percent ownership interest in the General Partner also owns at least fifty percent interest in the General Partners of at least three 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 eighty-five based on their most recent inspection...

5. **§11.9(c)(4)(a) Opportunity Index.** The Department should restore the five points for any population in top quartile in the attendance zone of a qualifying elementary school as in the 2013 version of the QAP. General population communities already have a two-point scoring advantage when in the first quartile.

Recommended Language:

(4) **Opportunity Index.** *The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials.*

(A) *For Developments located in an Urban Area, 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 clauses (i) – (iv) of this subparagraph. The Department will base poverty rate on data from the five (5) year American Community Survey...*

(iii) any Development, regardless of population served, if the Development Site 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 Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on Index 1 of the performance index, related to student achievement (5 points);...

6. **§11.9(c)(4)(c) Opportunity Index and §11.9(c)(5) Educational Excellence.** In Districts that have open enrollment, the Department should judge developments by the overall Independent School District rating, rather than using the lowest ranking school in the entire district, since most students will not attend the lowest ranking school. Open enrollment and limited open enrollment are becoming increasingly popular in Texas and this item unfairly penalizes developments in these school districts including, but not limited to, Argyle ISD, Birdville ISD, Cleburne ISD, Coppell ISD, Deer Park ISD, Forney ISD, Garland ISD, Lake Dallas ISD, McAllen ISD, Rockwall ISD, Texas City ISD. This is not an extensive list and the Texas Education Agency (TEA) itself does not

even keep a list of open enrollment districts. Additionally, Texas Education Code §25.031 Assignment and Transfers in Discretion of Governing Board says “In conformity with this subchapter, the board of trustees of a school district or the board of county school trustees or a school employee designated by the board may assign and transfer any student from one school facility or classroom to another within its jurisdiction.” The TEA estimates that during the 2007-08 school year, approximately ninety-four thousand Texas students transferred to a non-charter school in the public school system. According to the Coalition for Public Schools, of the 1,031 Texas school districts, 1,028 districts have adopted inter-district transfers that provide students with the opportunity to transfer from their home district to a public school within another district. Also, Students attending a “low-performing” school are eligible to attend a higher performing school in the same district or in another district under the Public Education Grant (PEG) program. Texas Education Code §29.202 establishes criteria allowing a student to transfer under PEG. Of the three hundred and fifty thousand students statewide estimated to be eligible to transfer from 613 identified campuses during the 2007-08 school year, five hundred students exercised their right to transfer to a different public school with a PEG transfer. Judging developments in open enrollment districts by the district rating achieves the purpose of the Opportunity Index and Educational Excellence scoring criteria by rewarding developments in good school districts and creating opportunities for children living in these apartment home communities to receive a quality education.

Recommended Language:

*(5) **Educational Excellence.** An Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of public schools that have achieved a 77 or greater on Index 1 of the performance index, related to student achievement, by the Texas Education Agency, provided that the schools also have a Met Standard rating. Points will be awarded 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 an Applicant may use the ~~lowest~~ rating of the school district of all in lieu of the elementary, middle, and/or high schools, respectively...*

7. **§11.9(c)(5) Educational Excellence.** The Department should allocate points to developments in the attendance zones of schools that meet the criteria of this item for each school as opposed to hinging on the elementary school. Developments in the attendance zone for all schools meeting the criteria should receive three points. If only two schools – regardless of whether they are elementary, middle, or high schools – meet the criteria, the development should receive two points. Finally, if only one school – regardless of whether it is elementary, middle, or high school – meets the criteria, the development should receive one point.

Recommended Language:

*(A) The Development Site is within the attendance zone of an elementary school, a middle school, and a high school with the appropriate rating (3 points); ~~or~~*

*(B) The Development Site is within the attendance zone of any two schools ~~an elementary school and either a middle school or high school~~ with the appropriate rating. Possible combinations are: elementary and middle school, elementary and high school, or middle school and high school (+ 2 points); or*

*(C) The Development Site is within the attendance zone of any one school: an elementary school, a middle school, or a high school with the appropriate rating (1 point).*

8. **§11.9(c)(6)(C) Underserved Area.** The Department should allow points under this scoring item if there is not an active HTC development that serves the same target population as opposed to any HTC development regardless of population. Different target populations serve different needs and if there is only one type of population served, the place is underserved in regards to the other types of populations.

