

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEETING

VIA TELEPHONE AND GOTOWEBINAR

September 3, 2020  
9:04 a.m.

MEMBERS:

LESLIE BINGHAM, Vice Chair  
PAUL A. BRADEN, Member  
SUSAN THOMASON, Member  
LEO VASQUEZ, Member

BOBBY WILKINSON, Executive Director

*ON THE RECORD REPORTING*  
*(512) 450-0342*

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#### COMMUNITY AFFAIRS

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- m) Presentation, discussion, and possible action on an order proposing the repeal, and proposed new rule, for 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.401 Definitions, §1.402 Cost Principles and Administrative Requirements, §1.403 Single Audit Requirements, §1.404 Purchase and Procurement Standards, §1.405 Bonding Requirements, §1.409 Records Retention, §1.410 Determination of Alien Status for Program Beneficiaries; an order and directing their publication for public comment in the *Texas Register*
- n) Presentation, discussion, and possible action on order proposing the repeal of 10 TAC Chapter 23, Single Family HOME Program, and orders proposing new 10 TAC Chapter 23, Single Family HOME Program Rules, and directing their publication for public comment in the *Texas Register*
- o) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 12, concerning the Multifamily Housing Revenue Bond Rules, and an order proposing new 10 TAC Chapter 12 concerning the Multifamily Housing Revenue Bond Rules, and directing their publication for public comment in the *Texas Register*

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on timely filed scoring appeals under the  
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20116 Dian Street Villas, Houston

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P R O C E E D I N G S

1  
2 MS. BINGHAM: Good morning. Welcome to the  
3 September meeting of the Governing Board of the Texas  
4 Department of Housing and Community Affairs. Nice to have  
5 you al here.

6 I'll start by taking roll. My name is Leslie  
7 Bingham. I'm the vice chair, and I'll be chairing the  
8 meeting today. Also, I see on video Mr. Braden.

9 MR. BRADEN: Here.

10 MS. BINGHAM: Ms. Thomason?

11 MS. THOMASON: Present.

12 MS. BINGHAM: Mr. Vasquez?

13 MR. VASQUEZ: Here.

14 MS. BINGHAM: Good morning. We do have quorum  
15 certified.

16 Let's start with the Pledge of Allegiance,  
17 Bobby.

18 MR. WILKINSON: Members, you may remain seated.

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

21 MS. BINGHAM: Thank you, Bobby.

22 This morning I think we have a resolution to  
23 read into the record designating October as National Energy  
24 Awareness Month.

25 MR. WILKINSON: Michael, if you're speaking

1 you're muted.

2 MS. NORRED: Michael, you should be good to go.

3 MR. LYTTLE: Can y'all hear me?

4 MR. WILKINSON: Yes.

5 MR. LYTTLE: All right. Sorry for the delay.

6 The resolution reads as follows:

7 "Whereas, the U.S. Department of Energy has  
8 designated October as National Energy Awareness month;

9 "Whereas, the Weatherization Assistance Program,  
10 the nation's largest residential energy efficiency program,  
11 was established by the U.S. Department of Energy in 1976 to  
12 make homes more energy-efficient, safer, and healthier for  
13 those with low and moderate incomes;

14 "Whereas, the Texas Department of Housing and  
15 Community Affairs administers a Weatherization Assistance  
16 Program, funded with both U.S. Department of Energy funds  
17 and Low Income Home Energy Assistance Program funds, which  
18 is operated by a network of private nonprofits and local  
19 government entities;

20 "Whereas, the Texas Weatherization Assistance  
21 Program has injected millions of dollars into communities  
22 to improve thousands of homes, thereby helping Texans,  
23 including elderly, disabled, or families with young  
24 children, conserve energy and reduce utility costs;

25 "Whereas, the Program conducts computerized



1 energy audits and uses advanced diagnostic technology,  
2 investing as much as \$7,669 in a home and providing an  
3 array of improvements that include weather stripping of  
4 doors and windows; patching cracks and holes; insulating  
5 walls, floors, and attics; replacing doors, windows,  
6 refrigerators, and water heaters; and repairing heating and  
7 cooling systems; and

8 "Whereas, weatherization efforts contribute to  
9 the state's economic, social, and environmental progress by  
10 creating jobs; prompting the purchase of goods and  
11 services; improving housing; stabilizing neighborhoods;  
12 reducing emissions; and decreasing the risk of fires;

13 "Now, therefore, it is hereby resolved, that the  
14 Governing Board of the Texas Department of Housing and  
15 Community Affairs does hereby celebrate October 2020, as  
16 Energy Awareness Month in Texas.

