

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEETING

Texas Capitol Extension  
E2.028  
1100 Congress Avenue  
Austin, Texas

November 7, 2019  
8:00 a.m.

MEMBERS:

J.B. GOODWIN, Chair  
LESLIE BINGHAM ESCAREÑO, Vice Chair  
PAUL A. BRADEN, Member  
ASUSENA RESÉNDIZ Member  
SHARON THOMASON, Member (absent)  
LEO VASQUEZ, Member

BOBBY WILKINSON, Executive Director

ON THE RECORD REPORTING  
(512) 450-0342

I N D E X

<u>AGENDA ITEM</u>	<u>PAGE</u>
CALL TO ORDER	7
ROLL CALL	
CERTIFICATION OF QUORUM	
CONSENT AGENDA	
ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:	8
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a) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement	
98170 Homes of Persimmons Dallas	
03245 Meadows Place Senior Village Stafford	
03257 Caney Run Estates Victoria	
b) Presentation, discussion, and possible action regarding an increase to the Housing Tax Credit amount	
16405 New Hope Housing at Harrisburg Houston	
BOND FINANCE	
c) Presentation, discussion and possible action on Resolution No. 20-005 Authorizing the Execution of Escrow Agreements relating to the Variable Rate Demand Multifamily Housing Revenue Bonds for Creek Point Apartments Series 2000 and Timber Point Apartments Series 2000	
COMPLIANCE	
d) Presentation, discussion, and possible action on Dispute of the Compliance Division's assessment of the Applicant's compliance history to be reported to the Executive Award Review Advisory Committee for Jackie Robinson (19470)	
COMMUNITY AFFAIRS	
e) Presentation, Discussion, and Possible Action on the 2020 Payment Standards for	

the Housing Choice Voucher Program (HCVP)  
HOME AND HOMELESSNESS PROGRAMS

- f) Presentation, discussion, and possible action to authorize the issuance of the 2019 HOME Investment Partnerships Program Single Family General Set-Aside Notice of Funding Availability and publication of the NOFA in the *Texas Register*

MULTIFAMILY FINANCE

- g) Presentation, discussion, and possible action regarding an increase in the first lien loan amount for Casa de Manana (HTC #19051/ HOME Contract 1002924)

RULES

- h) Presentation, discussion, and possible action on an order proposing amendments to 10 TAC §8.7, Tenant Selection and Screening; an order proposing amendments to 10 TAC §23.61, Tenant-Based Rental Assistance (TBRA) General Requirements; and directing their publication for adoption in the *Texas Register* (TABLED) 65

CONSENT AGENDA REPORT ITEMS

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- a) Outreach and Activities Report (Oct-Nov)
- b) Report on the Department's 4th Quarter Investment Report in accordance with the Public Funds Investment Act
- c) Report on the Department's SFY 2019 draft Balance Sheet/Statement of Net Position for the year ended August 31, 2019
- d) Report on the Department's 4th Quarter Investment Report relating to funds held under Bond Trust Indentures

ACTION ITEMS

ITEM 3: OCI, HTF, AND NSP 8  
Presentation, discussion, and possible action on Colonia Self-Help Center Program Awards to Maverick County and Starr County in accordance with Tex. Gov't Code §2306.582 through Community Development Block Grant

## Funding

## ITEM 4: BOND FINANCE

- a) Presentation, discussion, and possible 15  
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loan agreement and master trade  
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19438 Legacy Senior Residences Round Rock  
19439 Estates of Shiloh Dallas  
19444 Oaks on North Plaza Austin
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§10.617 Affirmative Marketing Requirements,  
§10.618 Onsite Monitoring; §10.622 Special  
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P R O C E E D I N G S

1  
2 MR. GOODWIN: Good morning, and welcome to the  
3 November 7 Board meeting for the Texas Department of  
4 Housing and Community Affairs.

5 We'll start by taking roll.

6 Ms. Bingham?

7 MS. BINGHAM ESCAREÑO: Here.

8 MR. GOODWIN: Mr. Braden?

9 MR. BRADEN: Here.

10 MR. GOODWIN: Mr. Goodwin, yes.

11 Ms. Reséndiz?

12 MS. RESÉNDIZ: Present.

13 MR. GOODWIN: Ms. Thomason, absent.

14 Mr. Vasquez?

15 MR. VASQUEZ: Here.

16 MR. GOODWIN: We have a quorum.

17 If you would, please stand and join Bobby  
18 leading us in the pledge to the American flag and the Texas  
19 flag.

20 (The Pledge of Allegiance and the Texas  
21 Allegiance were recited.)

22 MR. GOODWIN: Michael, we have no resolutions  
23 today?

24 MR. LYTTLE: No, sir.

25 MR. GOODWIN: Okay. Next item is our consent

1 agenda. Is there anything on the consent agenda that any  
2 Board member would like to see pulled or anyone in the  
3 audience that would like to be pulled?

4 (No response.)

5 MR. GOODWIN: If not, do I hear a motion to  
6 approve the consent agenda as presented?

7 MS. BINGHAM ESCAREÑO: I move to approve the  
8 consent agenda as presented.

9 MR. GOODWIN: A second?

10 MS. RESÉNDIZ: Second.

11 MR. GOODWIN: All those in favor say aye.

12 (A chorus of ayes.)

13 MR. GOODWIN: Opposed?

14 (No response.)

15 MR. GOODWIN: Okay. Moving on to the action  
16 items, we start with item number 3. Raul.

17 MR. GONZALES: Good morning, Chairman Goodwin,  
18 Board members. My name is Raul Gonzales and I'm the  
19 director for the Office of Colonia Initiatives, Housing  
20 Trust Fund, and the Neighborhood Stabilization Program.

21 On item 3 staff is recommending two awards of  
22 Community Development Block Grant funds under the Colonia  
23 Self-Help Center. The first award is for a million dollars  
24 to Maverick County, the second award is for \$700,000 to  
25 Starr County.

1           For Maverick County, at the May 23 Board meeting  
2 the Board approved the publication of a request for an  
3 administrator to operate the Maverick County Self-Help  
4 Center. Maverick County submitted a proposal that received  
5 the highest average scores of the two proposals received.  
6 Maverick County had administered the self-help center  
7 contract in 2011 prior to the recent administrator, but the  
8 county was unable to continue due to some HUD concerns and  
9 delinquent single audits. In response to Maverick County's  
10 proposal to return to administer the self-help center,  
11 TDHCA's Compliance Division conducted a previous  
12 participation review and did not identify any concerns or  
13 delinquencies. The Colonia Resident Advisory Committee  
14 also recommended the county for award in their October  
15 meeting. The four-year contract term for the county self-  
16 help center award is anticipated to begin in December.

17           Regarding Starr County, Starr County is pending  
18 the completion and submission of their single audit for  
19 fiscal year September 30 to the Federal Audit  
20 Clearinghouse. Starr County's audit is delayed due to the  
21 hiring of a new auditor, but the county states it should be  
22 completed and submitted by the end of November, beginning  
23 of December. TDHCA's Executive Award Review Advisory  
24 Committee met to discuss a compliance matter and  
25 recommended the conditional approval of Starr County's

1 self-help center in accordance with 10 TAC 1.303 under the  
2 subsection on award conditions that can be imposed by  
3 EARAC.

4 The condition is that Starr County must submit  
5 their compliant single audit to the Federal Audit  
6 Clearinghouse as soon as possible, but no later than  
7 February 7, 2020, in order to execute a new self-help  
8 center contract. And depending on the results of their  
9 audit, the Department may impose additional conditions up  
10 on the contract in accordance with 2 CFR 200.207, Audit  
11 Requirements for Federal Awards.

12 With that, I'm happy to answer any questions.

13 MR. GOODWIN: Any questions?

14 MR. BRADEN: Mr. Chair.

15 So the audit requirements, besides having them  
16 in compliance now when they sign up a contract, does the  
17 contract call for ongoing audit filings?

18 MR. GONZALES: Yes, sir. Throughout the term of  
19 the contract, it's a four-year contract so there will be  
20 other audits due at that time, so yes, they'll have to be  
21 compliant.

22 MR. BRADEN: And when are they due?

23 MR. GONZALES: I believe they're due annually;  
24 I'm not sure of the exact date.

25 MR. BRADEN: You don't know how many months

1 after the end of their year?

2 MR. GONZALES: No, sir, I sure don't.

3 MR. BRADEN: I'm just a little concerned that we  
4 have an audit here that's over a year old and it's not  
5 complete yet, whether a year or two of the contract we're  
6 going to have the same issue.

7 MR. GONZALES: But I believe it was due -- it  
8 does say 2018, and I would need to verify that.

9 MR. BRADEN: Okay. It's an important program  
10 and I want it to continue, but those things are kind of  
11 concerning.

12 MR. WILKINSON: There's a concern that if we  
13 waited on the award we might get some funds swept, so  
14 that's why it's written in a conditional manner to where  
15 they have to get their audit finished before the actual  
16 funds are released.

17 MR. BRADEN: But if it's a four-year contract,  
18 so if in the middle of the contract term they start non-  
19 complying, I mean, do we do anything or do we just keep  
20 continuing? I'm not suggesting a change of course.

21 MR. WILKINSON: We do stuff.

22 (General laughter.)

23 MR. GONZALES: We do continue to request it.  
24 And the other thing that we also do is that we do not allow  
25 them to draw down any funds until the audit requirement has

1       been brought compliant.

2                   MR. BRADEN:   Which, of course, is unfortunate  
3       because we want these funds to be used.

4                   MR. GONZALES:   Right.   Yes, sir.

5                   MS. BOSTON:   Brooke Boston.   I would say they're  
6       required to do a single audit every year, and so every  
7       year, assuming they turn it in on time, then our folks will  
8       review it and if we see any problems we would potentially  
9       withhold a draw, like Raul said, and if they don't turn it  
10      in, we withhold a draw.

11                   MR. BRADEN:   I'm not concerned about the content  
12      so much as the fact that we actually get audits in a timely  
13      manner.

14                   MR. GONZALES:   Yes, sir.

15                   MR. GOODWIN:   Any other questions?

16                   MR. VASQUEZ:   Question.   So if they continue to  
17      not submit the audits or not pass the audits, at what point  
18      is there a backup plan?   I mean, do we switch to another  
19      administrator?

20                   MR. GONZALES:   Administrator?   You know, that is  
21      an option.   One of the biggest concerns, depending on the  
22      area, is that these contracts do have to be awarded to a  
23      unit of general local government, and some of these areas  
24      that we're operating in there's very limited interest other  
25      than a county government.   Most of the colonias that we're

1 working with are outside of the jurisdiction, so for a  
2 municipality to step in, sometimes it makes kind of  
3 difficult for them because they're serving outside their  
4 area. So unfortunately, the interest from other units of  
5 general government is very limited.

6 And this is one of the counties that is mandated  
7 under statute. There's five of them and Starr County is  
8 one that is mandated under Texas Government Code.

9 MR. WILKINSON: Raul, we have gone from a county  
10 to a municipality and back again?

11 MR. GONZALES: In Maverick County we have.  
12 Maverick County, previously they approached us and so we  
13 were able to go to a unit of local government there with  
14 the City of Eagle Pass, and so at that point when the new  
15 award came up, we did do the request for administrator in  
16 Maverick County. So it has happened and we have reached  
17 out to several of the other units of general government in  
18 Starr County as well, but not a lot of interest.

19 MR. WILKINSON: Options but limited options.

20 MR. GONZALES: Yes, sir.

21 MR. WILKINSON: One of the other issues is  
22 getting the money spent fast enough, not just audit issues.

23 MR. GONZALES: Yes, sir. Correct.

24 MR. GOODWIN: Any other questions?

25 (No response.)

1 MR. GOODWIN: If not, do I hear a motion to  
2 accept staff's recommendation?

3 MR. BRADEN: So moved.

4 MR. GOODWIN: Second?

5 MR. VASQUEZ: Second.

6 MR. GOODWIN: It's been moved and seconded. Any  
7 further discussion?

8 (No response.)

9 MR. GOODWIN: All those in favor say aye.

10 (A chorus of ayes.)

11 MR. GOODWIN: Opposed?

12 (No response.)

13 MR. GOODWIN: I'd like to recognize the county  
14 commissioner from Precinct 4 of Maverick County, Mr.  
15 Roberto Ruiz. Thank you for being here and thank you for  
16 your interest in this program.

17 Raul, I think we're moving on to item 3(b) --  
18 no -- 4(a). I'm sorry. There is no 3(b).

19 MS. GALUSKI: I'm not prepared to present 3(b).

20 (General laughter.)

21 MR. GOODWIN: Okay.

22 MS. GALUSKI: Good morning. I'm Monica Galuski,  
23 director of Bond Finance.

24 This is item 4(a) which is presentation,  
25 discussion, and possible action on Resolution 20-006

1 approving the form and substance of the warehousing  
2 agreement, retained mortgage agreement, and master trade  
3 confirmation; authorizing the execution of documents and  
4 instruments related to the foregoing; making certain  
5 findings and determinations in connection therewith; and  
6 containing other provisions relating to the subject.

7 Staff recommends approval of Resolution of  
8 20-006 which approves and authorizes the execution of  
9 warehousing agreement, retained mortgage loan agreement,  
10 and master trade confirmation, each of which is a credit  
11 agreement, as described in Chapter 1371 of the Texas  
12 Government Code. Descriptions are in your item but I'll  
13 briefly run through the three documents in fairly plain  
14 English.

15 The warehouse agreement. So the Department  
16 typically originates at least a portion of its mortgage  
17 loans for its single-family bond issues prior to the  
18 closing of the bond issue, but we don't have the funds to  
19 buy and hold those mortgage-backed securities. So the  
20 warehouse facility actually purchases those mortgage backed  
21 securities, holds them for a -- not as a favor, they take  
22 revenues off of it -- holds them for us and then when we  
23 close on the bond issue we take bond proceeds, we buy those  
24 mortgage-backed securities directly into the trust estate.

25 So that is a key piece to our bond issues and a few other

1 things that we do, but that's our typical use for that  
2 agreement.

3           The master trade confirmation is the agreement  
4 that controls that TBA program, so our taxable mortgage  
5 program, or TMP, as we call it, which is our primary  
6 financing mechanism. So through that agreement it commits  
7 our TBA program administrator, which is Hilltop  
8 Securities -- or we named them at the last Board meeting --  
9 it commits them to purchase mortgage-backed securities in  
10 the future at a predetermined price. Those mortgage-backed  
11 securities are backed by mortgage loans that we haven't  
12 originated yet. And the TBA provider hedges the TBA loan  
13 pipeline and they bear all of the financial risks and costs  
14 associated with market movements prior to those loans being  
15 securitized and sold, as well as any loan fallout from the  
16 pipeline.

17           The retained mortgage loan agreement is actually  
18 a spinoff out of our master trade confirmation. It gives  
19 us the ability, once our TBA provider has hedged loans for  
20 the program, it gives us the ability to go in and sort of  
21 break those hedges, buy those loans back out to put them in  
22 a single-family mortgage revenue bond issue. That gives us  
23 a lot of latitude, particularly if we're facing negative  
24 arbitrage, if rates are moving quickly and we've got a bond  
25 issue out there. If we have loans in the pipeline that are

1 bond-eligible, we can go in and do this, and we obviously  
2 do an economic analysis first, but it's just another tool  
3 for us that helps us mitigate risk.

4 These documents in substantially final form have  
5 been provided in your package, and if you approve, once  
6 they're executed, these will all be effective December 1,  
7 2019.

8 That concludes my presentation. If there's any  
9 questions, I'm happy to answer.

10 MR. GOODWIN: Any questions, Mr. Bond Expert?

11 MR. BRADEN: First of all, I thought the cover  
12 letter that explained the three contracts was well done and  
13 understandable, hopefully, for more of the lay to read as  
14 well.

15 How was the warehouse identified? Did we do a  
16 request for proposals?

17 MS. GALUSKI: We did a request for proposals for  
18 the warehouse and for the TBA provider.

19 MR. BRADEN: And I recognize that the universe  
20 of people who do this is very limited.

21 MS. GALUSKI: Extremely so, yes.

22 MR. BRADEN: And does our financial advisor  
23 recommend approval as well?

24 (General laughter.)

25 MR. BRADEN: Thank you. I have nothing further.

1 MR. GOODWIN: Any other questions?

2 (No response.)

3 MR. GOODWIN: If not, do I hear a motion to  
4 approve staff's recommendation?

5 MR. BRADEN: So moved.

6 MR. GOODWIN: Second?

7 MR. VASQUEZ: Second.

8 MR. GOODWIN: It's been moved and seconded. Any  
9 further discussion?

10 (No response.)

11 MR. GOODWIN: If not, all those in favor say  
12 aye.

13 (A chorus of ayes.)

14 MR. GOODWIN: Opposed?

15 (No response.)

16 MR. GOODWIN: Monica, thank you again for a  
17 fabulous job.

18 MS. GALUSKI: Thank you.

19 MR. GOODWIN: Next we move on to item 4(b).  
20 Teresa.

21 MS. MORALES: Teresa Morales, director of  
22 Multifamily Bonds.

23 Chairman Goodwin and members of the Board, item  
24 4(b) involves the issuance of multifamily revenue bonds by  
25 the Department for the new construction of 216 units in

1 Balch Springs, with all of the units restricted at 60  
2 percent of the area median family income and serving the  
3 general population.

4 Under the proposed financing structure, the  
5 Department will issue unrated tax exempt bonds in the  
6 amount of \$28,100,000. The bonds will be privately placed  
7 during construction, and upon conversion, the note will be  
8 acquired by Freddie Mac who will be the permanent lender  
9 and bond holder. The bonds will bear interest at a fixed  
10 rate of approximately 4.13 percent, with a 17-year term, a  
11 35-year amortization, and a maturity date of January 1,  
12 2040.

13 To date for 2019, Ventura at Hickory Tree is the  
14 fifth transaction to be funded by the Department's private  
15 activity bond program, bringing the total issuance to just  
16 over \$86 million and serving 850 households. Moreover,  
17 there is approximately \$69 million reserved volume cap for  
18 applications that are under review by staff that will be  
19 brought to you over the coming months.

20 Staff recommends approval of Bond Resolution  
21 Number 20-007 in the amount of \$28,100,000 and a  
22 determination notice of 4 percent housing tax credits in  
23 the amount of \$1,886,974 for Ventura at Hickory Tree.

24 MR. GOODWIN: Any questions?

25 MR. VASQUEZ: Just a question. So when would

1 they typically be bought out by you said Fannie Mae?

2 MS. MORALES: Freddie Mac.

3 MR. VASQUEZ: Freddie Mac?

4 MS. MORALES: Upon conversion after  
5 construction, about 18 to 24 months. Once they've  
6 completed construction and they've stabilized, then they  
7 would meet the conditions to conversion at stabilization,  
8 and once that occurs, then Freddie comes into the picture.

9 MR. VASQUEZ: And that frees up that amount of  
10 bonds?

11 MS. MORALES: It's already been used. The bond  
12 would have been used during construction for project costs.

13 MR. GOODWIN: Any other questions?

14 (No response.)

15 MR. GOODWIN: If not, do I hear a motion  
16 approving staff's recommendation.

17 MR. VASQUEZ: Move to approve staff's  
18 recommendation.

19 MR. GOODWIN: Second?

20 MR. BRADEN: Second.

21 MR. GOODWIN: Any other discussion?

22 (No response.)

23 MR. GOODWIN: If not, all those in favor say  
24 aye.

25 (A chorus of ayes.)

1 MR. GOODWIN: Opposed?

2 (No response.)

3 MR. GOODWIN: Okay. Teresa, you're going to do  
4 5(a)?

5 MS. MORALES: Yes.

6 MR. GOODWIN: Okay.

7 MS. MORALES: Item 5(a) involves the award of  
8 \$7.9 million in 4 percent housing tax credits associated  
9 with six multifamily developments, the majority of which  
10 are new construction and serving the general population.

11 Worth noting, among those developments under  
12 this item is Bridge at Canyon View which you may recall had  
13 a neighborhood risk factor relating to the middle school.  
14 The development site was found eligible by the Board last  
15 month based on the information and testimony presented.

16 Estates of Shiloh includes entities and  
17 principals that resulted in a Category 3 designation as it  
18 relates to the previous participation. Despite this, the  
19 Board determined last month that EARAC could recommend  
20 approval and that recommendation is reflected in your  
21 package.