*Recommended Language:*

*(6) Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive two (2) points for general population or Supportive Housing Developments if the Development Site is located in one of the areas described in subparagraphs (A) – (D) of this paragraph.*

*(A) A Colonia;*

*(B) An Economically Distressed Area;*

*(C) A Place, or if outside of the boundaries of any Place, a county that has never received a competitive HTC 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; or*

*(D) For Rural Areas only, a census tract that has never received a competitive HTC allocation or a 4 percent non-competitive HTC allocation for a Development that remains an active HTC development serving the same Target Population.*

9. **§11.9(d)(2) Commitment of Development Funding by Local Political Subdivision.** The Department should move the resolution due date for the two firm commitment bonus points for this scoring item to April 1, 2015, which is the same date the local support is due. When developers have more time to work with the local jurisdictions, it will be beneficial to the Applicant and the local jurisdictions.

*Recommended Language:*

*(2)...The Applicant must provide evidence ~~in the Application~~ by April 1, 2015 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 final decision with regard to the awards of such funding is expected to occur no later than September 1. A firm commitment of funds is required by Commitment or points will be lost (except for Applicants electing the point under subparagraph (C) of this paragraph). While the specific source can change, the funding secured must have been eligible at the time the Application was submitted. ...*

*(C) Two (2) points may be added to the points in subparagraph (B) (i) – (v) of this paragraph and subparagraph (D) of this paragraph if the Applicant provides a*

*firm commitment for funds in the form of a resolution [by April 1, 2015](#) from the Local Political Subdivision and provides a commitment for the same source(s) at Commitment. The resolution must reflect terms that are consistent with the requirements of this paragraph. ...*

**10. §11.9(d)(2) Commitment of Development Funding by Local Political Subdivision.**

Since State HOME funds do not apply to this scoring item, then no HOME funds should apply. As currently written, this rule gives larger metropolitan areas a distinct advantage, which could be in violation of Fair Housing. We recommend allowing all HOME funds count for this scoring item or none at all.

*Most Preferred Recommended Language:*

*(2)... HOME Investment Partnership Program or Community Development Block Grant funds administered by the State of Texas ~~cannot~~ [can](#) be utilized for points under this scoring item ~~except where the city, county, or instrumentality is an actual applicant for and sub-recipient of such funds for use in providing financial support to the proposed Development.~~*

*Secondly Preferred Recommended Language:*

*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 sub-recipient of such funds for use in providing financial support to the proposed Development.~~*

**11. §11.9(d)(4)(A)(iii) and (iv) Quantifiable Community Participation.** The Department should remove and replace line items (iii) and (iv). Neighborhood Organizations have the right to form and govern their organizations as they see fit. As long as support or opposition is given in accordance with the HOA or POA meeting rules, nothing further should be needed for the Department.

*Recommended Language:*

*(A) **Statement Requirements.** If an organization cannot make the following affirmative certifications or statements then the organization will not be considered a Neighborhood Organization for purposes of this paragraph.*

*(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) of 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;*

*(iii) certification that ~~no person required to be listed in accordance with Texas Government Code §2306.6707 with respect to the Development to which the Application requiring their listing relates participated in any way in the~~*

~~deliberations of the Neighborhood Organization, including any votes taken support, opposition, or neutrality was given at a public meeting in accordance with the organization's governing documents;~~

~~(iv) certification that at least 80 percent of the current membership of the Neighborhood Organization consists of persons residing or owning real property within the boundaries of the Neighborhood Organization; and~~

~~(v) (iv) 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.~~

**12. §11.9(e)(2)(B)-(D) Cost of Development Per Square Foot.** As costs of construction continue to rise, the Department should increase the cost per square foot by \$20 for this section. The US Labor Secretary Thomas E. Perez announced on October 1, 2014 that the minimum wage for workers on federal service and construction contracts has been increased to \$10.10; which will affect all Developments seeking TDHCA HOME funds and other programs that work in conjunction with the 9% HTC applications.

Recommended Language:

*(B) Applications proposing New Construction or Reconstruction will be eligible for twelve (12) points if one of the following conditions is met:*

- (i) The Building Cost per square foot is less than ~~\$70~~ \$90 per square foot;*
- (ii) The Building Cost per square foot is less than ~~\$75~~ \$95 per square foot, and the Development meets the definition of a high cost development;*
- (iii) The Hard Cost per square foot is less than ~~\$90~~ \$110 per square foot; or*
- (iv) The Hard Cost per square foot is less than ~~\$100~~ \$120 per square foot, and the Development meets the definition of high cost development.*

*(C) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:*

- (i) The Building Cost per square foot is less than ~~\$75~~ \$95 per square foot;*
- (ii) The Building Cost per square foot is less than ~~\$80~~ \$100 per square foot, and the Development meets the definition of a high cost development;*
- (iii) The Hard Cost per square foot is less than ~~\$95~~ \$115 per square foot; or*
- (iv) The Hard Cost per square foot is less than ~~\$105~~ \$125 per square foot, and the Development meets the definition of high cost development.*