17 "Signed this 3rd day of September 2020."

18 MS. BINGHAM: Thank you.

19 Do I have a motion to so resolve?

20 MS. THOMASON: So moved.

21 MS. BINGHAM: Ms. Thomason motions to resolve.

22 MR. BRADEN: Second.

23 MS. BINGHAM: Mr. Braden seconds.

24 All those in favor aye.

25 (A chorus of ayes.)

1 MS. BINGHAM: Opposed?

2 (No response.)

3 MS. BINGHAM: The motion carries. Great.

4 Moving on to the consent agenda. If the Board  
5 has had a chance to look at the consent agenda, let us know  
6 if there are any items that they wish to have moved to the  
7 action items agenda.

8 I notice we do have -- Renee says there's a  
9 couple of people that have asked to speak on items 1(i) and  
10 1(j), and it looks like, Renee, they're not showing as  
11 attendees yet.

12 MS. NORRED: For 1(j), but the person for 1(i)  
13 that wishes to speak, they are available.

14 MS. BINGHAM: Great. Okay.

15 Why don't we entertain a motion to approve the  
16 consent agenda with the modifications of moving items 1(i)  
17 and 1(j) to the action items part of the agenda.

18 MR. BRADEN: So moved.

19 MS. BINGHAM: Motion by Mr. Braden.

20 MS. THOMASON: Second.

21 MS. BINGHAM: Ms. Thomason seconds.

22 Any further discussion?

23 (No response.)

24 MS. BINGHAM: All those in favor aye.

25 (A chorus of ayes.)

1 MS. BINGHAM: Opposed?

2 (No response.)

3 MS. BINGHAM: Motion carries.

4 So let's go ahead and start. I see Michael  
5 there. Hi, Michael.

6 MR. DE YOUNG: Hello.

7 MS. BINGHAM: We have comment on item 1(i).  
8 Would you provide us with some background on that item?

9 MR. DE YOUNG: Sure. Item 1(i) is the  
10 presentation, discussion and possible action on extensions  
11 to the release to the Coronavirus Aid Relief and Security  
12 Act -- which we call CARES -- for CSBG and LIHEAP that  
13 we've held in emergency reserve and authorization to award  
14 these funds.

15 In the spring of 2020, the State of Texas and  
16 TDHCA received approximately \$48 million in CSBG CARES  
17 funding and an additional \$94 million in LIHEAP CARES  
18 funded that should be expended by September 30, 2022 for  
19 the CSBG and September 30, 2021 for the LIHEAP.

20 At the Board meeting on April 23 of this year,  
21 as part of the overall approval and planning of these  
22 funds, the Board approved that 7 percent of the CSBG CARES  
23 funding and 9 percent of the LIHEAP CARES funding would be  
24 held in reserve until August 31 of 2020 for any future  
25 allowable use or incentive awards.

1           So for the LIHEAP portion of these funds, no  
2 unexpected needs have arisen and expenditures have not yet  
3 reached a level high enough to clearly identify which subs  
4 are doing very well with the program.

5           Staff is recommending that the time frame to  
6 obligate these funds be extended back to November 30. That  
7 will give us more opportunity to see their summer bills  
8 arrive and we'll see which agencies are doing better than  
9 expected performance or higher than average and we would  
10 want to award at that time with more data to support the  
11 award.

12           For the 7 percent of funds that are CSBG CARES  
13 funds, staff is recommending it be used for a pilot  
14 program. There's been some recent interest from the State  
15 Supreme Court, the Office of Court Administration, and the  
16 Office of the Governor to roll out an eviction diversion  
17 program.

18           Staff is recommending that these funds be used  
19 to develop a pilot eviction diversion program in  
20 collaboration with one or more court systems here in Texas.  
21 We would work with the Texas Supreme Court and the Office  
22 of the Governor to see if such a model can be successfully  
23 implemented.

24           If such a pilot program is not able to be  
25 successfully instituted and if by January 31, 2021, no

1 eligible emergency use has been identified, the 7 percent  
2 of those funds will be distributed to those CSBG eligible  
3 entities most efficiently and promptly using their CSBG  
4 CARES funds as originally contemplated earlier this year.