22 Last, Oaks on North Plaza is requesting a waiver  
23 of the 14-day deadline associated with the submission of  
24 the resolution of no objection which is a threshold item  
25 required by statute. Worth noting is that this deadline is

1 not something that staff often recommends be waived, given  
2 the fact that applications can be submitted without it and  
3 the length of time the application is under review by staff  
4 should provide the applicant with the time necessary to  
5 obtain such resolution from the appropriate governing body.

6 The circumstances surrounding the need for the waiver and  
7 how the waiver meets the requirement articulated in the  
8 rule is explained more thoroughly in your materials and  
9 concludes with staff recommending that the waiver be  
10 granted. Moreover, with the resolution being adopted last  
11 Thursday, just prior to the Board book being posted, staff  
12 confirms that it has received a certified copy of that  
13 resolution.

14 In closing, these six applications represent  
15 almost 1,300 units of affordable housing financed through  
16 the 4 percent Housing Tax Credit Program. The application  
17 log included with this item reflects the current status of  
18 4 percent applications in 2019. To date, Board action has  
19 produced almost 7,700 units of affordable housing.

20 Staff recommends approval of these six  
21 applications in their respective amounts noted in your  
22 package and recommends the waiver be granted associated  
23 with Oaks on North Plaza.

24 MR. GOODWIN: Any questions?

25 MS. BINGHAM ESCAREÑO: I have a question about

1 that waiver. Conditioned on anything?

2 MS. MORALES: No.

3 MS. BINGHAM ESCAREÑO: Just a waiver altogether.

4 MS. MORALES: Just a waiver of the deadline  
5 because the rule requires it be submitted 14 days before  
6 the Board meeting.

7 MS. BINGHAM ESCAREÑO: So it being submitted is  
8 inevitable, it's just not going to meet the deadline.

9 MS. MORALES: The deadline.

10 MR. ECCLES: And it has been submitted.

11 MS. BINGHAM ESCAREÑO: Oh, okay. Great.

12 MR. GOODWIN: Any other questions?

13 (No response.)

14 MR. GOODWIN: If not, do I hear a motion to  
15 approve staff's recommendation?

16 MS. BINGHAM ESCAREÑO: Move to approve staff's  
17 recommendation.

18 MR. GOODWIN: Second?

19 MS. RESÉNDIZ: Second.

20 MR. GOODWIN: It's been moved and seconded. Any  
21 further discussion?

22 (No response.)

23 MR. GOODWIN: If not, all those who agree  
24 signify by saying aye.

25 (A chorus of ayes.)

1 MR. GOODWIN: Opposed?

2 (No response.)

3 MR. GOODWIN: Okay. We are going to take item  
4 5(b) and move it to 6(h), so we'll take up item 5(c) next.

5 MR. SINNOTT: Good morning, Chairman Goodwin,  
6 members of the Board. My name is Andrew Sinnott,  
7 Multifamily Loan Program administrator.

8 Item 5(c) concerns an award of a predevelopment  
9 grant from our 2019-2 special purpose NOFA for  
10 predevelopment. The 2019-2 special purpose NOFA, which  
11 allows for predevelopment grants of up to \$50,000, was  
12 approved by the Board back in February and the Board  
13 approved the award of the first predevelopment grant to  
14 Project Transitions back in July.

15 Predevelopment application 19554, being  
16 considered today, was submitted by Making Dreams Real, Inc.  
17 and is being recommended for a predevelopment award of  
18 \$50,000 under this NOFA. Making Dreams Real, Inc. plans on  
19 using the funds for a 96-unit development in Sherman that  
20 will serve a supportive housing population.

21 And with that, if you have any questions.

22 MR. GOODWIN: Any questions?

23 (No response.)

24 MR. GOODWIN: Do I hear a motion to approve  
25 staff's recommendation?

1 MR. BRADEN: Move to approve.

2 MR. GOODWIN: Second?

3 MR. VASQUEZ: Second.

4 MR. GOODWIN: All those in favor say aye.

5 (A chorus of ayes.)

6 MR. GOODWIN: Opposed?

7 (No response.)

8 MR. GOODWIN: Andrew, are you going to move on  
9 to the next item?

10 MR. SINNOTT: Sure. 5(d) concerns the approval  
11 for publication in the *Texas Register* of the 2020-2  
12 multifamily direct loan special purpose NOFA.

13 So three things have led to staff creating this  
14 NOFA and bringing it to the Board for approval today.  
15 First, the likelihood of having National Housing Trust Fund  
16 left over from the 2019-1 NOFA once the application  
17 submission deadline occurs later this month, as we  
18 currently have approximately \$11.3 million in unrequested  
19 NHTF. Two is the need to commit and expend NHTF as this is  
20 the one source of funds that we're currently administering  
21 under the Multifamily Direct Loan Program that has  
22 commitment and expenditure deadlines, federal commitment  
23 and expenditure deadlines. And then the third motivating  
24 factor is the potential demand from 4 percent layered  
25 applicants that have received advance notice that they

1 would get a bond reservation in January 2020 under the 2020  
2 private activity bond lottery that occurred last week.

3 And it's worth noting that 4 percent layered  
4 applications could be particularly helpful in helping the  
5 Department meet federal commitment and expenditure  
6 deadlines as they tend to close on their financing and  
7 start construction pretty quickly after Board approval. So  
8 this NOFA proposes accepting 4 percent layered applications  
9 that received advance notice that they would get a bond  
10 reservation in January 2020 from December 3, 2019 through  
11 January 6, 2020, with all applications being given an  
12 application acceptance date of January 6, 2020, as that  
13 will be the date by which the 2020 version of Chapter 13,  
14 the Multifamily Direct Loan Rule, will become effective.  
15 As a result of all applications under this NOFA receiving  
16 the same application acceptance date, scoring criteria in  
17 the Multifamily Director Loan Rule may be utilized should  
18 funds become oversubscribed.

19 All NHTF under this NOFA will be available as  
20 construction only or construction to permanent loans  
21 structured as surplus cash flow loans to finance new  
22 construction or reconstruction developments providing 30  
23 percent units that would not have been available otherwise.

24 The maximum per-application request under this NOFA will  
25 be \$3 million, just like it is under the soft repayment

1 set-aside right now under the 2019-1 NOFA.

2 So that concludes my presentation if you have  
3 any questions.

4 MR. SINNOTT: Could you explain a little bit  
5 about the deadline of use of this money?

6 MR. SINNOTT: Sure. So we've committed all of  
7 our 2017 NHTF. Years that we have not fully committed  
8 funds for 2017, 2018 and 2019. 2017 we're in a position to  
9 commit with awards that we've already made, it's just a  
10 matter of committing those funds. 2018 and 2019, the 2018  
11 commitment deadline is October of 2020, and the 2019  
12 commitment deadline, I'd have to go back and look but it's  
13 a little further out, but it's primarily the 2018 NHTF  
14 funds that we're trying to commit through this NOFA, or  
15 that we're hopeful we'll be able to commit through this  
16 NOFA.

17 MR. GOODWIN: Okay. Other questions?

18 MR. BRADEN: To the Chair.

19 Could you go into a little more commentary on  
20 when you made the comment about this could become  
21 competitive?

22 MR. SINNOTT: Right. So right now under our  
23 annual NOFA and under previous annual NOFAs, it's basically  
24 been first come, first served. There's been some priority  
25 given to applications with development sites in counties

1 that have had FEMA declared disaster declarations, but  
2 primarily it's first come, first served under the annual  
3 NOFA. So with this NOFA, because our 2020 Direct Loan Rule  
4 won't go into effect until January 6, 2020, we'll start  
5 accepting applications prior to that, but the earliest that  
6 they'll considered received or have an application  
7 acceptance date is January 6, 2020 to account for that rule  
8 going into effect.

9 So as a result, you know, if we get four, five,  
10 six applications, we could have to use scoring criteria in  
11 13.6, which it's been there since we've had the Direct Loan  
12 Rule, it's been there for a few years, it's just that we  
13 haven't typically had to utilize that scoring criteria.  
14 And a lot of it, or a fair amount of it comes from the QAP  
15 scoring but some of it is specific to direct loan  
16 applications. Like if an applicant elects lower maximum  
17 per-unit subsidy limits, that's specific to direct loan.

18 MR. GOODWIN: Any other questions for Andrew?

19 (No response.)

20 MR. GOODWIN: I want to point out anybody that  
21 wants to speak on this issue if you would come up and sit  
22 in the first two rows. A few meetings ago we had somebody  
23 say they didn't get a chance to come up when we asked for  
24 comments, so you've got to be pretty quick if you're  
25 sitting in these first two rows. We're not going to move

1 on without hearing your comments.

2 So do I hear a motion from the Board to hear  
3 comments on this?

4 MS. BINGHAM ESCAREÑO: So moved.

5 MR. GOODWIN: Second?

6 MR. VASQUEZ: Second.

7 MR. GOODWIN: All in favor say aye.

8 (A chorus of ayes.)

9 MR. GOODWIN: Opposed?

10 (No response.)

11 MR. GOODWIN: Okay. We'll start to hear  
12 comments.

13 MR. COMBS: Thank you. Ryan Combs.

14 And the competitive aspect of this is the thing  
15 that I wanted to talk about. I spent quite a while talking  
16 with Andrew about this on the phone yesterday, and I'd  
17 really just learned about it yesterday, and I understand  
18 that there is this need for this NOFA because there is this  
19 challenge that we've got, 2019 ran out of bond cap. And so  
20 we all got into the lottery and there were a certain number  
21 of applications that were picked in the lottery to be able  
22 to get 2020, and so there is kind of this disconnection.

23 And so the challenge is the current rules --  
24 there's a current NOFA that's open right now and under the  
25 current rules, me or anybody else can go and apply today,

1 and as the Multifamily Direct Loan Rules are currently  
2 written, and the new rules that you're about to adopt next  
3 month, that bond deals have never been competitive. There  
4 are the competitive criteria that's in the Direct Loan  
5 Rules, but those are always used with 9 percent layered  
6 applications in the competitive process, and those  
7 competitive criteria are the 9 percent competitive  
8 criteria. Bond applications have never really used those  
9 competitive criteria because bond applications are taken  
10 all throughout the year, they don't comply to that 9  
11 percent cycle.

12 And so the challenge is under the rules right  
13 now myself or anybody can apply for these funds that are  
14 available right now under this current NOFA that's open,  
15 however, you have to have a bond reservation within 30  
16 days. Well, the new bond reservations happen at the very  
17 beginning of January, so that's more than 30 days. Staff  
18 can administratively approve another 30-day extension,  
19 however, I understand, and after talking with Andrew and  
20 several people on staff yesterday, I understand why they  
21 would not want to do that. And they're trying to clear  
22 this up and it makes sense that they want to clean this up  
23 because then you would have the direct loan, the tax credit  
24 application and the bonds all in the same program year,  
25 instead of having some of it in 2019 and some of it in 2020

1 which could create a compliance issue. So it makes sense  
2 that they would all be the same year.

3 The unintended consequence is that it would  
4 become this competitive process which is not great because  
5 applications that are ready to go now basically have to  
6 wait till the end of the year -- which would happen anyway  
7 because anybody in the lottery has to wait to get their  
8 bond reservation at the end of the year, so the waiting is  
9 not the problem. The unpredictability of a competitive  
10 process at the end of those 60 days is the problem.

11 And so Andrew and I talked about this quite a  
12 while yesterday and we came up with a couple of possible  
13 solutions. One, neither Andrew nor I knew whether it was  
14 legal to do this or not, and so I'll throw it out there,  
15 and if it's not legal, there's a second option. The first  
16 option is so the effective date of January 6 has to be what  
17 it is based on what Andrew just said, and that's the way he  
18 explained it to me and that's the way I understand it. The  
19 Multifamily Direct Loan Rule has always been you get logged  
20 in as to when you receive them, and so can the rule allow  
21 that applications are given priority based on this  
22 application acceptance period from December 3 through  
23 January 6? The legality of that is I don't know if that's  
24 allowed before the effective date of January 6.

25 Beau is shaking his head no, and so if that's

1 not allowed, then the second option is that you would  
2 either put into the NOFA or the new Direct Loan Rule that's  
3 coming up next month additional criteria that allows  
4 applications that are ready to go now more priority. So  
5 applications that are ready to go, that have their  
6 resolutions, their zoning, their things that are readiness  
7 to proceed, that they're given the ability to be able to be  
8 more competitive. And the reason for that is these  
9 applications are ready to go, and so me or anybody else,  
10 we're having to kind of wait and then get put into this  
11 unpredictable competitive process to know if those funds  
12 are going to be available, where we know they are now. If  
13 I submitted today, I know they're there and I would have  
14 access to it, it's just I'm not going to be able to get the  
15 30-day extension because we have this new NOFA that's  
16 coming up.

17 And so I want to just kind of put those things  
18 out there as an option, and hopefully those would be  
19 considered.

20 MR. GOODWIN: Okay. Any questions?

21 (No response.)

22 MR. GOODWIN: Beau, would you like to address  
23 your head-shaking? Okay. Now you're going to have to  
24 explain this.

25 (General laughter.)

1 MR. ECCLES: I think, actually, it would be  
2 preferable, rather than making it a legal opinion, to just  
3 have program explain the process of how the plan fuels the  
4 NOFA as opposed to the NOFA being changed on the fly to  
5 maybe backwards reflect the plan.

6 MR. GOODWIN: Okay.

7 MS. HOLLOWAY: So good morning. Marni Holloway,  
8 director of Multifamily Finance.

9 Ryan makes some very good points about in the  
10 past we've been able to just run on this first come, first  
11 served sort of process. We don't with the 9 percent  
12 applications for very obvious reasons, but our Direct Loan  
13 Rule -- and Beau, I don't have the citation, I'm sorry, I  
14 didn't write it down -- does allow us to set this date,  
15 this received date for all applications.

16 MR. ECCLES: It's 10 TAC 13.5(b).

17 MS. HOLLOWAY: And also allows us to create set-  
18 asides that are not contemplated in the rule otherwise.

19 What is going on, just as we are running out of  
20 bond cap at the end of the year, we're starting to run out  
21 of direct loan funds. It's starting to become a  
22 competitive environment. That's why there are selection  
23 criteria within the Direct Loan Rule so that if we are  
24 entering into a competitive environment, we have a tool  
25 with which to select the applications that best suit the

1 priorities of our Department.

2 So Mr. Ryan's original plan that he was going to  
3 submit a 2019 application requesting direct loan funds and  
4 4 percent tax credits, but he didn't have the reservation  
5 yet, meant that his tax credit application would be for  
6 2020, his direct loan application would have been for 2019.

7 We've encountered this situation in the past with Grimm  
8 Hotel -- some of you are familiar with that transaction --  
9 and what wound up happening is the only way we could put  
10 that together was to have Grimm resubmit a direct loan  
11 application that matched up with the bond year so that  
12 everything was moving in lockstep through the process.

13 So the original plan would have put Mr. Combs  
14 submitting an application under the regular 2019 NOFA.  
15 This special NOFA has a due date on January 6 because our  
16 Direct Loan Rule is effective on that date. The next day  
17 or very shortly after -- within a few days after that, our  
18 regular 2020 NOFA will open and that runs all year long  
19 with all the set-asides and everything else.

20 I understand the concern about the competition.

21 Frankly, this is the environment that we are working in at  
22 this point. We don't have big pots of money that we're  
23 able to make sure that everybody gets their deal. So there  
24 is the potential for Mr. Combs's applications to compete  
25 well if we get to that point within the direct loan

1 criteria, or there's the potential to apply the next year  
2 in the regular NOFA.

3 I would also point out that if we want to make a  
4 change to this NOFA, my request to the Board would be that  
5 we table it and move it to next month because we don't have  
6 time to work through something. The issue with that is we  
7 don't know if we approve a NOFA on December 12 if we can  
8 take applications on December 13, so how soon can we take  
9 applications because we have to publish in the *Texas*  
10 *Register*. So if we push this out a month to try to figure  
11 it out, we're potentially just making it all moot.

12 The other thing that would happen with the  
13 readiness to proceed suggestion that Mr. Combs has made is  
14 that all of the rehabilitation applications would have an  
15 advantage.

16 Any questions?

17 MR. GOODWIN: Any questions for Marni?

18 MR. BRADEN: So is this a one-time glitch in  
19 timing?

20 MS. HOLLOWAY: This is something that we deal  
21 with at the end of every year because we have 4 percent  
22 applications coming in who will have their reservations in  
23 2020 and we've dealt with it in the Bond Rule. We haven't  
24 really caught up with the Direct Loan Rule. The issue is  
25 the effective date of the rule, so we can't call this a

1 2020 application until the 2020 rule is effective.

2 MR. GOODWIN: Any additional questions?

3 (No response.)

4 MR. GOODWIN: Andrew.

5 MR. SINNOTT: I was just going to add I think  
6 going forward next year we'll probably cut off the  
7 application acceptance date before it starts to bleed into  
8 the 2021 lottery for 4 percent deals just to avoid this  
9 confusion in the future.

10 MR. GOODWIN: Okay.

11 MR. BRADEN: And currently we don't have  
12 readiness to proceed as one of the factors?

13 MR. SINNOTT: We do not. It's obviously a  
14 scoring criteria for 9 percent folks. It's something staff  
15 has always been interested in seeing deals that are shovel-  
16 ready rather than deals that may take a while to get to  
17 closing. So it will be a new concept for the Direct Loan  
18 Program for sure but it's not a new concept for staff.

19 MR. BRADEN: But the timing would be problematic  
20 to try to add that as a criteria?

21 MR. SINNOTT: For the NOFA, I don't think it's  
22 appropriate, after speaking with Beau yesterday. I don't  
23 know if adding that kind of criteria to this NOFA is  
24 appropriate, I think it's more appropriate to be addressed  
25 through the rule, which we're taking public comment on

1 through November 14, next week. So if the Board would like  
2 to consider -- if stakeholders would like to make public  
3 comment about adding that as a scoring criteria in Chapter  
4 13 for 2020, they may do so, and the Board has the ability  
5 to consider that when we bring the 2020 version of Chapter  
6 13 to the Board next month.

7 MR. BRADEN: And the rule would be effective  
8 January 6?

9 MR. SINNOTT: Correct.

10 MR. BRADEN: And so would it apply to this  
11 special NOFA?

12 MR. SINNOTT: Correct.

13 MR. BRADEN: That would make sense to me.

14 MR. GOODWIN: Any other questions?

15 (No response.)

16 MR. GOODWIN: Barry, did you want to comment?

17 MR. PALMER: Barry Palmer with Coats Rose. We  
18 represent the developer.

19 And these are 2018 Housing Trust funds that  
20 you're under a deadline to spend, so it seems here we have  
21 a developer that's got two projects that are ready to go  
22 and could use \$3 million apiece on those two projects. So  
23 including something like readiness to proceed in the NOFA  
24 seems to make a lot of sense so that you don't pick  
25 projects that don't close for another 12 months after they

1 get an award of the funds and you miss your deadline for  
2 spending those funds.

3 MR. GOODWIN: Any questions for Barry?

4 (No response.)

5 MR. GOODWIN: Marni.

6 MS. HOLLOWAY: If I may? In general, those bond  
7 reservations come with a six-month closing deadline and our  
8 Direct Loan Rule requires contracting within a time frame  
9 that for these awards would allow us to easily meet that  
10 commitment deadline, and we meet the commitment deadline  
11 prior to closing.

12 MR. GOODWIN: And nothing is to say that we move  
13 forward on this, as staff has recommended, that these two  
14 projects won't get approved.

15 MS. HOLLOWAY: Until we have the applications, I  
16 can't speak to that.

17 MR. GOODWIN: Right. Okay.

18 MR. BRADEN: But just to be clear, we still can  
19 add readiness to proceed in the rule next month and it  
20 would apply to these or other projects?

21 MS. HOLLOWAY: Beau, what do you think if we've  
22 approved a NOFA? It would change the selection criteria.

23 MR. ECCLES: It would change the selection  
24 criteria, and without seeing the comment that would fuel  
25 the change to the rule and whether that's something that

1 would be an allowable rule change because it's -- I can't  
2 really comment in the hypothetical on that. It would be  
3 pretty thorny to say that a rule change adding a new  
4 criteria at this phase would be an allowable flex on the  
5 rule that's out for public comment.

6 MS. HOLLOWAY: Well, and to that I would add,  
7 repeating my comment earlier, if we had a readiness to  
8 proceed selection criteria within the Direct Loan Rule, as  
9 it relates to the 4 percent, all the rehab deals would go  
10 first because they're already going to have all their  
11 zoning and all that other stuff that new construction deals  
12 are getting there but they may not have them in place.