*(D) Applications proposing New Construction or Reconstruction will be eligible for ten (10) points if one of the following conditions is met:*

- (i) The Building Cost is less than ~~\$90~~ \$110 per square foot; or*
- (ii) The Hard Cost is less than ~~\$110~~ \$130 per square foot.*

**13. §10.101(a)(3)(C) Undesirable Site Features.** The Department should set the distance limitations back to the 2014 allotment of 300 feet for heavy industrial uses. This standard has been acceptable in the past and the additional 200 feet are excessive. Additionally, the inclusion of manufacturing plants as an example of heavy industrial is too varied across their trade. The Department should remove that item and leave the others as examples instead.

*Recommended Language:*

(C) Development Sites located within ~~500~~ 300 feet of heavy industrial or dangerous uses such as ~~manufacturing plants~~, fuel storage facilities (excluding gas stations), refinery blast zones, etc.;

**14. §10.101(a)(4)(B)(ii) Undesirable Neighborhood Characteristics.** The Department is commendable for authorizing staff to select and contract with a qualified crime data statistics provider through an Invitation for Bid during the July 31, 2014 TDHCA Board Meeting, which will hopefully inform the 2016 Uniform Multifamily Rules in this section. In the mean time, TDHCA should not rely on Neighborhood Scout for crime information since their scoring system lacks transparency and, by their own admission, can be unreliable. In the Disclaimer section of the website (neighborhoodscout.com), it states that “Location Inc., its partners, shareholders, directors, officers, employees, successors and assignees, do not warrant that NeighborhoodScout, HometownGuides, ScoutReport or any other linked websites or email communication, or any of the information they contain is complete, accurate or error-free, nor that the servers that carry these websites are free of viruses or other harmful components. Location Inc. does not promise or warrant to the user that any aspect of this site and system will work properly or be available continuously.” Therefore, the Department should not use this as a threshold item for the eligibility of Developments and instead use the language from the 2014 Uniform Multifamily Rules.

*Recommended Language:*

(ii) ~~The Development Site is located in a census tract that has a crime index of 40 or less, according to neighborhoodscout.com;~~ locally known presence of gang activity, prostitution, drug trafficking, or other significant criminal activity that rises to the level of frequent police reports;

Sincerely,



Stuart B. Shaw, CEO

# (51) RealTex Development



October 20, 2014

Board of Directors  
Texas Department of Housing & Community Affairs  
221 E. 11<sup>th</sup> Street  
Austin, TX 78701

Dear Chairman Oxer & Members of the Board,

Realtex is a member of TAAHP and concurs with their recommendations to the 2015 Multifamily Program Rules and QAP. In addition to the comments submitted by TAAHP, Realtex would like to submit the recommendations below for suggestions to the 2015 Multifamily Program Rules and the Qualified Allocation Plan.

**RECOMMENDATION #1**

**§10.101(a)(1) Floodplain**

Realtex recommends that the requirement for all Developments to be able to obtain flood insurance be removed.

**RECOMMENDATION #2**

**§10.101(a)(3)(B) Undesirable Site Features**

Realtex recommends that the allowable distance for a Development Site to be located from a railroad remain at 300 feet, not 100 feet.

**RECOMMENDATION #3**

**§10.203 Public Notifications**

Realtex recommends removing the language requiring Applicants to renotify if there is a 5% change in density.

**RECOMMENDATION #4**

**§10.204 Required Documentation for Application Submission**

Realtex supports the addition of language excluding Applications for Rehabilitation to submit building floor plans when the floor plans will not be changing.

Your considerations of the aforementioned recommendations, as well as the TAAHP membership comments are greatly appreciated.

Respectfully,



**Rick J. Deyoe**  
President

[rdeyoe@realtexdevelopment.com](mailto:rdeyoe@realtexdevelopment.com)

# (52) Roundstone Development

**From:** [Jean Latsha](mailto:Jean.Latsha)  
**To:** [Teresa Morales](mailto:Teresa.Morales)  
**Subject:** FW: Public Comment for Draft 2015 Uniform Multifamily Rules  
**Date:** Monday, October 20, 2014 5:34:16 PM

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**From:** Lisa Taylor [mailto:lat@rstdev.com]  
**Sent:** Monday, October 20, 2014 4:00 PM  
**To:** stephanie.naquin@tdhca.state.tx.us; jean.latsha@tdhca.state.tx.us  
**Subject:** Public Comment for Draft 2015 Uniform Multifamily Rules

Good Afternoon,

Please find our public comment related to the draft uniform rules below.