5 The eviction diversion pilot program is a rental  
6 assistance program intended to keep Texans in their homes  
7 who have fallen behind on their rent because of the impact  
8 of COVID-19 and whose landlords have initiated eviction  
9 proceedings.

10 The premise is that the court refers the  
11 landlord and tenant to the program administrator, and if  
12 the tenant is found to be eligible, their rental arrears  
13 are in large part paid for and the landlord agrees to stop  
14 the eviction proceedings.

15 I'm aware that there may be some comment in  
16 opposition to this idea as the community action network  
17 would like to see the funds remain earmarked for their use.

18 I would also state that as part of their CSBG CARES Act  
19 funding, they were asked to perform a needs assessment in  
20 the community, and 39 of the 40 community action agencies  
21 identified mortgage and rental assistance as a need in  
22 their community needs assessment.

23 I would also point out to you in advance if  
24 these funds under CSBG were being used in a rapid fashion,  
25 at the current time I would be proposing to go with the

1 original plan, which is to provide the 7 percent of  
2 discretionary funds to that network. However, currently 15  
3 of the 40 CSBG subrecipients have reported expenditures of  
4 less than one percent, and of the 40 CSBG agencies, only 19  
5 so far have reported activity assisting with rent or  
6 mortgages, and that equates to about 300 households across  
7 the state that have been reported to us.

8 Staff also recommends in this item that to the  
9 extent that LIHEAP and CSBG funds are distributed to those  
10 most successfully using funds in their communities, the  
11 executive director will be authorized to make award  
12 decisions on the CSBG and LIHEAP reserve funds limited to  
13 the pool of already awarded subrecipients based on their  
14 expenditure rate and their ability to efficiently utilize  
15 the funds from the CARES Act.

16 I believe we have comment from one of the  
17 executive directors of the community action agencies from  
18 El Paso.

19 MS. NORRED: Yes. We have Laura Ponce queued up  
20 and ready to go.

21 MS. BINGHAM: Let's hold just for a minute and  
22 just see if the Board has any questions of Michael at this  
23 point in time.

24 (No response.)

25 MS. BINGHAM: If not, would entertain a motion

1 either on the item or to hear comment.

2 MR. BRADEN: I make a motion to approve the  
3 item.

4 MS. BINGHAM: I have a motion to approve item  
5 1(i). Is there a second?

6 MR. VASQUEZ: Second.

7 MS. BINGHAM: Mr. Vasquez seconds.

8 We'll take a comment before we take action.  
9 We're ready for the speaker.

10 MS. NORRED: Laura, you are unmuted. Can you  
11 hear us? Laura, you are also self-muted. Can you unmute  
12 yourself, please?

13 MS. PONCE: Yes. I've unmuted. Can you hear  
14 me?

15 MS. NORRED: Yes, ma'am.

16 MS. PONCE: Okay. I will begin.

17 Good morning esteemed members of the TDHCA Board  
18 and executive director, Mr. Wilkinson. My name is Laura  
19 Ponce, and I'm the executive director for Project Bravo,  
20 the community action agency that serves the County of El  
21 Paso.

22 I'm here on behalf of the Texas Association of  
23 Community Action Agencies that represents 40 nonprofit and  
24 governmental community action agencies serving all 254  
25 counties in Texas. We received CSBG CARES Act contracts in

1 June to provide services to low-income people affected by  
2 the COVID-19 crisis. Funds were available in July.

3 I'm providing comment on item 1(i) that proposes  
4 using \$3.3 million of CSBG CARES Act funds for an eviction  
5 diversion pilot program based on a model developed in  
6 Michigan.

7 I'm here to tell you that there's no need for a  
8 pilot program, because community action agencies across  
9 Texas are already implementing eviction diversion programs  
10 in your communities. Yesterday we conducted a poll of the  
11 40 CAAs and CSBG CARES Act recipients to determine how many  
12 are providing rental and mortgage assistance with their  
13 funds. Thirty-four organizations responded. The  
14 responding agencies budgeted \$25,560,494 of CARES Act funds  
15 for rental and mortgage assistance.

16 Most of the organizations surveyed also secured  
17 other funds for housing through sources such as HUD, the  
18 Area Agency on Aging, Community Development Block Grants,  
19 Emergency Solutions Grants, FEMA emergency food and shelter  
20 program funds, city and county CARES funds, private  
21 foundations, as well as our regular CSBG funds.