13 MR. ECCLES: And that would be part of the staff  
14 response and the consideration on that and part of the  
15 debate that would go on with that as well.

16 MS. HOLLOWAY: Right.

17 MR. ECCLES: It's just not something that we  
18 would do on the fly.

19 MS. HOLLOWAY: So again, this is part of the  
20 environment that we are starting to work in, that there is  
21 far more competition. You heard the just tremendous  
22 numbers that Teresa's group is producing on the 4 percent  
23 side. There's a lot of business out there.

24 MR. GOODWIN: Leo, did you have a question?

25 MR. VASQUEZ: No.

1 MR. GOODWIN: Any other questions?

2 (No response.)

3 MR. GOODWIN: Do I hear a motion from a Board  
4 member to accept staff's recommendation?

5 (No response.)

6 MR. GOODWIN: Do I hear a motion to do something  
7 else?

8 MR. VASQUEZ: I move to accept staff's  
9 recommendation.

10 MR. GOODWIN: Do I hear a second?

11 MS. BINGHAM ESCAREÑO: I will, I'll second.

12 MR. GOODWIN: Okay. It's been moved and  
13 seconded. Any further discussion?

14 (No response.)

15 MR. GOODWIN: All those in favor say aye.

16 (Ayes: Chairman Goodwin, Members Bingham  
17 Escareño, Reséndiz and Vasquez.)

18 MR. GOODWIN: Opposed?

19 MR. BRADEN: Opposed.

20 MR. GOODWIN: One opposed, Mr. Braden.

21 Okay. Moving on to item 6, Rules. And I will  
22 point out anybody that wants to speak on the rules, please  
23 move up and take a position in the first two rows.

24 Good morning, Brooke.

25 MS. BOSTON: Good morning, Chairman Goodwin,

1 Board members. I'm Brooke Boston. I'm presenting item  
2 6(a) which leads to the adoption of 10 TAC Section 1.10  
3 relating to public comment procedures.

4 This rule was presented to the Board in  
5 September, released as a draft. The rule provides the  
6 Department's procedures for hearing public comments at  
7 Governing Board meetings. The proposed draft made  
8 revisions to clarify when the registration form method of  
9 comment can be used, to clarify the deference may be  
10 provided to reading written communication from elected  
11 officials, to clarify that no new materials may be provided  
12 to the Board when the item for consideration is part of a  
13 competitive award process, and to make other minor  
14 administrative and technical revisions.

15 Public comment was accepted from September 20 to  
16 October 21, and no comment was received. This rule is  
17 being recommended for adoption with no changes from the  
18 version that was put in the *Texas Register*. And I'm happy  
19 to answer any questions.

20 MR. GOODWIN: Any questions?

21 (No response.)

22 MR. GOODWIN: Do I hear a motion to approve  
23 staff's recommendation?

24 MS. BINGHAM ESCAREÑO: So moved.

25 MS. RESÉNDIZ: Second.

1 MR. GOODWIN: Anyone out there want to speak to  
2 this? Is somebody coming up to speak on this?

3 (No response.)

4 MR. GOODWIN: All those in favor say aye.

5 (A chorus of ayes.)

6 MR. GOODWIN: Opposed?

7 (No response.)

8 MR. GOODWIN: Okay. Moving on to item 6(b).

9 Good morning.

10 MS. TRACZ: Good morning. I'm Cate Tracz, Fair  
11 Housing manager.

12 This is item 6(b). This item proposes creating  
13 a new Subchapter G in the Uniform Multifamily Rules called  
14 Affirmative marketing requirements and written policies and  
15 procedures. The content of this new Subchapter G comes  
16 from 10 TAC Section 10.601 and .617 of the Compliance  
17 Monitoring rules which are proposed to be repealed under a  
18 separate rulemaking action that Patricia is going to  
19 present in the next item.

20 So the purpose of the proposed move of these  
21 rule sections from Compliance to Fair Housing is to align  
22 the TAC rules with some recent organizational moves within  
23 the Department which shifts the oversight of the  
24 multifamily affirmative marketing requirements and the  
25 written policies and procedures, which are sometimes called

1 tenant selection criteria, and all the associated review  
2 process from the Compliance Division to the Fair Housing  
3 data management and reporting unit.

4 So with this change in the rule location, there  
5 are some edits that are being made to the rule sections.  
6 In particular, the proposed rule highlights requirements  
7 for the Multifamily Direct Loan funded developments that  
8 were just not in the previous part of the rules.

9 The proposed rule also clarifies the  
10 Department's occupancy standards policy in response to some  
11 concerns that we've heard over the last year or so from  
12 development owners, tenant complaints, and this also will  
13 help us to be more in line with HUD guidance.

14 And finally, in response to some comment that we  
15 received at a roundtable discussion held a few weeks ago,  
16 the occupancy standards policy now includes specific  
17 exemptions for supportive housing developments where all  
18 units in the development are single room occupancy, or  
19 SROs, or efficiencies, to allow only one person per unit.  
20 This exemption aligns with the supportive housing model  
21 currently in place with many of the Department's funded  
22 supportive housing providers. But it should be noted that  
23 if either Section 811 or the Multifamily Direct Loan funds  
24 are present in a development, any of those exceptions would  
25 require the Department's written approval just to ensure

1 that we follow HUD guidance and we document the HUD  
2 procedures.

3 So with your approval today of these rules, the  
4 new Subchapter G will be published in the *Texas Register*  
5 and then go out for public comment, and the public comment  
6 period will be open from November 22 through December 23.

7 MR. GOODWIN: Any questions for Cate?

8 MS. RESÉNDIZ: Chairman, I have a question.

9 MR. GOODWIN: Okay.

10 MS. RESÉNDIZ: Hi, Cate.

11 MS. TRACZ: Hi.

12 MS. RESÉNDIZ: So you just mentioned that in  
13 order for us to be more in line with HUD requirements in  
14 the guideline procedures that we heard from development  
15 owners and tenant complaints. What were the tenant  
16 complaints and the comments from development owners?

17 MS. TRACZ: So in the previous version of the  
18 rule we weren't as specific as to what you could have for  
19 your occupancy standards policy, so there was a little bit  
20 of confusion in interpreting the rule, how many folks you  
21 could have in a unit. So the new rule now tries to get in  
22 between the Property Code and some HUD guidance called the  
23 Keating Memo which says you can have -- the Property Code  
24 says you can go up to three times the number of people --  
25 three times the number of veterans, you can have that

1 number of people, and the Keating Memo, or the HUD  
2 guidance, says you need to have two people.

3 Is that correct? I've got it in my notes.

4 So we weren't really clear as to where we would  
5 fall between the occupancy standards that the Texas  
6 Property Code sets, which is pretty high, and the Keating  
7 Memo, which is a little bit lower, so we were trying to be  
8 in the middle of that, and there was some confusion as to  
9 how many folks could be in those units. So the purpose of  
10 this rule is to try to explain how to fit in between those  
11 two standards.

12 And I'm not sure of the details, because this  
13 was before my time in this position, of the complaints, but  
14 I think either counsel could answer that specific question.

15 MR. GOODWIN: Beau, can you answer that  
16 question?

17 MR. ECCLES: Actually, I'd ask Megan to come  
18 forward and explain. She was shaking her head on the  
19 Keating Memo.

20 MR. GOODWIN: A lot of head-shaking going on  
21 here today.

22 (General laughter.)

23 MS. SYLVESTER: Okay. I'm going to clarify a  
24 couple of points. The Property Code doesn't actually talk  
25 about bedrooms, it talks about sleeping areas, and it is a

1 very high standard.

2 MR. GOODWIN: What is considered a sleeping  
3 area?

4 MS. SYLVESTER: A sleeping area is actually  
5 defined as in what it is not, so it is not a kitchen, it is  
6 not a bathroom, it is not a space that you could not have a  
7 bed, but they would consider, for example, a living room  
8 would be a sleeping area. And it talks about three  
9 unrelated adults -- three adults, rather, in a sleeping  
10 area, and it also has some exceptions of if situations are  
11 in domestic violence, and it doesn't address the number of  
12 children that you can have in a household. It is a very,  
13 very high standard and it's probably not a reasonable  
14 standard for most of our designs in multifamily.

15 MR. GOODWIN: And this is the Texas Property  
16 Code?

17 MS. SYLVESTER: This is the Texas Property Code,  
18 and it's at the maximum of what you can have.

19 MR. GOODWIN: You're saying that a one bedroom  
20 apartment with a living room could have six adults under  
21 the Texas Property Code?

22 MS. SYLVESTER: I would need to look at it very  
23 specifically and you'd have to compare it with the language  
24 in the Property Code. I would be uncomfortable with saying  
25 that without looking at the specifics. But it's a very

1 high standard.

2           The Keating Memo sets a two per person is  
3 reasonable, but that's not reasonable if you have a  
4 sleeping area, that's not reasonable if you have young  
5 children. It's two per person unless all of these other  
6 factors are present. And when we did this rulemaking back  
7 in, I want to say, 2015, we received public comment that  
8 two per person should not include children under the age of  
9 six, and so that's kind of what we put in our rule, and  
10 that has caused a lot of confusion. Is it one child under  
11 the age of six? Is it any children you would have under  
12 the age of six? And since 2015, HUD has taken more of an  
13 interest in familial status discrimination, and so we now  
14 have more cases to look at, and they're really shifting  
15 away in their enforcement actions from basing it on age of  
16 a child and more towards a two plus one standard. And that  
17 seems to be what most of the industry has adopted, and so  
18 that's where we've gone as well.

19           Just to clarify one third point, Cate said that  
20 it's HUD guidance, and some of the things in the HUD  
21 program regulations for our Direct Loan Program and 811 are  
22 in HUD guidance, but then there are other things that are  
23 part of the regulations and part of our contracts with HUD,  
24 and so we tried to adopt a rule that addresses all of those  
25 factors as well, keeping in mind that supportive housing

1 developments may have some special characteristics but that  
2 our HUD program regulations make us examine those for our  
3 Direct Loan Program and 811 on a case-by-case basis and not  
4 a just overall policy.

5 MR. GOODWIN: A couple of questions to clarify.  
6 Does HUD define sleeping area the same way the Texas  
7 Property Code does?

8 MS. SYLVESTER: I would need to go look that up.  
9 I have a lot in my head. That's not one of the things.

10 MR. GOODWIN: I understand, and I understand  
11 it's hard to keep track of all these different things.

12 When you were responding about two, you said two  
13 per person. I think you meant two per sleeping area?

14 MS. SYLVESTER: Yes. I'm sorry. HUD actually  
15 uses the word bedroom when it talks about the two per  
16 bedroom, but then it also says a two per bedroom standard  
17 would not be reasonable if there is a large sleeping area  
18 or if there are young children. It details other factors  
19 where that would not be found reasonable, and I believe the  
20 court cases since 2015 where HUD has done these enforcement  
21 actions bear that out.

22 MR. GOODWIN: So I wouldn't qualify under my  
23 wife's definition of being the oldest child in the house.

24 (General laughter.)

25 MS. SYLVESTER: Familial status discrimination

1 is those under the age of 18 per the family unit.

2 MR. GOODWIN: I see we have people who want to  
3 speak.

4 Before you speak, Walter, let me ask for a  
5 motion to hear comments.

6 MS. BINGHAM ESCAREÑO: So moved.

7 MR. GOODWIN: Second?

8 MS. RESÉNDIZ: Second.

9 MR. GOODWIN: Any discussion?

10 (No response.)

11 MR. GOODWIN: All those in favor say aye.

12 (A chorus of ayes.)

13 MR. GOODWIN: Opposed?

14 (No response.)

15 MR. GOODWIN: Okay, Walter.

16 MR. MOREAU: I'm Walter Moreau, the director of  
17 Foundation Communities. We're very, very concerned about  
18 the occupancy standard rules.

19 A little background. Six of our communities are  
20 supportive housing, or we commonly call them SROs, which is  
21 not standing room only, its single room occupancy, and it's  
22 a HUD definition that's been around for decades. We have  
23 765 units in six communities, and our primary focus is  
24 single adults that have been homeless; most of our  
25 residents in our SROs have been homeless. So we do a lot

1 of onsite services, there is psychiatric nurses, there's  
2 substance abuse counseling. The units are tiny, they're  
3 generally under 400 square feet, efficiencies, if you're  
4 thinking in architectural terms.

5 Capitol Studios is the closest, it's right  
6 across the street from the La Quinta. You wouldn't know  
7 that it's supportive housing. It's a beautiful property,  
8 it's well managed.

9 Our rule has been for 15 years one person per  
10 unit. If you adopted a standard that allowed two people  
11 per unit, everything we do in our model changes. Instead  
12 of having 135 residents at Capitol Studios, I could have  
13 180 residents. You know, somebody moves in and then they  
14 want their friend or buddy or someone else to move in.  
15 We're not set up to provide the kind of supportive services  
16 that make that model successful.

17 There's been so much heated debate right now  
18 about homelessness, especially in Austin. The only thing I  
19 know is true is if you want to reduce the number of  
20 homeless, you've got to create supportive housing, and our  
21 model works, and it's not alone. This supportive housing  
22 it's happening all over the country, there's many, many  
23 examples of a one person per SRO, per unit. That's how  
24 it's defined.

25 We've brought all these concerns to staff. What

1 Megan and staff came up with -- and Megan explained it  
2 well, this is a gray area -- they said you're exempt if  
3 your supportive housing unless you have 811 or MFDL money  
4 and then you need written permission. It shouldn't matter  
5 what the funding source is.

6 I would ask that you change what goes out for  
7 public comment so the sentence in there that reads, "except  
8 in supportive housing units where all the units in the  
9 development are SROs or efficiencies" and then it goes on  
10 and on and describes. Just put a period at the end of that  
11 sentence. If there's public comment in the next 30 days  
12 that that exception needs to be fine-tuned, great, but  
13 we're not hearing any complaints. This is the model we've  
14 followed for 15 years.

15 So I'm passionate about this, this really works,  
16 don't screw up something that works because of a gray area  
17 in the rules, in the law, in the case law. We've got  
18 plenty of Fair Housing attorneys and plenty of other  
19 colleagues around the country who will weigh in that  
20 supportive housing SROs/efficiencies should be one person  
21 per bedroom.

22 Thanks.

23 MR. WILKINSON: I'm very sympathetic to Walter's  
24 opinions on this matter, and I was happy to put in the  
25 exception and then we put in the exception to the exception

1 based on counsel's concerns. But I totally agree that some  
2 of the special populations that you serve in supportive  
3 housing it makes sense to have a one person standard.

4 I can give you my word that we would be diligent  
5 and quick on granting permission, but I know that you would  
6 prefer to not have the exception to the exception at all.

7 MR. MOREAU: And there's nothing in here about  
8 grandfathering, so what do we do with our six communities  
9 that are existing.

10 MR. WILKINSON: That's our other practical  
11 concern.

12 MR. MOREAU: Three of them don't have any of  
13 that money and would be exempt, three wouldn't.

14 Thank you.

15 MR. GOODWIN: Any other questions for Walter?

16 (No response.)

17 MR. GOODWIN: Thank you for the great job that  
18 you do. I don't know that you know this, but my wife is a  
19 tutor in one of your projects in the after-school program  
20 and she sings your praises. Forty-two years of education  
21 experience she brings to that community twice a week in the  
22 afternoons, and she is your biggest supporter.

23 MR. MOREAU: Thank you.

24 MR. GOODWIN: Any other questions for Walter?

25 MS. BINGHAM ESCAREÑO: Mr. Chair, I think I just

1 have a question for staff.

2 So typically the Board hasn't really, that I can  
3 remember, made any changes to recommendations for what to  
4 post publicly for comment, and I also hear Walter's  
5 concerns and want to make sure that we're being responsive  
6 to a real concern.

7 So how about timelines? Like what kind of time  
8 pressure are we under right now to post for public comment?

9 MS. TRACZ: So the plan now is immediately after  
10 approval at this meeting to post in the *Texas Register*. It  
11 would have to go in by noon tomorrow because of some  
12 deadlines. But that would allow for time if there were  
13 Board proposed tweaks to the rule.

14 MS. BINGHAM ESCAREÑO: Okay. And then if we  
15 posted something different, like if we put the period at  
16 the end of the SRO sentence and left out the rest -- which  
17 I'm sure will be of some concern regarding the gray area --  
18 does the posting for -- I think I know the answer to this  
19 already, dadgummit.

20 So the staff or the agency cannot make material  
21 changes to something that's been posted for public comment?

22 In other words, if we rethought it and unfortunately could  
23 not get to some kind of modification in what's proposed  
24 that would address counsel's concern, do we revert back to  
25 the language proposed here and just say, sorry, we tried?

1 Take my hypothetical about if we put the period at the end  
2 of the SRO sentence and don't put in the stuff that we  
3 think might address the gray area, what would be the path  
4 after that?

5 MR. ECCLES: Actually, since it's a basic  
6 rulemaking question, public comment would go out on a  
7 proposed rule that would not then include the exception to  
8 the exception, and thus, there would be no comment that  
9 would be generated on that, so adding it in would be much  
10 more problematic at the end of public comment as opposed to  
11 leaving it in, receiving comment on it and then removing  
12 it. Plus, it would allow for staff to actually engage in  
13 that reasoned response to the comment that's received on  
14 it, and then the Board could evaluate whether staff's  
15 recommendations are within the Board's discretion to  
16 determine whether it's a good addition to the rule or  
17 whether it should be removed in response to public comment.

18 MR. GOODWIN: I saw Mr. Braden first. It looked  
19 like you have a question, comment?

20 MR. BRADEN: So the phrase that we're concerned  
21 about or we have questions on is this "and the supportive  
22 housing development has not Section 811 PRA or MFDL  
23 funding." That's correct, right?

24 MR. GOODWIN: Right.

25 MR. BRADEN: So the gray area is that counsel

1 thinks that 811 PRA or MFDL may require that? Is that  
2 correct?

3 MS. TRACZ: So it's a little bit more than just  
4 that one section at the end. It would be in the second  
5 sentence that starts "except in supportive housing  
6 developments," I think the proposal that I heard would be  
7 just to leave it at that, the comma, and then take out  
8 where we go into "where all units in the development are  
9 SROs or efficiencies has no Section 811 or MFDL funding"  
10 take that section out, and then in the following sentence  
11 also take out "in accordance with the HUD program  
12 requirements." So it would be those two just to go back to  
13 a blanket supportive housing exception to the SROs or  
14 efficiencies.

15 MR. BRADEN: And then nobody has raised  
16 objections about that, it's just that internally we have  
17 concerns that that may not be in compliance with technical  
18 requirements?

19 MS. TRACZ: We did have some objections at the  
20 roundtable a few weeks ago and it was what Walter had spoke  
21 about today. Some of the Foundation Communities staff did  
22 come before any of this was put in to present their case  
23 about the SRO model.

24 MR. BRADEN: Okay. But the comments that were  
25 made were comparable to Walter's comments, or they were

1 saying no, put this new language in?

2 MS. TRACZ: They were comparable.

3 MR. BRADEN: To Walter's comments. So nobody  
4 else has said put this new language in?

5 MS. TRACZ: Not externally, but our counsel has  
6 suggested it.

7 MR. BRADEN: Maybe, because it's a gray area.

8 MS. TRACZ: Yes.

9 MS. SYLVESTER: I apologize. I probably should  
10 have been more granular and save y'all. The HUD program  
11 regulations I spoke of require the Department to analyze  
12 tenant selection criteria on a deal-by-deal basis, and in  
13 one of our programs we have a handbook which we are  
14 contractually required by HUD to follow called the 4350,  
15 and that's the 811 PRA program, that specifically does not  
16 allow a single person standard. Now, we can go to HUD and  
17 we can try to get a waiver from that, but that is my  
18 understanding today of the requirement. It specifically  
19 says that you can't have an occupancy standard that does  
20 not allow a child in the household.

21 The other direct loan programs, we have a lot  
22 more flexibility on what we could approve but we have to  
23 approve that and we have to do it in our written agreement  
24 with the owner. So that's why the exception to the  
25 exception, as I believe Bobby termed it, is in the rule.

1 Not that we don't want to do it, there's just a process  
2 that we have to follow for HUD-funded programs and programs  
3 that we use those HUD match.

4 MR. BRADEN: And can we do a writing at the  
5 beginning to grandfather in current ones?

6 MS. SYLVESTER: We did not do this analysis at  
7 the beginning. We believed we had adopted a standard in  
8 2015 that had a two per person standard. It was not clear  
9 before the 2013 rulemaking with our Direct Loan funds how  
10 this sort of requirement was supposed to be done, it is  
11 clear now, HUD has done a lot of trainings on it.