Thanks,

Lisa Taylor  
**Please note new address:**  
Roundstone Development, LLC  
1605 LBJ Freeway, Suite 610  
Dallas, TX 75234  
Phone: 972-243-4205 ext. 304  
Fax 972-243-4267

In regards to section 4 Undesirable Neighborhood Characteristics of Chapter 10 of the Uniform Multifamily Rules part B ii, which an excerpt is below, we would like to suggest an alternative to this data source. CityData.com provides data over the course of several years which allows for one to see how the crime for an area develops over time. Neighborhood Scout uses current data, which while beneficial, neglects to show how an area may have decreased crime rates from the past. A data set which provides current data and previous history could provide a better picture of the crime in a particular area. If data from neighborhood scout was used, it would create more work on behalf of the Department staff as they would have to review numerous sites which although located in areas that may score high on opportunity index according to the QAP fall below the index of 40 on neighborhood scout. An example of this would be deals submitted in border towns which fall below the index of 40 currently listed in the rules. As section C of the rules lists out the criteria used by the Department to further analyze areas that have an undesirable characteristics, it would seem to save the Department staff time if sites that were located in an area that scored max opportunity index points then a lower crime score shouldn't be considered an undesirable characteristic.

(ii) The Development Site is located in a census tract that has a crime index of 40 or less, according to neighborhoodscout.com;

(53) Accessible Housing  
Austin, Inc.



1640A E. 2<sup>nd</sup> Street Suite 100  
Austin, Texas 78702-4412  
512-442-6680

October 17, 2014

Tim Irvine  
Executive Director  
Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, TX 78711-3941

Dear Mr. Irvine:

Accessible Housing Austin! Inc. is a community housing development organization that works to address the housing needs of individuals with disabilities. With the demand for housing assistance for individuals with disabilities, it is critical that the state of Texas is serious about creating affordable housing to prevent unnecessary institutionalization. We have seen that the lack of resources for housing for those individuals identified in institutions with service supports in place does prevent their relocation to the community.

Please accept this letter as our support for the staff recommended scoring item in the Qualified Allocation Plan for developers proposing to participate in the State's Section 811 Project Rental Assistance Program to create new units and the opportunity for existing units to be identified for this program.

Sincerely,

Stephanie Thomas  
President

# (54) Promoting Independence Advisory Committee

## PROMOTING INDEPENDENCE ADVISORY COMMITTEE

*Constituted by Senate Bill 367  
77<sup>th</sup> Legislature - 2001*

**Cindy Adams**  
*Superior Health Plan*

**Doni Green**  
*Texas Association of Area  
Agencies on Aging*

**Jean Langendorf**  
*Accessible Housing Austin!*

**Dennis Borel**  
*Coalition of Texans with Disabilities*

**Rachel Hammon**  
*Texas Association for Home  
Health Care and Hospice, Inc.*

**Jeff Miller**  
*The ARC of Texas*

**Danette Castle**  
*Texas Council of Community Centers*

**Colleen Horton**  
*Hogg Foundation  
for Mental Health*

**Carole Smith**  
*Private Providers Association  
of Texas*

**Kevin Warren**  
*Texas Health Care Association*

**Bob Kafka**  
*ADAPT of Texas*

**Elizabeth Tucker**  
*EveryChild, Inc.*

**Robert Ham**  
*Providers Alliance for Community  
Services of Texas*

Dear Texas Department of Housing and Community Affairs (TDHCA) Board of Directors:

**It is recommended that the Board of Directors of the Texas Department of Housing and Community Affairs approve the staff recommended scoring item of the Qualified Allocation Plan for developers proposing to participate in the State's Section 811 Project Rental Assistance Program to create new units and the opportunity for existing units to be identified for this program.**

*With the demand for housing assistance for individuals with disabilities leaving institutions increasing, it is critical that resources be directed to meet this need. The state of Texas has indicated a commitment to moving individuals from state institutions. Affordable housing has been identified as the primary barrier to living in the community. In addition, the United States Department of Justice and the United States Department of Housing and Urban Development have also emphasized the importance of integrated housing opportunities for individuals with disabilities. Currently, there are many households on the Project Access voucher waitlist with some waiting for more than a year. The wait is preventing their relocation to the community; but they could be assisted through 811 program along with individuals with severe mental illness or aging out of the foster care system.*

*The Section 811 Project Rental Assistance (PRA) program provides project-based rental assistance for extremely low-income persons with disabilities linked with long term services. The program is made possible through a partnership between TDHCA, the Texas Health and Human Services Commission and eligible multifamily properties funded by TDHCA. The Section 811 PRA program creates the opportunity for persons with disabilities to live as independently as possible through the coordination of voluntary services and the provision of a choice of subsidized, integrated rental housing options.*