22 Every CAA has been working even harder during  
23 the pandemic to make sure we meet the needs of our  
24 communities. CAAs across Texas conducted needs assessments  
25 in April in anticipation of receiving CSBG CARES funds



1 after the act passed. The results of those needs  
2 assessments pointed to a resounding housing crisis so we  
3 all have to work together.

4 At Project Bravo we began applying for housing  
5 assistance grants in April and May, which involved creating  
6 a multimillion dollar budget and developing a housing  
7 assistance program from the ground up. My organization  
8 budgeted \$1.7 million of our CSBG regular and CARES funds  
9 for housing assistance programs. We received \$1.6 million  
10 in additional funds from other sources.

11 To effectively implement our program, we've  
12 hired staff, developed standard operating procedures,  
13 trained staff, created applications that are compliant with  
14 contract language, conducted outreach, and procured a  
15 vendor to create a secure online platform so we can pay  
16 landlords through ACH transfers.

17 We've partnered with churches, nonprofits,  
18 governmental agencies and other organizations that help  
19 families fill out applications and submit them  
20 electronically. We've partnered with Texas Rio Grande  
21 Legal Aid so they can help us identify clients who are  
22 being evicted so we can intervene with the landlords before  
23 they go to court.

24 I reached out to several CAAs to see how they  
25 were disbursing their funds and most of us are working with

1 legal aid agencies to identify tenants in the process of  
2 eviction.

3 Most agencies are providing up to three months  
4 of assistance in a lump sum payment with a maximum benefit  
5 of around \$3,000. Many agencies require landlords to waive  
6 fees, discount the back rent by 10 percent, just like the  
7 Michigan model.

8 The only obstacle that nonprofits and non-  
9 governmental CAAs face is that the justice of the peace  
10 courts cannot provide flyers or information on our rental  
11 assistance programs to landlords and tenants because we are  
12 not part of the county system. Hidalgo County Community  
13 Services is working directly with the justice of the peace  
14 courts because they are under the same governmental entity.

15 I'm here to offer an alternate recommendation on  
16 the use of the \$3.3 million in CARES funds. Rather than  
17 providing the funds to one or two agencies that may have to  
18 create a program from the ground up, which will take  
19 months, disburse the funds through the CSBG discretionary  
20 process where CAAs can ask to participate, and then the  
21 funds are disbursed through the regular formula. This will  
22 allow areas of Texas to access these crucial funds.

23 Please consider using your influence to  
24 implement a statewide policy that will allow CAAs that  
25 receive CARES CSBG funds to work directly with the justice

1 of the peace courts. If we're given access to the JOP  
2 courts, then we can use the more than \$30 million in our  
3 housing assistance funds to prevent eviction.

4 Keep in mind that just yesterday the CDC issued  
5 a moratorium on eviction that will start on September 4 and  
6 end in December, which means that designating these funds  
7 for an eviction diversion pilot program may lead to more  
8 delays in spending because the program will not be  
9 implemented until January 2021, when the moratorium is  
10 lifted.

11 By allowing CAAs to keep the \$3.3 million,  
12 you'll be doing the most good for all Texans who are  
13 struggling to pay their rent. Thank you.

14 MS. BINGHAM: Thank you, Ms. Ponce.

15 Any questions from the Board?

16 MR. VASQUEZ: Actually, I don't know if this is  
17 a question for Michael or Ms. Ponce.

18 Michael said that there's just been a small  
19 percentage that have been allocated that have actually been  
20 spent. I mean, he was saying like 1 percent. Did I hear  
21 that correctly?

22 MR. DE YOUNG: The community action agencies  
23 received their contracts in June and started reporting in  
24 July. Across the network we have about a 7 percent average  
25 expenditure.

1 I will tell you that fluctuates pretty  
2 dramatically. Many of these agencies are small and some  
3 are large, and Ms. Ponce happens to work for a very large  
4 agency in a municipality. Some of the smaller agencies,  
5 two in particular, have reported expenditures that are in  
6 excess of 50 percent of their funds, but there's a large  
7 portion of agencies that have reported below one percent of  
8 expenditures.