12 So I hear what you're saying and we could give  
13 utmost deference to that of people who applied, and we do  
14 have some developments in which this is written in. I  
15 reviewed a LURA the other day where this is something that  
16 was specifically approved at the time of application. And  
17 any of those that that was the case where this was the  
18 representation made at application for our Direct Loan  
19 Program, we would do that. But the HUD rules that we have  
20 to follow don't allow us to just adopt a one-size-fits-all  
21 policy unless we do that at the very beginning. So you  
22 could say applications that meet this criteria and this  
23 criteria but we'd have to be a lot more detailed than just  
24 the definition of supportive housing because there's  
25 nothing currently in our definition of supportive housing

1 that would describe all of the factors that HUD is looking  
2 for.

3 MR. BRADEN: I guess I'm getting a little  
4 concerned the more you speak.

5 (General laughter.)

6 MR. BRADEN: Are you saying the HUD rule itself  
7 might prohibit this supportive housing structure so if you  
8 have 811 PRA funding on supportive housing?

9 MS. SYLVESTER: Not for the whole development,  
10 just for the 811 unit, and it doesn't say that you have to  
11 accept a two adult persons and that you could have a  
12 reasonable occupancy standard, but you can't adopt an  
13 occupancy standard, according to the 4350 handbook, that  
14 would prohibit a child from living in the unit that is part  
15 of the qualifying household, I mean, not like any child  
16 anywhere but a child that is part of that household.

17 MR. BRADEN: I guess when we began discussion I  
18 thought it was going to be a procedural hassle for Walter  
19 and people in organizations like him to actually comply and  
20 maybe one more thing we'd have to do, but are you saying  
21 that it might actually be an issue?

22 MS. SYLVESTER: For the 811 units we would need  
23 to go to HUD and try to get them to approve something else.  
24 For the Direct Loan units we have a lot of flexibility but  
25 we have to do that in the prescribed method that HUD has

1 told us we have to do that if you're going to limit the  
2 population. And this is not unique to supportive housing.

3 If you're going to have any preference or limitation for  
4 a certain type of population, it has to be reflected in  
5 your written agreement per the HUD guidelines -- I'm  
6 sorry -- the HUD regulations.

7 MR. BRADEN: We'll have to do an analysis of the  
8 811 funding for the complex.

9 MS. SYLVESTER: No. So the Direct Loan is under  
10 one set of rules and they're mostly the same, not entirely  
11 the same, and then the 811 PRA program. But the 811 PRA  
12 program only touches the 811 PRA units, and in the vast  
13 majority of our developments we have ten or fewer units  
14 that would potentially be impacted by this. And we will do  
15 our utmost, if this is something the Board wants, to try to  
16 get HUD to give us permission to do something else, but  
17 today the 4350 handbook is pretty clear on this matter.

18 MS. BINGHAM ESCAREÑO: Let me give it a shot.  
19 Why couldn't we do this, why couldn't we get rid of the  
20 language on the exception to the exception but leave in the  
21 part that says "in accordance with HUD program  
22 requirements" and then that allows you to kind of look at  
23 it case by case which is what the intent of the policy is.  
24 Right?

25 MS. SYLVESTER: I think that's where we are now.

1 I mean, I think the exception to the exception gives us  
2 that flexibility because it says it has to be approved on a  
3 case-by-case basis in a written agreement.

4 MS. BINGHAM ESCAREÑO: I know, but the exception  
5 to the exception kind of spells it out in a way that looks  
6 restrictive and puts us in a position where we have to  
7 promise people that we're going to do our best on the front  
8 end which would not be very reassuring to me if I were in  
9 that community. If you leave out the exception to the  
10 exception but you just leave in the language in accordance  
11 with HUD program requirements, then I think what to me that  
12 says is that allows folks on either spectrum to challenge  
13 it and then to do the due diligence that's required to  
14 prove it up or not.

15 MS. SYLVESTER: I think the issue is for these  
16 specific programs we have to do an affirmative analysis and  
17 that's part of just the string you take when you accept the  
18 federal money. As I said, you know, this is something  
19 that the Department has to approve. Unless I am missing  
20 what you're saying which is entirely possible because I  
21 have not had enough coffee this morning.

22 MR. WILKINSON: Brooke, may I suggest that we  
23 postpone this rule and we work on the draft a little bit?  
24 Would that be acceptable to the Board?

25 MS. SYLVESTER: If we postpone this one, there's

1 two other rules on the agenda that we will have to postpone  
2 as well because they all have citations that have to line  
3 up and you can't have -- which is fine. There's no  
4 external conditions.

5 MR. WILKINSON: Shorter agenda.

6 MR. GOODWIN: Which are those other two rules,  
7 Megan?

8 MS. TRACZ: It's the next one, the Compliance  
9 rules because we're taking the sections out of the  
10 Compliance rules, and then I believe it's one that was  
11 passed on the consent agenda which is just a cleanup of  
12 citations. It would be 1(h).

13 MS. SYLVESTER: So we could withdraw all three  
14 of those.

15 MR. GOODWIN: So if there was a feeling on the  
16 Board's level to table this till next meeting, we would  
17 tabling 1(h) and we would be tabling 6(b) and (c).

18 MS. TRACZ: That's right.

19 MR. GOODWIN: Do I hear a motion by any Board  
20 member that would like to see us kick this can to December?

21 MR. BRADEN: I'll make a motion to table items  
22 6(b) and (c) and amend the consent items. Let's open that  
23 up to get 1(h).

24 MR. GOODWIN: So we have a motion to table 6(b)  
25 and 6(c), but it's more appropriate to take a motion, Beau,

1 we have to open up the consent items again before we can  
2 re-table that?

3 MR. ECCLES: It may probably be a little bit  
4 cleaner if there was a separate motion to just open that  
5 item that was already passed up, remove that one, and table  
6 it which is the Board's taking action to essentially  
7 unapprove that and table it.

8 MR. GOODWIN: So we need to start with tabling  
9 6(b) and 6(c). We have a motion to table 6(b) and 6(c).

10 MS. BINGHAM ESCAREÑO: I'll second.

11 MR. GOODWIN: We have a second.

12 MR. GOODWIN: The motion to table is not  
13 discussable or not debatable, I don't believe. Can we hear  
14 comment?

15 MR. ECCLES: Yes.

16 MR. GOODWIN: Okay. Patricia.

17 MS. MURPHY: Good morning. Patricia Murphy,  
18 director of the Compliance Division.

19 So the 6(c) item is the Compliance rule, so I'm  
20 not taking out the entire Compliance rule for proposed  
21 amendments, just certain sections of it. Therefore, it's  
22 possible to still hear parts of 6(c) and just not propose  
23 amendments to the particular sections which would be 10.610  
24 and 10.617, the affirmative marketing stuff, so there's a  
25 possibility to do that. If you'd like to take some

1 amendments to the Compliance rule, I can just pause those  
2 two particular sections and take them at the same time as  
3 Cate's rule.

4 MR. BRADEN: Then how do you publish the rule?

5 MS. MURPHY: Excuse me?

6 MR. BRADEN: Then you would publish only part of  
7 the rule?

8 MS. MURPHY: Right.

9 MR. BRADEN: And then publish the other part?

10 MS. MURPHY: Correct. So only part of the rule  
11 is proposed for amendment at this time anyway, we're not  
12 talking about the entire rule, but just an option if you  
13 guys want to do that.

14 MR. GOODWIN: I see Beau has got another facial  
15 expression.

16 (General laughter.)

17 MR. ECCLES: Yeah. Is there an urgency on the  
18 rule that would require that level of legal gymnastics?

19 MR. GOODWIN: In your opinion.

20 MS. MURPHY: No, it's fine. Just an option,  
21 though.

22 MR. GOODWIN: Okay. So now I'm relatively  
23 confused, so we have 6(b) and 6(c) and a motion to table,  
24 and we have it moved and seconded. All those in favor --  
25 any questions?

1 MR. VASQUEZ: Just before we close out the  
2 discussion on 6(b), I just have a question. Is there any  
3 place in the rule that addresses maximum occupancy? I  
4 mean, we had a lot of discussion on what they must allow  
5 minimum.

6 MS. MURPHY: Patricia Murphy, director of  
7 Compliance.

8 No. So the current rule says that you can't  
9 have a standard that is less than two persons per bedroom,  
10 and that's the rule right now and so that's just will stay  
11 until we work this out.

12 MR. VASQUEZ: But you theoretically, though,  
13 could have six people in an efficiency?

14 MS. MURPHY: Correct. We only establish  
15 minimums, not maximums. There may be a local code  
16 requirement that would address that but we wouldn't monitor  
17 for that. We just review their written policies and  
18 procedures to make sure that their occupancy standard  
19 doesn't prohibit two persons per bedroom.

20 MR. VASQUEZ: And then one last question and  
21 then y'all can do this one and kick it down the road. Is  
22 there any way that we can meet the criteria of the HUD  
23 rules but instead of using the word "must allow" say "may  
24 allow" two people?

25 MS. MURPHY: I would be guessing.

1 MR. VASQUEZ: Use that for next time.

2 MR. GOODWIN: Okay. We have a motion to table  
3 6(b) and 6(c). Any other questions?

4 (No response.)

5 MR. GOODWIN: If not, all in favor signify by  
6 saying aye.

7 (A chorus of ayes.)

8 MR. GOODWIN: Opposed?

9 (No response.)

10 MR. GOODWIN: Now I need a motion to open up the  
11 consent agenda approval

12 MS. RESÉNDIZ: Move to open up the consent  
13 agenda approval.

14 MR. GOODWIN: Second?

15 MR. BRADEN: Second.

16 MR. GOODWIN: Any discussion?

17 (No response.)

18 MR. GOODWIN: All those in favor say aye.

19 (A chorus of ayes.)

20 MR. GOODWIN: Now I would entertain a motion to  
21 table item 1(h) in the consent agenda previously passed,  
22 tabling it to next month's discussion.

23 MR. BRADEN: Move to table 1(h).

24 MR. GOODWIN: Second?

25 MR. VASQUEZ: Second.

1 MR. GOODWIN: Any discussion?

2 (No response.)

3 MR. GOODWIN: All those in favor say aye.

4 (A chorus of ayes.)

5 MR. GOODWIN: Opposed?

6 (No response.)

7 MR. GOODWIN: Now we move on to item 6(d).

8 You've been waiting at the edge of your seat, haven't you,  
9 Teresa?

10 MS. MORALES: This will be quick. Teresa  
11 Morales, director of Multifamily Bonds.

12 MR. GOODWIN: I'm sorry?

13 MR. BRADEN: We need a motion to close the  
14 consent agenda.

15 MR. GOODWIN: I'm sorry. We need a motion to  
16 close the consent agenda.

17 MS. BINGHAM ESCAREÑO: Move to approve the  
18 consent agenda with the exception of item 1(h) that was  
19 tabled.

20 MR. GOODWIN: Okay.

21 MR. BRADEN: Second.

22 MR. GOODWIN: Any other screw-ups I've made  
23 before we vote?

24 (General laughter.)

25 MR. GOODWIN: All those in favor say aye.

1 (A chorus of ayes.)

2 MR. GOODWIN: Any opposed?

3 (No response.)

4 MR. GOODWIN: Not even you. Okay.

5 Now, Teresa, finally.

6 MS. MORALES: Item 6(d) relates to the  
7 Multifamily Housing Revenue Bond rules which govern  
8 multifamily transactions where the private activity bonds  
9 are issued by the Department. These rules primarily  
10 address the pre-application requirements that include both  
11 threshold and scoring, with the scoring component required  
12 by the Department's governing statute. This rule also  
13 mentions some of the full application requirements with the  
14 majority of the application requirements addressed in the  
15 QAP.

16 There was public comment that was specific to  
17 the neighborhood risk factors mentioned in this rule,  
18 however, the section of the rule refers the reader back to  
19 the QAP where the neighborhood risk factors are explained  
20 in more detail. The reasoned response for the QAP more  
21 appropriately explains the public comment received and  
22 staff's response which would be applicable to the Bond rule  
23 as well. The changes that you see in the Bond rule were  
24 made to be consistent with those changes that were made to  
25 the QAP through the public comment period.

1 Staff recommends approval of the adoption of the  
2 repeal and the new 10 TAC Chapter 12, as reflected in your  
3 Board package.

4 MR. GOODWIN: Any questions for Teresa?

5 (No response.)

6 MR. GOODWIN: Do I hear a motion to approve  
7 staff's recommendation?

8 MR. BRADEN: So moved.

9 MR. GOODWIN: Second?

10 MR. VASQUEZ: Second.

11 MR. GOODWIN: Any discussion?

12 (No response.)

13 MR. GOODWIN: All those in favor say aye.

14 (A chorus of ayes.)

15 MR. GOODWIN: Opposed?

16 (No response.)

17 MR. GOODWIN: Thank you, Teresa.

18 Raul.

19 MR. GONZALES: Good morning.

20 MR. GOODWIN: Good morning.

21 MR. GONZALES: Raul Gonzales, director of OCI,  
22 HTF and MSP.

23 On item 6(e) staff is recommending the repeal of  
24 existing 10 TAC Chapter 25, the rule that governs our  
25 Colonia Self-Help Center Program and adoption of a new rule

1 with revisions. After today, the updated rule will be  
2 published in the *Texas Register*.

3 A 30-day public comment period occurred from  
4 September 20 through October 21, and the Department  
5 received four comments. To respond to the comments, staff  
6 has modified the rule being recommended for adoption.

7 In Section 25.3 under Eligible and Ineligible  
8 Activities, we've clarified the requirement of the HUD  
9 counseling requirement to single-family activities.

10 In Section 25.8, Contract Operation and  
11 Implementation, we amended the subsection to allow the  
12 flexibility to be open longer on a weekday of their choice  
13 so that residents may access public service activities.

14 And in Section 25.10, Expenditure Thresholds, we  
15 are maintaining the original rule language with some  
16 grammatical corrections regarding the submission deadline  
17 of an environmental assessment. Staff had proposed a more  
18 stringent of the environmental assessment approval within  
19 six months of the contract start date, but the requirement  
20 will be only for the submission within six months of the  
21 contract start date.

22 With that, I'm happy to answer any questions.

23 MR. GOODWIN: Any questions for Raul?

24 (No response.)

25 MR. GOODWIN: Do I hear a motion to approve

1 staff's recommendation?

2 MS. BINGHAM ESCAREÑO: So moved.

3 MR. GOODWIN: Second?

4 MR. VASQUEZ: Second.

5 MR. GOODWIN: Okay. Any discussion?

6 (No response.)

7 MR. GOODWIN: All those in favor signify by  
8 saying aye.

9 (A chorus of ayes.)

10 MR. GOODWIN: Opposed?

11 (No response.)

12 MR. GOODWIN: Moving on to item 6(e).

13 MR. VASQUEZ: That was 6(e).

14 MR. GOODWIN: That was 6(e). I'm sorry. 6(f).

15 MS. GALUSKI: Monica Galuski, director of Bond  
16 Finance.

17 Item 6(f) is presentation, discussion, and  
18 possible action on the proposed repeal of and proposed New  
19 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule,  
20 and directing publication for public comment in the *Texas*  
21 *Register*.

22 Chapter 27 applies to single-family loans  
23 originated through the Department's Homeownership Division,  
24 specifically loans eligible for a bond program or for which  
25 an MCC has been issued. Loans originated under Chapter 27

1 must meet IRS requirements related to single-family  
2 mortgage revenue bonds, including compliance with IRS-  
3 defined income and purchase price limits and first time  
4 homebuyer requirements. Proposed rule conforms definition  
5 and terms to current practice and makes it clear that 10  
6 TAC Chapter 20, the Single Family programs umbrella rule,  
7 does not apply to this program and rule. And 10 TAC  
8 Chapter 20, that governs like the loans made with the HOME  
9 program, with State Housing Trust Fund, Neighborhood  
10 Stabilization, NSP, it's those types, they're very  
11 different than our homeownership programs.

12 So staff recommends approval. Following such  
13 approval, if received, the proposed repeal of and proposed  
14 New 10 TAC Chapter 27 will be published in the *Texas*  
15 *Register*. The public comment period will be November 22 to  
16 December 23, after which staff would return to the Board  
17 for approval for final adoption.

18 MR. GOODWIN: Okay. Any questions for Monica?

19 (No response.)

20 MR. GOODWIN: Do I hear a motion to approve  
21 staff's recommendation?

22 MR. BRADEN: So moved.

23 MR. GOODWIN: Second?

24 MR. VASQUEZ: Second.

25 MR. GOODWIN: Any further discussion or

1 questions?

2 (No response.)

3 MR. GOODWIN: All those in favor say aye.

4 (A chorus of ayes.)

5 MR. GOODWIN: Opposed?

6 (No response.)

7 MR. GOODWIN: Okay. Item (g).

8 MS. GALUSKI: Item 6(g) is presentation,  
9 discussion, and possible action on the proposed repeal of  
10 and proposed New 10 TAC Chapter 28, which is our Taxable  
11 Mortgage Program, or TMP program rule, and directing  
12 publication for public comment in the *Texas Register*.

13 Chapter 28 applies to single-family loans also  
14 originated through the Department's Homeownership Division  
15 but it's specifically loans originated through the Taxable  
16 Mortgage Program, or TMP.

17 The Department uses the same income and purchase  
18 price limits for TMP as we do for the First Time Homebuyer  
19 Program, however, TMP does not have a first time homebuyer  
20 requirement and permits a more traditional calculation of  
21 income versus the IRS method. It's what we call typically  
22 our My Choice Program.

23 The proposed rule, again, conforms definition  
24 and terms to current practice, makes it clear that 10 TAC  
25 Chapter 20, Single Family programs umbrella rule, does not

1 apply to this program and rule.

2 Staff recommends approval. Following such  
3 approval, if received, the proposed repeal of and proposed  
4 New 10 TAC Chapter 28, Taxable Mortgage Program Rule, will  
5 be published in the *Texas Register*. The public comment  
6 period would be November 22 to December 23, at which time  
7 staff would return to the Board for approval of final  
8 adoption.

9 MR. GOODWIN: Any questions for Monica?

10 (No response.)

11 MR. GOODWIN: If not, I'll entertain a motion to  
12 approve staff's recommendation>

13 MS. BINGHAM ESCAREÑO: Move to approve.

14 MR. GOODWIN: Second?

15 MS. RESÉNDIZ: Second.

16 MR. GOODWIN: Any further questions or  
17 discussion?

18 (No response.)

19 MR. GOODWIN: All those in favor say aye.

20 (A chorus of ayes.)

21 MR. GOODWIN: Opposed?

22 (No response.)

23 MR. GOODWIN: Okay. I think the one item that  
24 we skipped is item 5(b).

25 MS. HOLLOWAY: Good morning. Marni Holloway,

1 director of Multifamily Finance.

2 Item 5(b) is presentation, discussion, and  
3 possible on an order approving and recommending to the  
4 Governor the repeal of 10 TAC Chapter 11, concerning the  
5 Housing Tax Credit Program Qualified Allocation Plan, and  
6 an order approving and recommending to the Governor, in  
7 accordance with Texas Government Code 2306.6724(b), the New  
8 10 TAC Chapter 11 concerning the Housing Tax Credit Program  
9 Qualified Allocation Plan, and upon action by the Governor,  
10 directing its publication in the *Texas Register*.

11 They're already lining up behind me.

12 MR. GOODWIN: I figured out why you put this at  
13 the end now.

14 (General laughter.)

15 MS. HOLLOWAY: Yeah. The proposed QAP was  
16 published in the September 20 *Texas Register*. The Board  
17 action request says that it was published on the 23rd but  
18 it was actually on the 20th. Public comment was accepted  
19 between publication and 5:00 p.m. on October 11.

20 Statute requires that the Board adopt the QAP on  
21 or before November 15 and submit it to the Governor to  
22 approve, reject or modify and approve not later than  
23 December 1. Due the Thanksgiving holiday, the Governor's  
24 response will be due on November 27 this year. After the  
25 Governor responds, the final QAP will be effective 20 days

1 after it is submitted to the *Texas Register*.

2 We have reviewed all of the comments received  
3 and provided a reasoned response in the Board action  
4 request. Also included are the preamble and required  
5 analysis for the repeal and replacement of the QAP. We are  
6 required to analyze and address certain potential impacts  
7 of amended or replaced rules and to include the results of  
8 that analysis in the *Register*.