9 And we get our reports every month on the 15th,  
10 and they have a couple of months of work that they will be  
11 able to report because they have a pre-agreement cost  
12 contained in their contract, and we'll expect to receive  
13 those numbers probably within the next month or two,  
14 depending on the agency.

15 But yes, as a group, the network has  
16 expenditures of about 7 percent of the original award.  
17 About \$40 million of the \$43 million went to the network  
18 and \$3 million of it has been reported to us to date as  
19 expended.

20 MR. WILKINSON: I would note that just putting  
21 the \$3 million just through the formula I think would be  
22 the worst way to go forward. It would be to reward the  
23 high performers with money to kind of incentivize speed in  
24 serving Texans.

25 And I would also note that rental assistance and

1 an eviction diversion program are not exactly the same  
2 thing. We're talking about the Michigan type program where  
3 there's an actual legal agreement between the tenant and  
4 the landlord.

5 This is a request from the Supreme Court of  
6 Texas, they're interested, and the Office of the Governor.

7 This is a relatively small amount of money and it's really  
8 more about if we maybe put CDBG in a bigger pot later.

9 Frankly, there's arguments for and against  
10 eviction diversion versus rental assistance. Rental  
11 assistance is easier, I think, to administer and it solves  
12 a problem before you get to that point, but nevertheless,  
13 there is high interest in an eviction diversion program  
14 coordinated with the court system of Texas.

15 MR. BRADEN: First of all, we both, Ms. Ponce's  
16 organization, the ones she represents, and this Board  
17 recognize that there's a problem coming, and I agree with  
18 that, this looming eviction crisis, and we're just figuring  
19 out what's the best way to address that because we all see  
20 this coming.

21 I think we have a little bit of a respite  
22 because of what the president did and what the CDC did in  
23 terms of there being a moratorium so we kind of have time  
24 to plan and put something in place. And I do respect what  
25 the people on the ground are doing and they're dealing day

1 to day with the problems that are being faced and they're  
2 trying to address them.

3           However, I think from a state perspective,  
4 something that the Supreme Court could put in or something  
5 that they're asking, sort as a policy or a plan that can be  
6 something we can apply across the board for all counties  
7 would be more helpful, and if the Supreme Court got on  
8 board and put an order out, you know, that probably would  
9 mandate the justices of the peace and all the lower courts  
10 to follow, it seems like if we have a little bit of time  
11 and we can take a little bit of money, maybe we could come  
12 up with a good plan that will apply across the courts and  
13 the state to help the local agencies.

14           Based on that, I probably would still be  
15 supportive of what staff is recommending.

16           MS. BINGHAM: Okay. Thank you.

17           I think Laura Ponce wanted to just respond to  
18 the initial question.

19           Renee, if Laura is available we'll take her  
20 moment and then we'll take a vote.

21           MS. NORRED: Okay. Laura is available and is  
22 unmuted.

23           MS. PONCE: Good morning.

24           Yes, I just wanted to point out that right now  
25 we are rental assistance agencies, and really what we're

1 asking for is not an across-the-board formula, everybody  
2 gets the \$3.3 million, we want to do it in the process of  
3 the CSBG discretionary fund, which is where agencies opt in  
4 and ask for access to those funds.

5 And typically there's a process to review and  
6 make sure that those agencies are able to spend those funds  
7 and then they're allocated by formula. So it's not that  
8 every agency across Texas would get the \$3.3 million; it  
9 would be those that in their community they see that  
10 there's a need for these funds.

11 MS. BINGHAM: Thank you, Ms. Ponce, for the  
12 clarification.

13 MR. DE YOUNG: Thank you.

14 MS. BINGHAM: Any further discussion?

15 (No response.)

16 MS. BINGHAM: I have a motion by Mr. Braden and  
17 a second by Mr. Vasquez to approve staff's recommendation  
18 on the use of the CARES funds for CSBG and LIHEAP. If  
19 there's no further questions, I'll take a vote. All those  
20 in favor aye.

21 (A chorus of ayes.)

22 MS. BINGHAM: Opposed?

23 (No response.)

24 MS. BINGHAM: Motion carries to approve staff's  
25 recommendation.

1           It does not look like the speaker -- so one of  
2 the speakers for 1(j) was just available if there were  
3 questions or if they needed to speak if there was  
4 opposition present, and the other one I don't think has  
5 shown up yet. So I think since we moved it to the action  
6 agenda -- this is Teresa Morales -- does the Board wish to  
7 hear any background or to vote on it as presented?