9 We received comments from 54 entities or  
10 individuals this year, but a great deal of that comment was  
11 repeated. For instance, we received 16 comments from  
12 residents of the same Houston neighborhood regarding only  
13 schools in the neighborhood risk factors, so the number  
14 seems high but it's not as many.

15 The most comments were received on the new  
16 supportive housing definition -- and this is not  
17 necessarily in order -- the proximity to jobs scoring, cost  
18 per square foot, additional extended affordability scoring,  
19 neighborhood risk factors, specifically schools, and  
20 acquisition costs for identity of interest transactions,  
21 and developer fee requirements.

22 Today we are discussing those comments and  
23 changes staff has made as a result of the comments. This  
24 will be the last opportunity for the Board to make any  
25 changes to the 2020 QAP before it's transmitted to the

1 Governor. There are some changes requested in comment that  
2 we were not able to make because of the limitations on  
3 rulemaking in the Administrative Procedures Act. I'm sure  
4 Beau will be able to keep us on track with any potential  
5 changes out of our deliberation today.

6 He's ignoring me.

7 MR. ECCLES: I hear you.

8 MS. HOLLOWAY: Okay. Starting with the  
9 comments -- and my suggestion would be --

10 MR. WILKINSON: Marni, before we get into the  
11 comments and any response, you said the Governor's approval  
12 would be due November 27 or something?

13 MS. HOLLOWAY: Yes.

14 MR. WILKINSON: I think it's just December 1.

15 MS. HOLLOWAY: It's on or before December 1.  
16 December 1 is a Sunday.

17 MR. WILKINSON: They can take till Sunday.

18 MS. HOLLOWAY: Okay.

19 MR. WILKINSON: So to clarify, they have until  
20 December 1.

21 MS. HOLLOWAY: Okay. I was just assuming  
22 between the weekend and the state holidays.

23 MR. WILKINSON: Midnight December 1.

24 MS. HOLLOWAY: I stand corrected.

25 MR. WILKINSON: Okay. Thank you.

1 MS. HOLLOWAY: All right. I think that probably  
2 the best way to handle this is the way we did with the  
3 draft, and as I'm working through these, if someone has  
4 something to say, if they would raise their hand or stand  
5 up and I'll kind of check, and if someone sees something  
6 going on, if you'd let me know, I'd appreciate it.

7 MR. GOODWIN: Okay.

8 MS. HOLLOWAY: So starting out, one commenter  
9 asked that 4 percent tax credit applications be required to  
10 meet only threshold requirements. Because this is already  
11 true, no changes were made.

12 We received a request to implement a maximum tax  
13 credit per unit policy. This is a topic that we've  
14 discussed in the past and will continue to be part of our  
15 conversations as we work to maximize the impact of a  
16 limited resource.

17 Working through definitions, we have clarified  
18 the definition of development site to include access  
19 through ingress and egress easements as a result of  
20 comment.

21 MR. GOODWIN: Are you bringing up things first  
22 that you know there's nobody? Because I'm seeing no action  
23 behind you for any of these.

24 MS. HOLLOWAY: I'm pretty sure I know what they  
25 want to talk about.

1 MR. GOODWIN: I just didn't want them to  
2 misunderstand that we're saying when you bring up price per  
3 square foot, or something like that that somebody wants to  
4 talk about, that that's time for them to stand up and we'll  
5 stop and listen to what they have to say.

6 MS. HOLLOWAY: I'm pretty sure that I know what  
7 folks want to talk about.

8 MR. GOODWIN: And you're leaving those till the  
9 end?

10 MS. HOLLOWAY: There may be some surprises.  
11 We're just working through the QAP in order.

12 MR. GOODWIN: Okay.

13 MS. HOLLOWAY: In our revised supportive housing  
14 definition, two commenters objected to the requirement that  
15 all units be supported by project-based rental or operating  
16 subsidies if the development carries permanent debt.

17 MR. GOODWIN: You have somebody that wants to  
18 speak to that issue.

19 MS. HOLLOWAY: All right. Staff believes that  
20 that assurance of this continued support is important to a  
21 feasibility conclusion and that there is sufficient  
22 flexibility in the definition to allow for the multiple  
23 subsidy sources frequently seen in supportive housing  
24 developments.

25 There is also a request to remove the phrase

1 "for the entire affordability period as applied to subsidy  
2 sources." Staff agrees that this particular language is  
3 too stringent and has therefore amended the rule to remove  
4 that phrase.

5 One of the new requirements for supportive  
6 housing carrying debt is that a resident of the development  
7 serve on the owner or service provider board of directors.

8 Representation of the population on a board is a  
9 longstanding method of promoting accountability and clear  
10 communications and it is an industry best practice. Staff  
11 believes that many residents of supportive housing  
12 developments are competent to fill this role so we have not  
13 removed that requirement.

14 Another commenter requested that an exception be  
15 made for developments with TDHCA Direct Loan financing so  
16 that the underwriting and loan exemptions for supportive  
17 housing developments without debt in our REA rule will  
18 continue to apply. Staff has not made this requested  
19 change because carving out exceptions like this start to  
20 dilute the important differences between supportive housing  
21 with and without debt. Waiver of the requirement is  
22 available with Board approval, so developments aren't  
23 prevented from moving forward if the requested change isn't  
24 made.

25 Staff agrees with the commenter's request that

1 supportive services be required primarily online and have  
2 added this requirement to the minimum requirements for  
3 services in the definition.

4 MS. BINGHAM ESCAREÑO: It says onsite.

5 MR. GOODWIN: You said online?

6 MS. HOLLOWAY: Oh, I'm sorry. Onsite.

7 A commenter believes that staff -- okay. We're  
8 now moving on to the next one, so that was supportive  
9 housing.

10 MR. GOODWIN: Okay.

11 MS. HICKS: Good morning. Jennifer Hicks with  
12 True Casa Consulting. Sorry to get up here and talk about  
13 supportive housing a little bit more.

14 I was very supportive of all the changes to the  
15 supportive housing definition. My comments are focused on  
16 the requirement in order to have debt that there be  
17 project-based vouchers or operational subsidies on all  
18 units. This is problematic from a few different reasons.  
19 One, I don't know a housing authority in the State of Texas  
20 who has the voucher capacity to cover all units in a  
21 supportive housing development. I think even Houston  
22 Housing Authority, Harris County Housing Authority, they do  
23 50 percent, but 100 percent they just don't have that  
24 voucher capacity, nor is it good practice.

25 Another reason is because a lot of times the

1 housing authorities received special pots of vouchers for  
2 the target population, primarily people who are homeless,  
3 so HUD Mainstream vouchers, for instance, those will come  
4 with a specific requirement they be homeless and have a  
5 disabling condition, so we might start running into issues  
6 of the integrated housing rule, for instance.

7 In putting together and structuring the funding  
8 for nearly 1,000 units of supportive housing, I know these  
9 projects are made up of a hodgepodge of tenant-based  
10 voucher programs, so it's your HUD supportive housing  
11 program with partner service agencies, it's VASH vouchers  
12 through the housing authority and the Veterans Affairs  
13 Administration. This hodgepodge makes these projects work.

14 I get the intent of having the 100 percent  
15 requirement. It's for the financial feasibility and  
16 ensuring that, but I guess I'd argue that these projects  
17 are going to go through underwriting just like any project  
18 and they have to be made to be found feasible. A further  
19 assurance is that I don't think you're going to see these  
20 projects with large mortgages. I'm talking about half a  
21 million, a million, a couple million, and you're going to  
22 see the same complex capital stack, funding from the city,  
23 foundations, fundraising.

24 I talked to supportive housing investors, equity  
25 investors, I talked to national developers who do

1 supportive housing across the nation, and they do see lots  
2 of projects with debt and those projects don't have 100  
3 percent covered with operational subsidies or project-based  
4 vouchers.

5           So my ask is that we lower that threshold. If  
6 we don't, I don't think anyone is going to be able to use  
7 this clause and it's irrelevant. I think that homelessness  
8 is at the forefront of every city right now in Texas, and I  
9 guess I'm struggling with the issue of if there's a way to  
10 enable some more units, why wouldn't we want to try to  
11 negotiate that threshold down.

12           MR. WILKINSON: What threshold do you suggest?

13           MS. HICKS: I had suggested 25 percent, but, you  
14 know, another idea I had is perhaps we allow tenant-based  
15 vouchers and just ensure there's commitments for those  
16 tenant-based vouchers, just as you would for project-based  
17 vouchers, and make it 50 percent. I could live with that  
18 for sure; I think that's very doable.

19           MR. WILKINSON: Brent, would you like to address  
20 feasibility? Out of the bullpen.

21           MR. STEWART: Brent Stewart, Real Estate  
22 Analysis.

23           So I think part of this is a result of a shift  
24 in what supportive housing has kind of been under the rules  
25 and under the QAP and so forth. Historically, supportive

1 housing developments have been developments where there is  
2 no income and there's no income to be able to support debt,  
3 and therefore, it needed exemptions from the REA rules and  
4 it needed some level of commitments from somewhere to pay  
5 the operating expenses and to pay for the services that are  
6 being provided on the properties. So what's happening now  
7 is we're shifting from kind of that really, really, really  
8 deep type of supportive housing into one that is not  
9 necessarily lighter on -- projects that do generate some  
10 revenue and therefore can support debt, and therefore  
11 become feasible, and therefore you can do more units that  
12 way.

13 So the balance then is, well, how do you ensure  
14 that those developments are feasible given that they're  
15 still going to have much lower income, much lower rents,  
16 tenants that have vouchers, et cetera. So the thought  
17 process was to be able to do this you had to have some  
18 level of project-based vouchers for certain exemptions,  
19 some level of specific commitments of the boards of the  
20 nonprofits. We've historically analyzed the nonprofit's  
21 abilities to fund raise externally, and an ability to then,  
22 through the nonprofit itself, subsidize the development.

23 So this is kind of a move towards a different  
24 type of supportive housing than what the rules have  
25 historically contemplated. There's on magic about 100

1 percent, 50 percent, 25 percent in terms of because they're  
2 not going to be exempted from the REA rules, they're still  
3 going to be under it in that way, but I think the concept  
4 was to deeply target people and provide these level of  
5 services you're going to need some level of vouchers to be  
6 able to do that.

7 MR. GOODWIN: Leo, did you have a question?

8 MR. VASQUEZ: So again, you're saying 100  
9 percent is not necessary, 50 at least gets you --

10 MR. STEWART: Fifty percent would definitely  
11 change the dynamics of the feasibility as opposed to 100  
12 percent. If they are servicing debt and if the math works  
13 and the risks associated with those vouchers is not as  
14 important, then that level of vouchers wouldn't be  
15 important.

16 MR. VASQUEZ: And then what about just even the  
17 possibility of being able to have a development with 100  
18 percent. I mean, doesn't that eliminate almost everybody?

19 MR. STEWART: Yeah. In the past we've seen  
20 between the number of project-based vouchers that have been  
21 brought to the table by the nonprofits, between that and  
22 the self-funding through the nonprofit itself, that that  
23 has covered the rents on those units. They probably  
24 wouldn't be defined as 100 percent project-based vouchers.

25 Again, it's a shift from we have developments

1 and nonprofits where there is a lot of self-funding to  
2 support the rents on those projects, the rental income on  
3 those projects, and this shift away from that to having  
4 developments with more debt or conventional type debt, the  
5 vouchers are going to be more important.

6 If you said you wanted to lower the bar from 100  
7 percent vouchers to 50 percent vouchers, then that's a call  
8 that from a feasibility standpoint we're going to  
9 underwrite it based on how many vouchers are there, what  
10 those rents are.

11 MR. VASQUEZ: It still has to be feasible.

12 MR. STEWART: It's still got to fit the box.

13 MR. VASQUEZ: It just seems that 50 percent is a  
14 lot more feasible, reasonable, achievable for the  
15 developers.

16 MR. STEWART: I wouldn't disagree with that.

17 MR. GOODWIN: Any other questions?

18 (No response.)

19 MR. GOODWIN: Any other comments on this issue?

20 MS. JACKSON: Good morning, Board members. My  
21 name is Toni Jackson with the Banks Law Firm, and I'm here  
22 to speak on behalf of the Harris County Housing Authority.

23 And I want to clarify a couple of things that  
24 have actually been said. The nonprofit doesn't bring the  
25 project-based vouchers to the table, the nonprofit has to

1 get those vouchers from the housing authority, and a  
2 housing authority is only allowed to do up to 20 percent of  
3 their voucher capacity in any one project. Also, as it  
4 relates to tenant-based vouchers, they are just that,  
5 they're tenant-based, and so a housing authority or anyone  
6 else cannot steer people to a development, you can only  
7 hope that those tenants will, in fact, go to that  
8 development.

9 So the concern of this language of all units is  
10 disconcerting because, again, that is something that can't  
11 be guaranteed based on the housing authority's capacity of  
12 vouchers, as well as where tenants are going to choose to  
13 in fact take their vouchers. So we would recommend that  
14 that language be changed. The all units is definitely  
15 problematic, and again, the project-based vouchers cannot  
16 be directed in that way, and so we want to make that clear.

17 Also, as it related to the resident appointment,  
18 particularly when a housing authority is the  
19 developer/owner, if you are expecting a supportive housing  
20 tenant to be a part of the development owner, that housing  
21 authority board is appointed by the city or the county,  
22 they already generally have a resident on their board, and  
23 that may or may not be a supportive housing resident,  
24 depending on, again, the housing authority.

25 They may have a Section 8 tenant, they may have

1 a public housing tenant, so it may or may not have the  
2 capacity and ability to put a supportive housing resident  
3 on the board. So we're concerned about having that  
4 language about the appointment of a resident on the board,  
5 because the housing authority already has a resident, even  
6 though it may not be a supportive housing resident.

7 MR. GOODWIN: Okay. Any questions?

8 (No response.)

9 MR. GOODWIN: Additional comments?

10 MR. CICHON: Good morning. Gerry Cichon with  
11 the Housing Authority of the City of El Paso.

12 I just wanted to let you know these vouchers are  
13 a very limited resource. In El Paso we only have 5,500  
14 vouchers. Right now the resource is being used for the RAD  
15 transformation that we're going through. The obligation of  
16 the housing authority then to have to participate then  
17 limits access to type of development, especially in El  
18 Paso.

19 We think that this type of voucher obligation is  
20 going to stop that type of development, and what we  
21 definitely need in El Paso, and obligate housing  
22 authorities, and unfortunately, limit our ability to do our  
23 job. And our boards may not be in agreement with what this  
24 Board is asking us to do, which is then going to deprive  
25 access to those dollars to these type of developments.

1 Thank you.

2 MR. GOODWIN: Okay. Any questions for Gerry?

3 (No response.)

4 MR. GOODWIN: Any other comments, Marni?

5 MS. HOLLOWAY: If I may, just as a point of  
6 clarification, the line in the rule that we're discussing  
7 says, "must also be supported project-based rental or  
8 operating subsidies for all units."

9 Vouchers may be a part of that support, but  
10 we're not contemplating that PHA vouchers are going to be  
11 all of it, and that's separate from a discussion of whether  
12 it's all or some part of.

13 MR. GOODWIN: Okay. Do we want to take this in  
14 discussion and approve it as we go, or wait till the end  
15 and bring up each point? Which would you recommend, Beau?

16 MR. ECCLES: I think probably discussion but do  
17 it all at once in terms of modifications at the end since  
18 you'll be adopting the QAP. This particular discussion is  
19 focused on 11.1(d)(122)(E)(ii) --

20 MR. GOODWIN: That's what I was going to say.

21 (General laughter.)

22 MR. ECCLES: -- and specifically the phrase  
23 "all units" and I think that the discussion thus far has  
24 gone with 25 percent and 50 percent of units as opposed to  
25 all units. And if there's any further discussion on that

1 point.

2 MR. GOODWIN: I've got a question. In the Rules  
3 Committee did y'all address this specifically, do you  
4 recall?

5 MR. VASQUEZ: No. Brooke is shaking her head  
6 no. It didn't come up.

7 MS. HOLLOWAY: It did not come up in Rules  
8 Committee.

9 MR. VASQUEZ: Just the more I'm hearing this and  
10 thinking about it, even if it's zero percent, the  
11 feasibility analysis has to be done and if you're going to  
12 put in debt, it has to make it. Right? So obviously it  
13 should make it at 100 percent, 50 percent.

14 I think setting the threshold lower in this case  
15 gives more flexibility to the developers, and again, bottom  
16 line, if it's not feasible, it's not going to be feasible  
17 whether it's at 25 percent or 50 percent. So I'm leaning  
18 more towards even setting it at a 25 percent target rather  
19 than 50 percent. Again, if it's at 25 and it gets  
20 submitted and it's not feasible, well, it doesn't work.

21 MR. GOODWIN: Still doesn't work.

22 MR. VASQUEZ: If it's 25 percent and it is  
23 feasible, great. Just what I'm leaning towards now.

24 MR. BRADEN: And I agree with that comment,  
25 sounds right to me.

1 MR. GOODWIN: As do I.

2 MS. BINGHAM ESCAREÑO: Me too.

3 MS. HOLLOWAY: Moving on, discussing staff  
4 determinations. A commenter believes that staff  
5 determinations issued prior to application submission  
6 should be subject to the same appeals process as staff  
7 determinations after submittal. We agree with the comment  
8 and have amended the rule to remove that limitation.

9 Three commenters asked that the exception under  
10 the Two Mile Same Year Rule for developments with a  
11 resolution from the Houston City Council be extended to  
12 other cities. Because this exception is the direct result  
13 of Senate Bill 493 in the last legislative session, we are  
14 not able to make the requested change.

15 Under proximity of development sites, a  
16 commenter believes that the best way to ensure dispersion  
17 is by increasing the distance in this rule from 1,000 feet  
18 to 5,000 feet. This is too large of a change to make  
19 through the public comment process but it may be something  
20 that we can take up in planning for the next QAP.

21 The increase in eligible basis section requires  
22 that applications in certain census tracts have a  
23 resolution from the appropriate municipality or county  
24 which specifically allowed for the construction of the new  
25 development in referencing this rule.

1           A commenter asked that the phrase be revised, as  
2 some cities are uncomfortable with this language since it  
3 could imply that the development is being permitted or  
4 otherwise approved for construction. We agree with the  
5 commenter and have made the requested change.

6           Another commenter asked that we assist the  
7 development community in San Antonio to identify  
8 developments that will qualify for the at-risk set-aside.  
9 The Department's Fair Housing Data Management and Reporting  
10 Division is beginning the work to design, build and share a  
11 public database that identifies developments within our  
12 portfolio that are at risk of losing their affordability  
13 restrictions. We expect to hold public meetings regarding  
14 this activity early in 2020 to roll out the project and are  
15 recommending no changes based on that comment.

16           Under tiebreaker factors, a commenter asked if  
17 the second factor includes developments that receive  
18 subsequent tax credit allocations that were not for  
19 rehabilitation and cites an example where a development  
20 received a small allocation 2-1/2 years after its initial  
21 award.

22           Staff believes that if the same development has  
23 received more than one award of tax credits, its award year  
24 is the most recent award year regardless of the purpose or  
25 amount of the subsequent award, and we are recommending no

1 changes.

2 A commenter suggested that the pre-application  
3 threshold criteria and the public notification section of  
4 Subchapter B should be amended to better align with statute  
5 which requires notification to entities rather than  
6 individuals.

7 In other parts of our statute, a distinction is  
8 made that the Department notify certain persons when an  
9 application is received, so there is a clear distinction  
10 between the two. Staff agrees with the commenter and has  
11 made the appropriate changes to Subchapters A and B.

12 Regarding sponsor characteristics, two  
13 commenters have requested that regional and national  
14 nonprofits be able to take advantage of the two point  
15 scoring item which is currently disallowed by our  
16 definition of qualified nonprofit if the nonprofit is the  
17 managing member of the GP. Because staff has identified  
18 this paragraph to be included in planning efforts for the  
19 2021 QAP, we are not recommending changes for this year.

20 MS. FINE: Hi. I'm Tracey Fine with National  
21 Church Residences, and I really appreciate that this is  
22 going to be a topic of discussion for 2021.

23 To give a little bit of background, in order to  
24 receive the highest amount of sponsorship points, which is  
25 two for a nonprofit, per legislative code, the nonprofit

1 has to have the majority of their board members within 90  
2 miles of their site.

3 What this has effectively done, it has limited  
4 national nonprofits for participating competitively in the  
5 9 percent program, and also regional nonprofits. It's also  
6 prohibited any local nonprofit that would ever want to  
7 expand out of their little 90-mile bubble from being able  
8 to do so.

9 Many urban areas, other than the major urban  
10 communities in Texas, do not have a high quality service-  
11 enriched nonprofit to be able to deliver these types of  
12 projects in their communities except for perhaps a housing  
13 authority will often have a development arm, but that's  
14 really it.

15 Last year I came to TDHCA to discuss these  
16 issues. National Church Residences is a national  
17 nonprofit. We deliver high quality, service-enriched  
18 senior housing. We have projects all over the State of  
19 Texas. We will never be able to have a board within 90  
20 miles of each of our communities from Lubbock to Corpus  
21 Christi.

22 So in discussion we kind of came up with this  
23 one point option that would allow nonprofits to get one of  
24 the two points if we participated in some capacity. We are  
25 the general partner, managing member, we property manage,

1 we do our compliance, we provide our own services. So I  
2 ask that this affiliated language be removed so that we can  
3 still take this one point for ourselves. I don't  
4 understand why we wouldn't be allowed to take that point.

5 MR. GOODWIN: Questions?

6 MR. VASQUEZ: I think it's more for Brooke. Did  
7 we discuss this in the QAP meetings? I don't recall this.  
8 Marni or Brooke?

9 MS. HOLLOWAY: I don't believe that we did  
10 discuss in the Rules Committee.

11 MS. BOSTON: (Speaking from audience.) No.

12 MS. HOLLOWAY: Okay. As I said, this sponsor  
13 characteristics item, I have a number of concerns about it  
14 when members of the Fab Five still haven't figured it out.

15 If you don't know the Fab Five, they're our application  
16 review group, and they know these rules inside and out, and  
17 this section is one that needs a good hard look for a  
18 number of reasons, and I believe could also be part of  
19 considering the national and regional nonprofits. That  
20 goes back to our definition of qualified nonprofits, so  
21 it's actually a multi-part change that would have to be  
22 made.

23 MR. VASQUEZ: Again, on the surface it sounds  
24 like a very reasonable request, but I wish we had discussed  
25 it before.

1 MS. HOLLOWAY: It's one of those, you know, pull  
2 this string over here and all these other things happen  
3 over here. But yeah, we absolutely recognize that we need  
4 to work on these issues.

5 MR. VASQUEZ: Again, like you said, I think we  
6 definitely address it in the next round of the QAP.

7 MS. FINE: I mean, I appreciate that we're going  
8 to address it in 2021, but we have 2020 at the table, and  
9 so I don't think we need to add this language this year.

10 As an alternative of deleting the entire  
11 sentence, you could put -- and I think that maybe your Fab  
12 Five team, I think, probably gets tripped up more on the  
13 HUBs than they do on the nonprofit, so if you could just  
14 delete the word "nonprofit" from the additional sentence  
15 and leave "HUB," that might solve the problem, at least for  
16 us.

17 MR. GOODWIN: Marni, could you weigh in on that?

18 MS. HOLLOWAY: Removing "qualified nonprofit"  
19 from that sentence would impact any other application  
20 that's coming in planning to take these points using a  
21 qualified nonprofit rather than a HUB. I would mention  
22 that last year, I think, the year before, we made some  
23 modifications for 202 rehabilitation projects. Apparently  
24 we haven't gone far enough with those in order to  
25 accommodate those particular transactions.

1 MS. RESÉNDIZ: Marni, remind me what a qualified  
2 nonprofit is.

3 MS. HOLLOWAY: Let me go back to the  
4 definitions. A qualified nonprofit is an organization that  
5 meets the requirements of the Internal Revenue Code for all  
6 purposes and for an allocation in the nonprofit set-aside  
7 or subsequent transfer of the property when applicable  
8 meets the requirements of Texas Government Code -- and it  
9 cites a bunch of code -- including having a controlling  
10 interest in the development. And then I don't know where -  
11 - I forget where the -- Patrick has abandoned me, in case  
12 anyone has noticed.

13 MR. GOODWIN: I think this young lady says she  
14 knows the answer.

15 MS. FINE: The only difference in the definition  
16 is a qualified nonprofit is described, like Marni described  
17 it, it is an IRS Section 43 definition. The State of Texas  
18 took that exact definition and added the maturity of board  
19 member radius, is almost the only change in that definition  
20 from qualified nonprofit from the IRS to the qualified  
21 nonprofit definition in Texas.

22 MR. VASQUEZ: Is this a change to the rule? Is  
23 this a new addition, or it's been in there?

24 MS. HOLLOWAY: I'm hearing that that's part of  
25 the statutory definition.

1 Beau, do you have the whole thing?

2 MR. ECCLES: No, not right in front of me.

3 MS. HOLLOWAY: Okay. I was really hoping you  
4 did.

5 MS. RESÉNDIZ: So outside of the qualifications  
6 for the board members that need to be assigned or voted  
7 on --

8 MS. HOLLOWAY: Live within 90 miles.

9 MS. RESÉNDIZ: That's the only requirement?

10 MS. HOLLOWAY: That's the one that's tripping up  
11 this organization. Yes.

12 MS. RESÉNDIZ: So what other requirements are  
13 there for board members outside of board training?

14 MS. HOLLOWAY: For our --

15 MS. RESÉNDIZ: No. I apologize. For the  
16 nonprofit. Because if that's the case then, I'm just  
17 trying to match these.

18 MS. FINE: I want to make reference to the full  
19 definition before I answer that, but I believe it has to do  
20 with being a 501(c)(3) organization that has -- and I do  
21 want to reference the definition but, you know, has a  
22 background in housing development, not just, you know, does  
23 pet adoptions or something like that.

24 MS. RESÉNDIZ: That is not or that is a  
25 requirement?

1 MS. FINE: I need to double-check the  
2 definition.

3 MS. RESÉNDIZ: Okay.

4 MS. FINE: But like to be clear, there's two  
5 points in sponsorship. To get the two points you do have  
6 to meet the legislative definition of the majority of the  
7 board members.

8 The second option is the one I'm talking about  
9 which is just one point. Even with this just one point we  
10 will not win. We have tons of tiebreakers. We're looking  
11 at a 45-year compliance period. We will have other  
12 nonprofits participate in our service delivery.

13 We probably can meet this regardless, but I do  
14 think that National Church Residences, we should be able to  
15 take that point for ourselves.

16 MR. GOODWIN: Any other questions?

17 (No response.)

18 MR. GOODWIN: Marni, are you looking for some  
19 clarification?

20 MS. HOLLOWAY: Beau, the citation is to 6706 or  
21 6729 under the definition?

22 MR. GOODWIN: If I understand the issue  
23 correctly, they're not asking to be in the two point  
24 category but not to be excluded from the one point.

25 MS. HOLLOWAY: Actually, the change that we made

1 to sponsor characteristics allowed organizations such as  
2 National Church Residences to access that one point item.  
3 They are not able at this time to access the two point  
4 item, and that is the concern.

5 MR. GOODWIN: So our proposed language, they  
6 would be able to get the one point but not that second  
7 point?

8 MS. HOLLOWAY: Yes, depending on how they have  
9 arranged their development.

10 MR. GOODWIN: I thought I heard no in the  
11 audience from the young lady.

12 MS. FINE: So unless I'm misunderstanding this,  
13 Marni, it says that if you're affiliated with the applicant  
14 you can't take the point.

15 MR. GOODWIN: You cannot? I'm sorry, I didn't  
16 hear you.

17 MS. FINE: My understanding of this language was  
18 if you're an affiliate of the developer then you cannot  
19 take that point.

20 MR. GOODWIN: You cannot even get the one point.

21 MS. FINE: You could not take that one point.

22 That was the added language this year.

23 Did I misunderstand the added language?

24 MS. HOLLOWAY: I don't believe we made any  
25 changes to this section in draft. I don't have the draft

1 with me.

2           The line that was added that put some  
3 limitations on the HUB or nonprofit organization that can  
4 participate that we added says, "A principal of the HUB or  
5 nonprofit organization cannot be a related party to or  
6 affiliate, including the spouse of any other principal of  
7 the applicant or developer, excluding another principal of  
8 said HUB or nonprofit organization."

9           So I believe the concern here is that National  
10 Church Residences would be a related party? -- yes -- and  
11 would not be able to access the one point item because they  
12 are a related party to the developer and to the applicant.

13           MR. WILKINSON: And they can't take advantage of  
14 that exclusion because they're not a nonprofit organization  
15 as defined by state statute.

16           MS. HOLLOWAY: So there's a difference between  
17 nonprofit organization and qualified nonprofit. That's the  
18 important difference there. Their concern here is that  
19 this organization that would be able to otherwise access  
20 the one point because they are providing onsite tenant  
21 services is an affiliate of the applicant and developer.

22           MR. GOODWIN: If we dropped affiliate, would it  
23 resolve the issue?

24           MS. HOLLOWAY: Related party or affiliate, which  
25 would leave us with spouse of. There's quite a bit of

1 intermingling and mixing and that's part of the reason that  
2 we need to take a really hard look at this section about  
3 who qualifies as the nonprofit organization and who  
4 qualifies as the HUB.

5 MR. GOODWIN: Okay. Any further discussion?

6 MR. BRADEN: I mean, this seems fairly complex.  
7 It seems like it ought to go through the Rules Committee  
8 or should have gone through the Rules Committee, and the  
9 fact that we're going to look at it next time makes sense  
10 to me, as opposed to trying to do something on the fly.

11 MR. GOODWIN: Any other comments?

12 (No response.)

13 MR. GOODWIN: Do you want to move on, Marni?

14 MS. HOLLOWAY: Under opportunity index, a  
15 commenter supports the addition of menu items for location  
16 in the attendance zone of a school rated A or B by TEA.  
17 They asked that this item be increased to eight points to,  
18 and I'm quoting, "use the QAP to strongly incentivize  
19 placing tax credit properties in the attendance areas of  
20 good schools."

21 Because of the restrictions on above the line  
22 and below the line scoring, we are not able to increase  
23 this item score to eight. Further, the opportunity index  
24 is constructed so that applicants must select multiple  
25 community features to reach the full seven points. If

1 schools are increased to eight points, then all other menu  
2 items would be effectively negated. Staff is recommending  
3 no change to this item.

4 The same commenter requested a change in  
5 tiebreakers regarding the last award to a development.  
6 Going back to the commenter that made the comment regarding  
7 last award has made a similar request regarding census  
8 tracts in underserved areas. They also request that we  
9 clarify what most recent year of award means because the  
10 site demographics characteristic has two columns containing  
11 years of award, year and Board approval.

12 Regarding the first request, staff refers back  
13 to the response under tiebreakers. Regarding the second  
14 request, the only time and place at which an award of tax  
15 credits can be made is at a Board meeting, and we recommend  
16 no changes as a result of this comment.

17 Nine commenters addressed the new proximity to  
18 jobs scoring item. One of them supports the addition  
19 stating that it's a flexible alternative to proximity to  
20 the urban core and will help to add affordable housing in  
21 needed areas. Another commenter expressed support and  
22 asked that no changes be made to the 2020 QAP to the  
23 distance or job number requirements as developers are  
24 already proceeding based on the draft.

25 Five commenters asked that the staff lower the

1 population requirement under proximity to urban core. The  
2 commenters were concerned that Lubbock is the only city in  
3 Region 1 that is able to access these points because its  
4 population is over 200,000.

5 The population of Amarillo, under our site  
6 demographics, is 197,823, so developments within its  
7 boundaries are not eligible for those points. They are  
8 concerned that this creates an unfair advantage for  
9 Lubbock. Staff agrees and has amended the rule to reduce  
10 the population minimum to 190,000.

11 A commenter is opposed to this scoring item  
12 talking about the jobs applying to rural subregions stating  
13 that rural communities are spread out and vary in  
14 concentration of businesses.

15 They also request that this item should not  
16 apply to the at-risk and USDA set-aside. Staff believes  
17 that if proximity to jobs applies to rural subregions, the  
18 QAP can help to revitalize historic downtown plazas and can  
19 help to counteract the donut-hole effect in some rural  
20 areas. Staff has clarified that the scoring item does not  
21 apply to the USDA set-aside.

22 Another commenter suggested the proximity to  
23 jobs scoring item be treated similarly to crime data from  
24 Neighborhood Scout in that any data obtained after October  
25 1 but before the pre-app deadline satisfies the

1 requirements.

2 Staff agrees that there should be an eligible  
3 time frame for that data and that documentation of that  
4 data should be included in the application. Additionally,  
5 we have clarified that the 2017 data must be used for the  
6 2020 application moving forward.

7 Another commenter tentatively opposes the  
8 proximity to jobs scoring item largely because it has so  
9 much weight in the QAP relative to other items that they  
10 believe contribute more to fair housing. They request that  
11 the item be reduced to two or three points.

12 They also take issue with not considering the  
13 types of jobs and are concerned that it could incentivize  
14 developments near areas of heavy industry. They requested  
15 any site with undesirable neighborhood characteristics be  
16 ineligible to receive proximity to jobs points and that  
17 mitigation under these circumstances be disallowed.

18 Staff believes that input gathered during the  
19 2020 QAP planning process and findings from our resident  
20 survey indicate broad support for development of affordable  
21 housing near job centers.

22 Rather than making changes at this point, we  
23 will follow the request of the other commenter about not  
24 making changes that would impact site selection currently  
25 underway. Once applications are received in 2020, we will

1 be better able to evaluate any necessary changes. So the  
2 only change that we are recommending in this section is to  
3 documentation of the data and the time frame for the data.

4 One commenter requested that the deadline for  
5 readiness to proceed in disaster-impacted counties be  
6 extended to January. Another requested that it be removed  
7 entirely because it was intended to be a temporary measure  
8 after Hurricane Harvey. Both of these are substantive  
9 changes that cannot be made as the result of public  
10 comment.

11 For commitment of development funding by local  
12 subdivisions, three commenters request that a local  
13 contribution involving HOME, CDBG, CDBG DR, or other  
14 locally funded subsidies should be weighted more heavily  
15 than a \$500 in-kind contribution which they claim is not  
16 material to the financing of the development. The  
17 commenters also requested that the minimum amount be  
18 removed from this scoring item.

19 So while we appreciate the benefits of  
20 leveraging larger local contributions with tax credits, the  
21 commenters suggested change would adversely impact the  
22 smaller communities in urban subregions that do not receive  
23 HOME or CDBG allocations, so no change is recommended.

24 One commenter requests that the score for  
25 community support from the state representative be reduced.

1 This item score was increased in order to maintain the  
2 hierarchy of scoring required by statute after the changes  
3 required by House Bill 1973. As such, we do not have the  
4 authority to reduce the score.

5 Also under this section -- and this is a staff  
6 correction rather than the result of public comment --  
7 under letter from a state representative, we've realized  
8 that language in the rule is inconsistent with other rules  
9 and statutes. As previously written, the rule gave zero  
10 points for letter of opposition while the statute calls for  
11 negative points. We've made the appropriate change in this  
12 rule.

13 Four commenters stated that the concerted  
14 revitalization plan requirement for a history of sufficient  
15 documented and committed funding to accomplish its purpose  
16 on an established deadline is too prescriptive and  
17 compromises local control. They request that the word  
18 "committed" be removed from the requirements.

19 The IRC notice 2016-77, which addresses CRPs,  
20 strongly suggests that tax credit developments should  
21 follow implementation of the components of a CRP which can  
22 only be accomplished with sufficient committed funding.  
23 Also, this Board has consistently maintained the position  
24 that the CRP work should have been underway prior to the  
25 tax credit development. Therefore, staff recommends no

1 changes based on these comments.

2 Under financial feasibility, a commenter notes  
3 that the financial feasibility rule as currently written  
4 precludes supportive housing developments with no permanent  
5 debt from scoring the maximum points under this item  
6 because the maximum points can only be achieved through a  
7 letter provided a third-party permanent lender. They ask  
8 that the rule for a third-party construction lender's  
9 letter to count for the maximum amount of points.

10 We believe there's an important distinction  
11 between a construction lender or a permanent lender saying  
12 that a development is feasible, but we recognize the  
13 concern for certain supportive housing developments. We've  
14 added an exception for those supportive housing

15 developments that will have no permanent debt to the rule  
16 Under cost of development per square foot, two  
17 commenters have requested that costs be increased. This  
18 was a topic that was discussed during roundtables with no  
19 conclusion that the amount should increase based on the  
20 available data.

21 It's important to note that this is a  
22 competitive scoring item meant to encourage the efficient  
23 use of a limited resource. Also, the voluntary eligible  
24 basis and voluntary eligible building cost items do not  
25 limit the cost per square foot. That limitation is created

1 by our million and a half dollar cap per application.

2 Staff recommends no changes based on these comments.

3 Under that same item a commenter suggests that  
4 an allowance be made for non-air conditioned spaces at  
5 supportive housing developments that support social  
6 gatherings, such as outdoor common porches and patios and  
7 interior courtyards. Staff agrees and has changed the  
8 allowance for net rentable area for supportive housing  
9 under this development to include 25 square feet of non air  
10 conditioned common area to be included in net rentable  
11 area.

12 There were eight commenters regarding the new  
13 extended affordability scoring item. Three of them support  
14 the item but one asked us to add language that ensures the  
15 quality of these developments will be maintained over these  
16 extended periods and to explore opportunities for re-  
17 syndication.

18 One commenter reminds us the Department  
19 incentivized affordability periods of 55 years in the past  
20 and suggested that we mandate a 55-year affordability  
21 period now. They note that 12 states require or  
22 incentivize affordability periods at least that long.  
23 Similarly, another commenter notes that the tax credits are  
24 limited and with good stewardship a 45-year affordability  
25 period is reasonable.

1           Five commenters asked that the 40- and 45-year  
2 affordability period scoring items be removed, reverting to  
3 previous years standard of incentivizing a 35-year  
4 affordability period.

5           Two of them agree that compliance periods beyond  
6 35 years runs counter to national averages, complicates the  
7 owner's ability to recapitalize, increased construction  
8 costs, and requires updating underwriting standards to  
9 ensure the long-term feasibility. They state that the more  
10 pressing issue is preserving existing affordable units.  
11 Suggestions for discussion during the 2021 QAP planning  
12 efforts were provided that would make preservation of  
13 affordable housing easier.

14           One commenter commissioned a report by  
15 Novogradac to study extended affordability rates in other  
16 states' QAPs. The study found that 26 states have some  
17 form of extended use requirements, and according to two  
18 commenters, a 45-year affordability period is not an  
19 industry standard.

20           The commenter claims that TDHCA does not offer  
21 tools necessary to make a 45-year affordability period  
22 viable, and that current policies, such as the right of  
23 first refusal process, complicate existing developments'  
24 ability to re-syndicate.

25           Three commenters request more planning from

1 staff before committing to a longer extended affordability  
2 period and asked that planning efforts for the 2021 QAP  
3 focus on preservation. They state that they're not  
4 opposing the extended affordability but prefer more time  
5 evaluating and discussing.

6 One commenter is especially concerned about how  
7 the longer affordability period will affect the  
8 Department's underwriting standards which has not yet been  
9 discussed with stakeholders. Another commenter is  
10 concerned that standard financing mechanisms may conflict  
11 with a 45-year affordability period since the maximum  
12 amortization is 40 years.

13 Staff believes that these concerns can be best  
14 addressed during future planning efforts for the 2021 and  
15 subsequent QAPs, and we are recommending no changes.

16 MR. GOODWIN: Any comments? Before we have  
17 comments, we're going to take a five-minute quick recess to  
18 allow Board members to relieve themselves if they would  
19 like. We'll be back in five minutes.

20 (Whereupon, at 10:16 a.m., a brief recess was  
21 taken.)

22 MR. GOODWIN: I proclaim this meeting now out of  
23 recess, and I think we had someone that wanted to comment  
24 on the extended affordability issues.

25 MS. STEVENS: Yes, sir. Good morning. I am

1 Lisa Stevens. I am actually here speaking on behalf of the  
2 Texas Coalition of Affordable Housing Developers.

3 We did provide comments on extended  
4 affordability and we were the ones that commissioned the  
5 report from Novogradac. Our goal in commissioning that  
6 report was to find out what actually is the industry  
7 average because we've heard a lot of other states are doing  
8 this so we should too.

9 What we found out is that it's almost 50-50  
10 between states that do have extended affordability and  
11 states that don't, and of the 50 percent of the states that  
12 do, it's very widespread from five years to 69 years, so  
13 what we found is that there is no industry average. Right?

14 Every state does what they think is best for them. The  
15 other thing that we learned is that of the states that do  
16 provide extended affordability, they also provide some  
17 mitigation that allows for refinancing and rehabilitation  
18 when those projects need to be rehabilitated.

19 One of the concerns we have is that in Texas we  
20 build a lot of frame construction, and quite frankly, our  
21 underwriting standards today don't take into account what's  
22 going to happen between year 30 and year 45. A lot of  
23 these developments, when you model them financially,  
24 actually trend down and if you take that 30 year trending  
25 and you model it out another 15 years, the likelihood is

1 that a lot of these developments are going to trend  
2 negative. So if they don't have the cash flow to cover  
3 operations, how are they going to have the cash flow to  
4 maintain the properties and to keep up the rehabilitation  
5 that needs to be done?

6 So we are not opposed to extended affordability  
7 fundamentally. As a proponent of affordable housing, I  
8 think it's a great thing for us to be talking about, but  
9 we're actually asking that you defer that discussion until  
10 the next QAP and let's talk about all of the issues that  
11 need to be considered, including maintenance, rehab,  
12 refinancing, rehabilitation, and financial feasibility.

13 Thank you.

14 MR. GOODWIN: Thank you.

15 Any questions? Paul, you had a question?

16 MR. BRADEN: So what are you asking?

17 MS. STEVENS: We're asking that for this year  
18 you revert back to 35-year affordability and then actually  
19 form a committee to look at extended affordability and  
20 preservation of the existing portfolio for the 2021 QAP.

21 MR. GOODWIN: Okay. Any other questions? Is  
22 this something the Rules Committee reviewed?

23 MR. VASQUEZ: Yes.

24 MR. GOODWIN: It is? Okay.

25 Walter.

1 MR. MOREAU: Walter Moreau, the director of  
2 Foundation Communities.

3 I hope that you'll stick with staff  
4 recommendation at 40 and 45 years. I think the most  
5 important perspective here is really the residents, and we  
6 don't know in 35 years who that family will be and what the  
7 condition of the apartment will be, but when the LURA goes  
8 away, your role and stake in that project is gone. If the  
9 property is rundown, it's in danger of being torn down or  
10 potentially renovated, the family is going to move.

11 You're making a huge investment in these  
12 projects upwards of \$15 million. None of the developers  
13 that commented against extended affordability said they  
14 can't do this, they're going to drop out of the program.  
15 What they don't want, honestly, is when they go to exit, if  
16 there's a longer affordability, their interest has less  
17 value.

18 I think you need to do the right thing for  
19 families, and keeping the state engaged in that project for  
20 40 years or 45 years really helps preserve additional  
21 affordability for those families. We thought about a  
22 resident coming today to share their story but all of our  
23 residents are living in housing that has long-term  
24 affordability.

25 I think Lauren has the data from the Novogradac

1 study and can speak more to what other states do, but we  
2 think now this is the year to make this policy change.

3 Thanks.

4 MR. GOODWIN: Thank you.

5 Any other questions, comments?

6 MS. LONEY: Good morning, Mr. Chairman, members  
7 of the Board. My name is Lauren Loney. I'm a staff  
8 attorney at Texas Housers, and before I was a staff  
9 attorney at Texas Housers, I was a law fellow at University  
10 of Texas for two years.

11 It's my research that identified, along with  
12 Heather Way, who was my supervisor that identified a number  
13 of best practices for LIHTC preservation. It was two years  
14 of work working with experts across the country and in  
15 Texas to identify extended affordability as a really vital  
16 component of preservation.

17 And you've already heard some of the statistics  
18 about the Novogradac study, and actually, I wasn't  
19 surprised at all to find that the Novogradac study, with  
20 only a few exceptions, completely mirrored the results of  
21 my research because what they did is they went through QAPs  
22 and they went through other documents that identified these  
23 kinds of extended affordability periods and found very,  
24 very similar things to what I did.

25 The Novogradac study says and my research showed

1 that of the states that do commit to extended  
2 affordability, the average among those states is 50 years  
3 of affordability, and even if you consider all the states  
4 together, so considering the states that are not doing any  
5 extended affordability, and you weight that average by  
6 population -- meaning that what's happening in Texas and  
7 our extended affordability has more weight than the total  
8 average -- the average is still 40 years of affordability.  
9 So what we're asking here for an incentive to either your  
10 40 or 45 is clearly squarely in line with trends that we're  
11 seeing across the country.

12           And this is a little bit intangible, I think, to  
13 hear about what all these other states are doing and  
14 wondering like how that's going to impact properties in  
15 Texas, and while I can't predict what kind of funding will  
16 be available 45 years from now, there are three properties  
17 for sale on TDHCA's website right now.

18           These properties were allocated tax credits  
19 between 1998 and 2002, so they're 18 to 22 years old at  
20 this point. The third-party property condition assessments  
21 for those properties say that there's anywhere from 20 to  
22 40 years of remaining useful life in those properties if  
23 they are well maintained. So this is not an issue of  
24 whether or not our building standards are going to be up  
25 for lasting for up to 40 or 45 years.

1           And just to sort of highlight one of the  
2 properties that was built in 1998 had significant  
3 renovations while in the LIHTC program in 2016 and now only  
4 two years later is trying to exit the program, despite the  
5 fact that that property has up to 20 or more remaining  
6 useful years of life to serve low income tenants. So this  
7 is a completely feasible thing that we are asking.

8           Walter mentioned, of course, that the real  
9 reason why we're concerned about this is because we are and  
10 are probably going to continue to be in a massive  
11 affordable housing shortage, and it's really important to  
12 make decisions now that will make sure that we have  
13 affordability moving forward.

14           Thank you.

15           MR. GOODWIN: Any questions?

16           (No response.)

17           MR. GOODWIN: Any other comments?

18           (No response.)

19           MR. GOODWIN: Marni.

20           MS. HOLLOWAY: As I said, staff thinks that we  
21 can address these concerns during future planning efforts,  
22 and in particular, as we're starting to look at  
23 preservation and the work that our Fair Housing Division is  
24 doing on creating a database of properties and sort of  
25 wrapping our arms around what the preservation needs are.

1 I can't speak to the concerns regarding property  
2 conditions at 40 or 45 years because we haven't really  
3 researched that yet. Yes, absolutely properties will need  
4 if not two, at least one major rehab to get there.

5 MR. GOODWIN: Okay. Moving on to the next  
6 topic.

7 MS. HOLLOWAY: The next one is right of first  
8 refusal. Two commenters noted that in our staff draft we  
9 had moved the ROFR from scoring to threshold, while in the  
10 proposed QAP that we brought to you we moved it back to a  
11 scoring item due to a requirement in statute. We are  
12 unable to make the right of first refusal a threshold item  
13 and recommend no changes.

14 So that's all for Subchapter A. Now we're  
15 moving on to the threshold measures in Subchapter B.

16 Under flood plain, one commenter does not  
17 support the Department devoting funding to developments  
18 located in 100-year flood plains and, if we continue to  
19 fund these developments, asked that the Department require  
20 development owners to provide flood insurance to residents  
21 that covers their personal property.

22 Under our underwriting and loan policy rules,  
23 there's a requirement that the applicant must identify the  
24 cost of flood insurance for the buildings and for the  
25 tenants' contents within the 100-year flood plain and

1 certify that the flood insurance will be obtained. So that  
2 requirement is there, it's just in another part of our  
3 rule.

4 For undesirable site features, a commenter  
5 requested that proximity to highways, interstates and other  
6 major roadways that are heavily trafficked be added to the  
7 list of undesirable site features. This change is beyond  
8 what we can do through the public comment process, and it's  
9 something that we could take up for 2021.

10 We had two comments regarding the poverty  
11 section of the neighborhood risk factors. One commenter is  
12 concerned that this section prohibits re-syndication if a  
13 development is located in a census tract with a poverty  
14 rate above 40 percent. The rule actually requires  
15 notification and mitigation, so it's not a hard stop. I  
16 think it was a misunderstanding of our rule.

17 Another commenter prefers that the mitigation  
18 for the 2019 QAP go back to what was required for 2018. So  
19 under 2019 what we're looking for is a resolution from  
20 local government, under 2018 there was a bunch of data and  
21 information that we received as mitigation.

22 The various forms of mitigation previously  
23 allowed were challenging to review and could be seen as  
24 subjective. Local governments are better able to discern  
25 local conditions, can consider plans to revitalize or if

1 the area is gentrifying into account before adopting that  
2 resolution, along with any other information they may deem  
3 appropriate. Staff recommends no changes based on this  
4 comment.

5 All right. We received the most comments on the  
6 school section of the neighborhood risk factors. We got 37  
7 of them total. Seventeen commenters asked that we not  
8 change the threshold that would make sites ineligible if  
9 they are in the attendance zone of a school that received a  
10 TEA accountability rating of F in 2019 and an Improvement  
11 Required in 2018. And you'll recall that that came out at  
12 Rules Committee and then when we were talking about the  
13 draft here at the meeting.

14 They're concerned that schools that are already  
15 distressed, adding more low income students will exacerbate  
16 the problems. Several believe that families and their  
17 children would have a better chance of academic success if  
18 low income housing was built near better schools. One  
19 commenter argues that without the current proposed rule  
20 language, likelihood of low income children remaining stuck  
21 in the cycle of poverty increases.

22 Another commenter opposes the exemption from  
23 this risk factor for developments encumbered by a TDHCA  
24 LURA on the first day of the application period. They  
25 believe that if a development wants to secure additional

1 federal funding, it should be required to mitigate its  
2 being in the attendance zone of a failing school.

3 They state that the Department's policy, in  
4 effect, is to say that children living in a TDHCA supported  
5 development should continue to attend poorly performing  
6 schools and no mitigation is required.

7 Eight commenters asked that the staff eliminate  
8 the proposed language in the 2020 QAP regarding ineligible  
9 sites due to school ratings. One states that this  
10 disproportionately impacts public housing authorities whose  
11 properties tend to be in qualified census tracts.

12 Many of these commenters reference analysis that  
13 was performed by one of the commenters suggesting that  
14 approximately 66 percent of F rated schools are located in  
15 qualified census tracts in Texas's five largest cities.

16 They claim this rule will severely limit the  
17 ability to preserve PHA owned affordable housing through  
18 the 4 percent tax credit program. Four commenters worry  
19 that this may prevent the use of tax exempt bonds and QCTs  
20 and request that those developments be exempt.

21 Three commenters request that the Department  
22 allow mitigation if the school is rated Improvement  
23 Required in 2018 and F in 2019 if the independent school  
24 district has an open enrollment policy or if there is a  
25 passing open enrollment charter school. In both instances,

1 the applicant would commit to providing transportation.

2 Two commenters state that this rule is contrary  
3 to the Department's preservation goals and asks the  
4 Department to consider the unique characteristics of  
5 neighborhoods surrounding the development. Three of them  
6 also request that any existing developments going through  
7 the RAD conversion program be exempt. Another commenter  
8 would add developments using DR funds, those located in  
9 target zones, and those existing affordable housing  
10 developments seeking rehabilitation.

11 Two commenters worry that this proposed rule  
12 will preclude development in revitalization areas in the  
13 inner cities. And one commenter believes this restriction  
14 prevents the development of decent, safe and affordable  
15 housing needed to improve students' educational performance  
16 and they discuss their own after school care program in  
17 their comment.

18 We need to circle back to the commenters who  
19 referenced that analysis. In looking at their mapping, it  
20 appears that multiple QCTs in our largest cities will be  
21 ineligible due to this rule.

22 First, there is no correspondence between the  
23 attendance zone of a school which is generally a radius  
24 around the facility and a census tract. In the case of an  
25 elementary school, the radius may be very small, for high

1 schools it will be larger, but these measurements are not  
2 the same as census tracts.

3 Secondly, the mapping only shows schools with an  
4 F rating in 2019 rather than schools with an F rating and  
5 an Improvement Required in 2018, so their calculations  
6 overestimate the impact of this requirement. Rather than  
7 the 402 schools cited, the correct number is 102, or about  
8 2 percent of the schools in the state.

9 By way of example, our analysis shows that there  
10 are two schools impacted in Austin rather than ten, two  
11 rather than 32 in Houston, in Fort Worth there are three  
12 not 15, in Dallas there is one rather than eleven, and in  
13 San Antonio it's nine instead of 31.

14 It also should be noted that if staff determines  
15 that a site is ineligible, an appeal process going all the  
16 way to the Board is available to applicants.

17 While staff does not recommend any changes to  
18 this section based on the comments we received, we have  
19 modified the text in a couple of places for clarity.

20 MR. GOODWIN: Questions? Bobby.

21 MR. WILKINSON: I just want to add that the  
22 Rules Committee changed it from the 2019 F to 2018 IR and  
23 2019 F to help these concerns.

24 MS. HOLLOWAY: Right. So if that change hadn't  
25 been made, it would have been the 400 schools.

1 MR. GOODWIN: Okay. Any comments?

2 MS. LATSHA: Good morning. I'm Jean Latsha,  
3 representing Pedcor Investments.

4 It's not going to sound like I'm talking about  
5 schools, but I'm going to get there in a roundabout way.

6 MR. GOODWIN: Three minutes.

7 MS. LATSHA: Yes, yes.

8 This is in response probably to some comments  
9 and actions that were made at the October Board meeting.  
10 Those comments were made by Ms. Teresa Morales, and so  
11 before I start, I'll say that I know from working with her  
12 at the Department, I know how invaluable she is, and  
13 becoming more so with the increased activity in that  
14 program.

15 That said, I disagree with her comments that  
16 suggested that the 4 percent credits are not at risk of  
17 being lost when these transactions are delayed or not  
18 awarded at all. Ms. Morales stated that, I quote, "While  
19 there may be individuals who comment that the 4 percent  
20 credits will go unused and effectively wasted if not used  
21 for a particular transaction that may be before you, these  
22 numbers suggest otherwise. If one deal does not get done,  
23 there's still demand and volume cap is still being used."

24 It is true that volume cap, which has been  
25 undersubscribed for over a decade, is now oversubscribed.

1 It is true that there is competition for volume cap, but  
2 there are many different users of volume cap. This does  
3 not all go to housing and certainly not to multifamily  
4 housing, so to imply that the 4 percent tax credits work  
5 the same way as the 9 percent tax credits with every  
6 application undoubtedly having another worthy multifamily  
7 rental housing application behind it waiting in the wings  
8 is just not accurate.

9 Ms. Morales also mentioned that there was \$650  
10 million in volume cap set aside for multifamily in 2018 --  
11 that's true -- and that \$700 million was used, again  
12 implying that there are more than enough multifamily  
13 applications out there getting funded.

14 What's important to understand is that there was  
15 over \$3 billion in total volume cap so that includes set-  
16 asides for student loans, state voted issues, MRBs, and  
17 \$890 million in all other category. So multifamily rental  
18 housing users only took \$40 million of that all other  
19 category which is only about 5 percent. I'd like us to use  
20 a lot more of that all other category.

21 You might recall, too, that right after these  
22 comments about the program in general were made, this Board  
23 approved an applicant's appeal related to schools, partly  
24 because that volume cap actually was going to be lost to  
25 the state.

1 I don't want to comment on the Board's decision  
2 on that particular appeal, because I know it was a  
3 difficult situation, but my point is this: We are  
4 assuredly in a robust market for 4 percent tax credit  
5 transactions, and we don't know how long that's going to  
6 last. We should embrace that and not look at it as a  
7 reason to deny or delay funding to these applications.

8 Last month this Board also talked about the need  
9 for 60,000 affordable units in Austin, and that's just  
10 Austin. I hope that my competitors and me can use up more  
11 than that other set-aside of volume cap and put even more  
12 units on the ground, and we're asking for your help to do  
13 this.

14 Others here are going to comment about the  
15 neighborhood risk factors in the current draft of the QAP  
16 and I ask this Board to consider those comments and allow,  
17 at minimum, the 4 percent transactions to plead their cases  
18 or provide mitigation in cases where risk factors are  
19 present, specifically with regard to schools.

20 Thank you.

21 MR. GOODWIN: Any questions for Jean?

22 (No response.)

23 MR. GOODWIN: Anybody else want to comment on  
24 this issue?

25 MR. PALMER: Good morning. Barry Palmer with

1 Coats Rose, and I'm here today on behalf of the Houston  
2 Housing Authority, and particularly about the rule not  
3 allowing mitigation for schools.

4           The Houston Housing Authority, one of their  
5 properties called Clayton Homes is on the 59 feeder road  
6 downtown, it's about half a mile from Minute Maid Stadium,  
7 and it is being taken -- 296 units, its being taken by  
8 TxDOT through eminent domain to widen 59. And the housing  
9 authority has entered into agreements with all of the  
10 stakeholders, including TxDOT, the residents, to replace  
11 those units within two miles of the Clayton Homes site,  
12 which is not easy to do. They have found a tract of land a  
13 little bit over a mile from Clayton Homes in EADO that  
14 they've put under contract with a plan to reconstruct using  
15 a combination of the TxDOT funds and 4 percent credits.

16           The high school that the students at Clayton  
17 Homes are zoned to falls into the category of needing  
18 improvement in 2018 and getting an F in 2019, but we ask  
19 for the ability to replace this existing affordable housing  
20 in the same area and to show mitigation for the schools.

21           Under the rule that you currently have there are  
22 some carve-outs from the prohibition of going in where  
23 there are problem schools. There's a carve-out for  
24 elderly, for supportive housing, and there's a carve-out  
25 for a property that has an existing TDHCA LURA on it, so if

1 someone is coming in and wants to re-syndicate a tax credit  
2 deal, they're allowed to do that with 4 percent credits  
3 even if the school is non-performing.

4 So I guess we're asking for a carve-out to the  
5 prohibition for the replacement or reconstruction of a  
6 property that has a public housing Section 9 operating  
7 subsidy on it to go within two miles of its current  
8 location.

9 MR. GOODWIN: Okay. Any questions for Barry?

10 (No response.)

11 MR. GOODWIN: Marni, under this new QAP would  
12 this project not be eligible?

13 MS. HOLLOWAY: Staff would determine the project  
14 ineligible, and they would have an appeal process all the  
15 way up to the Board. We received this public comment, and  
16 I failed to follow up with the housing authority.

17 If TxDOT is moving this property and if it's  
18 being reconstructed due to a TxDOT activity, then the  
19 Uniform Relocation Act applies, and I'm not really clear  
20 how TDHCA plays into it so I can't fully answer your  
21 question.

22 MR. GOODWIN: Okay. But they would have the  
23 ability to apply, you'd determine them ineligible, they'd  
24 have the right to appeal, and next year's Board could make  
25 a determination to make an exception.

1 MS. HOLLOWAY: Yes. They could consider all the  
2 facts and circumstances and make that determination.

3 MR. GOODWIN: Just like we did last month with  
4 the school here in Austin.

5 MS. HOLLOWAY: Right, but what will happen next  
6 year is rather than us just bringing you stuff and say here  
7 it is, is it eligible, it will have gone through our  
8 regular appeal process and it will be looked at at several  
9 different levels before it's in front of you.

10 MR. GOODWIN: Thank you.

11 Any other questions for Marni?

12 (No response.)

13 MR. GOODWIN: Other comments? We're ready for  
14 you.

15 MS. GUERRERO: Hi. My name is Debra Guerrero,  
16 and I am here representing the NRP Group and really  
17 appreciate, in fact, that explanation because that actually  
18 proves the point that I'd like to make today.

19 First and foremost, I completely agree with the  
20 carve-out. We're one of the developers that is working in  
21 partnership with the Houston Housing Authority on this  
22 particular tract of land, and so a carve-out that really  
23 does take into consideration that circumstance is very  
24 important.

25 But I have to tell you beyond that, we develop

1 throughout the state of Texas, mostly in urban areas, and  
2 so we see a lot of challenges with the fact that this  
3 particular rule pretty much eliminates that mitigation  
4 opportunity.

5 Sure, there's an appeal because there's an  
6 appeal on everything, but we also know the difficulties,  
7 and we all watched last month when I think it was Mr.  
8 Vasquez had said I'm kind of going against my own rule at  
9 this point, and it is a difficult to put you all in. So  
10 allowing for mitigation when there are circumstances and  
11 compelling reasons to do so is not a bad practice.

12 And also, I am in a unique position because I'm  
13 not only a developer but I sit as a San Antonio ISD Board  
14 trustee. So in the City of San Antonio we've seen examples  
15 where school districts and we ourselves have had to create  
16 innovative partnerships and programs, and there's  
17 compelling stories out there, many of them which you may  
18 not hear if it goes all the way to appeal or it makes it  
19 more difficult to make that decision to really focus on  
20 that compelling story.

21 In the case of Houston -- well, the case of San  
22 Antonio, I can speak to that specifically, Wheatley Courts.  
23 Back in 2014 you all made the difficult decision to  
24 allow -- I think it was approximately 2014 -- you made the  
25 difficult decision to allow that development to proceed

1 forward.

2 Now I'm very proud of what SAISD has done, going  
3 from an F to a B district. In that particular area those  
4 schools have all scored well, they're well beyond that. So  
5 there really are cases where you need to hear what they are  
6 during mitigation.

7 In the case of Houston, the fact is they're  
8 going through a very trying time right now, so who knows  
9 what the governance will look like at that point.

10 So all I am asking is if we could go ahead and  
11 allow for mitigation, even in the circumstances where they  
12 met a 2018 IR and they may be an F now because those  
13 stories are important.

14 MR. WILKINSON: Debra, these success stories are  
15 great to hear about, and I think we should all be paying  
16 attention to it. But wouldn't that mean that the next year  
17 when they achieve success then they would be eligible?

18 MS. GUERRERO: Except that when we're actually  
19 doing these developments, the timing of them doesn't allow  
20 it -- I mean, it doesn't allow it to be a part of the  
21 process in that cycle.

22 MR. WILKINSON: It would just be a year later.

23 MS. GUERRERO: It could be a year later, but the  
24 rules could change at that point. And more importantly, we  
25 know that housing is a big factor, quality, safe housing is

1 a big factor in a child's education. So yes, in the future  
2 it could be eligible but we have to wait that year or two  
3 years to really see.

4 And honestly, the scores of 2019 are actually  
5 for last year, so I mean, there is a lapse. And there's  
6 plenty of stories where we have data people that are  
7 actually seeing quarter to quarter how well the schools are  
8 doing now without having the official TEA ratings.

9 And the thing is at the end of the day after  
10 mitigation you may not think that it is truly mitigation,  
11 therefore, it doesn't apply. But for the staff no longer  
12 to be able to bring them to you for that first pass, I  
13 mean, that's just -- it's not a process that I would  
14 recommend.

15 MR. WILKINSON: Thank you.

16 MR. GOODWIN: Any other comments? Any  
17 questions?

18 MR. VASQUEZ: I'd actually like to make a  
19 comment because we did discuss this in depth, and I believe  
20 everything I'm hearing fits with the intent of how we wrote  
21 this up. Obviously -- well, I say obviously -- but a  
22 circumstance where TxDOT is using eminent domain and  
23 forcing the movement, I'm sure the whole Board would look  
24 at that with a reasonable perspective. Even if the school  
25 isn't qualifying, we'd need to replace this and try to keep

1 it in the same area. That's a special circumstance and I'm  
2 sure it could get brought up to the Board.

3 But this whole process of how we set it up with  
4 I think we said Needs Improvement and D in two years, you  
5 can present mitigation circumstances and the staff can  
6 address those themselves, and if they agree that there's  
7 school improvement going on, they can present the  
8 recommendation to the Board.

9 Having Needs Improvement and F, we're  
10 discouraging that set of circumstances, but that doesn't  
11 mean -- that takes it out of the hands of the staff  
12 somewhat, but if you have a district that's like the one  
13 last month where I thought they brought compelling evidence  
14 that they are making a difference and they are trending  
15 correctly, that can still get appealed to the Board and if  
16 there is compelling evidence, the Board will look at that  
17 and make a decision.

18 So this Needs Improvement and an F not  
19 qualifying, I think is a good standard rule to have, but  
20 that doesn't preclude an appeal brought to the Board with  
21 compelling evidence.

22 MR. GOODWIN: Any other comments or questions?  
23 Anybody else want to speak to this issue?

24 (No response.)

25 MR. GOODWIN: If not, we'll move on.

1 Marni, I think they're finished with comments on  
2 the neighborhood risk factors.

3 MS. HOLLOWAY: I have nothing further on that.

4 Under mitigation of neighborhood risk factors, a  
5 commenter asked that a sentence we added be removed from  
6 this subparagraph. That sentence was: "If staff  
7 determines that the development site cannot be found  
8 eligible and the applicant appeals that decision to the  
9 Board" -- so exactly what we've been talking about -- "the  
10 applicant may not present new information at the Board  
11 meeting." The commenter believes that this prevents a  
12 holistic analysis of an issue and states that there are  
13 instances where it is appropriate to present new  
14 information, particularly in light of staff reviews and  
15 questions.

16 So to explain the process a little bit more,  
17 applicants are required with their initial submission to  
18 submit a neighborhood risk factor packet to address all of  
19 the factors applicable to their site, along with any of the  
20 mitigation they believe to be appropriate.

21 The packet undergoes the same review process as  
22 a full application with an opportunity to respond to any  
23 deficiencies. If staff determines the site is ineligible  
24 and issues a termination, the applicant first appeals to  
25 the executive director, at which time they should be

1 providing any missing information that would impact the  
2 director's decision.

3           Only after that process does an appeal appear  
4 before the Board. Given the opportunities prior to  
5 reaching the Board, along with the staff and executive  
6 director not having the ability to review the information,  
7 it should not be allowed for Board consideration.

8           Additionally, information presented at a Board  
9 meeting that was not supplied through deficiencies or  
10 appeal constitutes supplementation of an application which  
11 is prohibited by statute.

12           Staff recommends no changes based on these  
13 comments.

14           Moving on to mandatory development amenities, a  
15 commenter suggested the Department require compliance with  
16 statewide energy code and remove the allowance for fixtures  
17 with equivalent ratings to ENERGY STAR or WaterSense.

18           Because statewide energy code compliance is  
19 required in other laws, we don't feel it's appropriate or  
20 necessary to include it in our rule, and the language  
21 "equivalently rated" is common industry usage for  
22 specifications and applicants are required to prove the  
23 equivalency at completion.

24           Staff recommends no changes based on these  
25 comments.

1 MR. GOODWIN: Okay.

2 MR. REED: Very quickly, for the record, my name  
3 is Cyrus Reed. I'm here on behalf of the Lone Star Chapter  
4 of the Sierra Club. Good to see you all. This isn't  
5 usually where I do my business, but I thought this issue  
6 was important.

7 Back in 2015 the legislature passed a law, HB  
8 1736, which set the required energy code for the State of  
9 Texas as the 2015 International Energy Conservation Code  
10 and the equivalent chapter of the International Residential  
11 Code, and then said any local entity must follow these  
12 codes, although they can make local amendments, but if  
13 they're in affected counties or non-attainment areas, areas  
14 that are struggling -- like Bexar County -- struggling with  
15 air quality issues, they can't go backwards, they have to  
16 at least meet those minimum standards, and in general,  
17 cities have done that.

18 And my thought was because you're a state  
19 agency, because this is a state law, it would make sense to  
20 have that as a minimum threshold in the QAP. I think staff  
21 has said they don't feel it's necessary. That being said,  
22 you guys recently had a good rulemaking for your single-  
23 family homes programs where you did set those minimum  
24 standards in a rulemaking for single-family homes.

25 So my suggestion would be if you're not wanting

1 to do it within the QAP, maybe you consider a rulemaking  
2 for all multifamily homes that makes it crystal clear to  
3 the developer community that this is the expected minimum  
4 thresholds.

5 I'm not going to argue about the equivalency  
6 rating on the ENERGY STAR, I just always get worried when  
7 people talk about equivalency rating if they're not really  
8 there, but I guess the developers would have to prove it.

9 I will say, just in closing, thank you for the  
10 improvements that were made in terms of energy efficiency,  
11 so points were put back in. You did also establish a high  
12 performance International Green Construction Code to get  
13 extra points, so I recognize that some improvements were  
14 made in terms of energy efficiency in the 2020 QAP.

15 I still think in terms of mandatory amenities  
16 and thresholds you might consider some strengthening those.

17 I think we can put together a group and kind of work that  
18 through for 2021, but think about having sort of a minimum  
19 standard for all your multifamily programs.

20 And with that, I'll shut up. Thanks.

21 MR. GOODWIN: Any questions?

22 (No response.)

23 MR. GOODWIN: Thank you.

24 MS. HOLLOWAY: Okay. Under energy and water  
25 efficiency features, there are several comments requesting

1 that items included in this menu be moved to threshold.  
2 Others have requested that specific items be added to the  
3 list such as rooftop solar systems.

4 So you'll recall that this section was created  
5 as a result of comment at the Rules Committee meeting by  
6 pulling energy efficiency items from other parts of the  
7 rule, at nine o'clock at night. The addition of other  
8 items or moving certain items to threshold is more than we  
9 can accomplish through the public comment process, but they  
10 can be taken up for the 2021 QAP, and staff recommends no  
11 changes based on these comments.

12 Moving on, discussing non-lottery applications  
13 for tax-exempt bond developments. Two commenters are  
14 concerned the proposed timelines associated with tax-exempt  
15 bond developments that submit applications for non-  
16 competitive tax credits -- so 4 percent credits -- they are  
17 concerned with those timelines and request that Priority 3  
18 applications be allowed to submit an application 30 days  
19 prior to the issuance of a certificate of reservation.

20 Another commenter requests that language stating  
21 that 4 percent apps may not be reviewed during the 9  
22 percent round be removed from our rule. So changes to  
23 Texas Government Code 1372 lengthened the time under the  
24 certificate of reservation that a 4 percent applicant has  
25 to close from 150 days to 180 days.

1 Under previous rules, applicants were  
2 effectively allowed 180 days to close under our rules by  
3 allowing the application to be submitted 30 days prior to  
4 the reservation.

5 Given the new provision of 180 days to close,  
6 the new rule requires submission of the application the day  
7 the reservation is issued, which provides the same amount  
8 of time as our earlier rule. The requirement for a  
9 reservation helps assure that we are reviewing complete  
10 applications that will be moving forward.

11 Regarding the request for 4 percent applications  
12 to be placed on May, June or July Board agendas to be  
13 reviewed or underwritten during that time frame, we have  
14 used our best efforts to get 4 percent apps to their  
15 requested Boards. It's important to note that the 4  
16 percent applications do not carry a statutory deadline and  
17 9 percents do.

18 MR. GOODWIN: Nobody moving behind you.

19 MS. HOLLOWAY: Under the experience requirement,  
20 one commenter requested broadening the type of allowable  
21 experience to include construction of hotels and motels, et  
22 cetera. This is something that staff would need to better  
23 evaluate that's not achievable under this current rule, so  
24 we are suggesting no changes as a result of this comment.

25 In response to other commenters, staff

1 understands the comments raised regarding the time frame of  
2 the experience. We will propose that this be a topic for  
3 discussion in preparation of the 2021 QAP and we have  
4 changed the language in this item as a result of comment.

5 Under acquisition costs for identity of interest  
6 transactions, two commenters asked that the requirement for  
7 a secondary review of the original appraisal by a licensed  
8 appraiser be removed.

9 Alternatively they request that TDHCA publish a  
10 list of approved appraisers. They are concerned that under  
11 appraisal industry standards an appraiser may not review or  
12 comment on another appraisal but instead requires that a  
13 second appraiser conduct their own review, and they claim  
14 that having to engage two appraisers as unnecessary cost to  
15 the transaction. The commenters also state that this may  
16 infeasible during the competitive housing tax credit round,  
17 given its tight timeline.

18 A secondary review of the original appraisal or  
19 second appraisal is only required in a very limited set of  
20 circumstances: that it's an identity of interest  
21 transaction; it's financed with tax-exempt mortgage revenue  
22 bonds, so that removes that 9 percent cycle concern; that  
23 it currently has a project-based rental assistance or rent  
24 restrictions that will remain; and the applicant is asking  
25 that REA staff underwrite an as-is value that exceeds the

1 original acquisition price. So this is a very narrow set  
2 of circumstances under which that second appraisal would be  
3 required.

4 Staff believes that it's reasonable to request  
5 an additional review in order to maintain the integrity of  
6 the underwriting process, and additionally, given that the  
7 appraisal is provided by the applicant, third-party review  
8 of the appraisal is an important fiduciary function. So we  
9 are recommending no changes based on this comment.

10 MS. FINE: Hi. Tracey Fine, National Church  
11 Residences.

12 I just want to -- even though it's a very narrow  
13 requirement, anyone that's presenting an application, I  
14 guess, only on 4 percent that's an identity of interest,  
15 you own your property and your putting your application in  
16 to renovate it is now going to have to do two appraisals.  
17 So these applications cost so much money and so we're  
18 asking to be having to fork out another eight grand to  
19 submit this application.

20 Appraisals are governed by a set of rules they  
21 have to adhere to, they're licensed professionals, and I  
22 think that we should be able to hang our hats on their  
23 reports that may stand by them. No appraiser will be able  
24 to look at a report and say it's sufficient or accurate,  
25 they're going to have to do their own. And so I'm just

1 asking that we don't have to add another very expensive  
2 third-party report and that we rely on the professional  
3 that we're already paying to do it.

4 MR. GOODWIN: Any questions?

5 (No response.)

6 MR. GOODWIN: Marni.

7 MS. HOLLOWAY: In this same section, two  
8 commenters disagree with the proposed developer fee on  
9 acquisition costs if there is an identity of interest in  
10 the transaction. One says that it's unreasonable for a 4  
11 percent deal, given that a larger developer fee generates  
12 more eligible basis, and states that because there is no  
13 ceiling on 4 percent credits there's no harm in allowing  
14 developers to take the full developer fee on acquisition on  
15 these related party transactions.

16 Another requests that the allowable developer  
17 fee attributable to acquisition costs be raised from 5  
18 percent to 15 percent, with the requirement that two-thirds  
19 be deferred.

20 So in previous years' rules there was no  
21 developer fee allowed on acquisition costs in an identity  
22 of interest transaction. For the 2020 QAP, we are  
23 proposing an increase from zero percent to 5 percent.

24 The purpose of a developer fee is compensation  
25 for work actively performed in developer services which

1 wouldn't apply to acquisition of an existing development  
2 when the proposed owner already owns it. The proposed 5  
3 percent developer fee allowed on the acquisition costs is  
4 sufficient to pay transactional costs in an identity of  
5 interest transaction, and staff recommends no changes based  
6 on these comments.

7 I need to add in that same section a staff  
8 correction. One commenter pointed out that we had included  
9 in the description rehabilitation/new construction housing  
10 tax credits in (c) of this section, which is incorrect.

11 In your Board materials we have removed  
12 reference to new construction, but we should have stricken  
13 the entire description. As a result of this comment, the  
14 final rule transmitted to the Governor will simply say  
15 "housing tax credits."

16 And it's the last one. Scope and cost review  
17 guidelines. One commenter asked that the phrase  
18 "comprehensive description" needs either to be eliminated  
19 or further defined. They worry that this language will  
20 push report providers to provide unnecessary excessive  
21 information about a development that needs rehabilitation.

22 Staff believes it is reasonable to expect report  
23 providers to describe in detail the scope of work and  
24 capital needs of a proposed rehabilitation because this  
25 will allow the application to be underwritten more

1 accurately and we believe the proposed scope and cost  
2 review guidelines provide sufficient direction for  
3 providers to complete the review.

4 We recommend no changes based on these comments.

5 MR. GOODWIN: Any questions?

6 MS. HOLLOWAY: I'm about to make a  
7 recommendation but I wanted to shout out -- and he said he  
8 would be here and he's not -- as I mentioned, Patrick has  
9 abandoned us. He's gone to the City of Austin; his last  
10 day with the State was October 25.

11 His work on the QAP shows in the lack of drama,  
12 and I think that we've moved to a much better model with  
13 his work on it, and I very much appreciate it and I very  
14 much resent him leaving us. That's all I've got to say.

15 (General laughter.)

16 MR. GOODWIN: Well, a wonderful job, Marni, for  
17 you and your staff. Special thanks to the Rules Committee  
18 for all the time that you've put into this.

19 And Lesley appeared to have a motion that she  
20 wanted to make.

21 MS. BINGHAM ESCAREÑO: Actually, I would like to  
22 move staff's recommendation with one addition, and  
23 wondering if my fellow Board members would support. The  
24 one on supportive housing and the vouchers and the point  
25 that Mr. Vasquez made about that feasibility would still be

1 proved in underwriting, would it make sense to change that  
2 to a minimum of 25 percent?

3 So I'll make the motion to approve staff's  
4 recommendation with that one proposed change. It's  
5 11.1(d)(122)(E)(ii). I have no other recommended changes.

6 MS. FINE: Marni, was there going to be a change  
7 on the sponsorship on a nonprofit that Marni discussed?

8 MS. BINGHAM ESCAREÑO: I think not. I'm going  
9 to recommend that go to the Rules Committee.

10 MS. HOLLOWAY: So that I'm clear on the  
11 direction on this motion, this currently says, "be  
12 supported by project-based rental or operating subsidies  
13 for all units." The change that we're making is "be  
14 supported by project-based rental or operating subsidies  
15 for 25 percent of the units."

16 MS. BINGHAM ESCAREÑO: A minimum.

17 MS. HOLLOWAY: A minimum of 25 percent. Okay.

18 MR. ECCLES: Of all units.

19 MR. GOODWIN: I think Beau is asking a question,  
20 are you not, Beau, of all units, 25 percent of all units?

21 MS. BINGHAM ESCAREÑO: Yes.

22 MS. HOLLOWAY: Okay. Certainly.

23 MR. GOODWIN: Any other additional changes other  
24 Board members would like to have into that motion? If not,  
25 do I hear a second?

1 MR. VASQUEZ: Second.

2 MR. GOODWIN: Okay. Any further discussion?

3 (No response.)

4 MR. GOODWIN: All those in favor say aye.

5 (A chorus of ayes.)

6 MR. GOODWIN: Opposed?

7 (No response.)

8 MR. GOODWIN: Thank you very much, Marni.

9 MS. HOLLOWAY: Thank you.

10 MR. GOODWIN: I think that concludes all of our  
11 action items. We are at a spot where we take public  
12 comment on matters other than items for which there were  
13 posted agenda items. Do I hear any public comment? Yes,  
14 ma'am.

15 MS. DULA: Tamea Dula with Coats Rose. I would  
16 just like to point out that when the QAP appears in the  
17 November Board book with the insertions and changes, many  
18 people out here think that these are the changes from 2019,  
19 and that's not true because they're black-lined.

20 MR. GOODWIN: Hold on just a second.

21 Beau, does this qualify as something that was  
22 posted and should have been brought up sooner?

23 MS. DULA: Oh, I'm sorry.

24 MR. GOODWIN: I'm not sure, Tamea. I want to  
25 make sure.

1 MR. ECCLES: I think that this is in reference  
2 to an agenda item, but it's not criticizing or commenting  
3 or something that's been voted on or would have been voted  
4 on.

5 MS. DULA: In my anxiety to get up here, I may  
6 have come up before I should have. Is this the right time  
7 to speak about public comment for other things that may be  
8 dealt with in the future?

9 MR. GOODWIN: Okay.

10 MS. DULA: Okay. In the future I would suggest  
11 that the staff publish a black-line to the prior year's QAP  
12 and not to the early-on version, because when you look at  
13 it you're thinking what are the changes from what I did  
14 last year, what do I now have to comply with that I didn't  
15 before. What you're seeing is not that, and I think it's  
16 deceptive and needs to be made better -- not intentionally  
17 deceptive.

18 MR. WILKINSON: We might need two versions then,  
19 because I think it would be helpful for some people to see  
20 what changed since it was posted in the *Register*. Right?

21 MS. DULA: Right. And the black-line to the  
22 prior year in its completeness could be just posted on the  
23 website and not published in the Board book, but I think it  
24 needs to be available.

25 MR. GOODWIN: Point well made.

1 MS. DULA: Thank you.

2 MR. GOODWIN: Thank you.

3 Any other public comments?

4 (No response.)

5 MR. GOODWIN: If not, I'll entertain a motion to  
6 adjourn.

7 MR. VASQUEZ: So moved.

8 MR. GOODWIN: Second?

9 MR. BRADEN: Second.

10 MR. GOODWIN: All in favor say aye.

11 (A chorus of ayes.)

12 MR. GOODWIN: We're adjourned.

13 (Whereupon, at 11:17 a.m., the meeting was  
14 adjourned.)

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MEETING OF: TDHCA Board  
LOCATION: Austin, Texas  
DATE: November 7, 2019

I do hereby certify that the foregoing pages, numbers 1 through 148, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Housing and Community Affairs.

DATE: November 13, 2019

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(Transcriber)

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