8           MR. BRADEN: I'm okay with moving forward with  
9 it based on what was presented in the board book.

10          MS. BINGHAM: Very good. I'll entertain a  
11 motion.

12          MR. BRADEN: I make a motion to approve item  
13 1(j).

14          MS. BINGHAM: Very good. Mr. Braden moves to  
15 approve item 1(j). Is there a second?

16          MR. VASQUEZ: Second.

17          MS. BINGHAM: Mr. Vasquez seconds.

18           If there's no further questions or discussion,  
19 all those in favor aye.

20           (A chorus of ayes.)

21          MS. BINGHAM: Opposed?

22           (No response.)

23          MS. BINGHAM: Okay. The motion carries for item  
24 1(j) in support of staff's recommendation. That should  
25 conclude any action on the consent agenda.



1           We'll then move to action items starting with  
2 item 3 on Internal Audit. Ms. Thomason.

3           MS. THOMASON: Yes. The Audit and Finance  
4 Committee met at eight o'clock this morning. We had three  
5 report items. The director of Internal Audit, Mr. Mark  
6 Scott, discussed the internal audit of the physical  
7 inspection section of the Compliance Division, the internal  
8 audit of the Section 8 Program, and the recent internal and  
9 external audit activities.

10           The State Auditor's Office is conducting their  
11 annual audit of the TDHCA financial statements. Also, the  
12 Department of Energy is conducting a desk review of the Low  
13 Income Energy Assistance Program. There were no action  
14 items, just those report items this morning.

15           MS. BINGHAM: Awesome. Thank you.

16           Shall we at least entertain a motion to accept  
17 the report from the Audit and Finance Committee? I'll  
18 entertain a motion.

19           MS. THOMASON: So moved.

20           MS. BINGHAM: Ms. Thomason makes a motion. Is  
21 there a second?

22           MR. VASQUEZ: Second.

23           MS. BINGHAM: Mr. Vasquez seconds the motion.

24           All those in favor aye.

25           (A chorus of ayes.)

1 MS. BINGHAM: Opposed?

2 (No response.)

3 MS. BINGHAM: Great. Motion carries. Thanks,  
4 Sharon.

5 I'm just looking real quick. Let's see. Okay.

6 Item 4(a), presentation, discussion and possible action of  
7 a substantial amendment to the 2019 State of Texas  
8 Consolidated Plan. Elizabeth Yevich.

9 MR. WILKINSON: Vice Chair, we're pulling this  
10 item for ESG CARES and CDBG CARES.

11 MS. BINGHAM: Very good. I had that as a pulled  
12 item and then I saw it back on the agenda. Okay. So item  
13 4(a) is pulled.

14 We'll move to item 5(a). Andrew.

15 MS. NORRED: We're finding Andrew to unmute.

16 Andrew, can you hear us?

17 MR. SINNOTT: Yes. I'm here. Can you hear me?

18 MS. BINGHAM: God morning.

19 MR. SINNOTT: Good morning.

20 Item 5(a) relates to possible action on the  
21 proposed repeal of 10 TAC Chapter 13, Multifamily Direct  
22 Loan Rule, and the proposed new 10 Chapter 13, Multifamily  
23 Direct Loan Rule for 2021.

24 Overall, we generally tried to work on the  
25 margins of the rule this year and not make too many broad

1 changes. Instead, we tried to simplify the rule where  
2 possible and provide greater flexibility for staff and the  
3 development community in order to meet various commitment  
4 and expenditure deadlines. So with that, these are some of  
5 the more substantive changes in the draft 2021 Multifamily  
6 Direct Loan Rule.

7 Under 13.4(a)(1)(A) we tried to clarify the  
8 requirements of the soft repayment set-aside a little bit  
9 more. It was just a little bit confusing for perhaps the  
10 past couple of years, so hopefully that will provide  
11 greater clarity for the development community.

12 Under 13.5(d) we added some Uniform Relocation  
13 Act required language for purchase contracts in which  
14 direct loan funds are contemplated. This was brought to  
15 our attention by federal compliance counsel and our  
16 relocation specialist, Megan Sylvester and Carmen Roldan.

17 Under 13.5(f) we added some language about how  
18 we will treat 4 percent layered applications, and it's  
19 probably a good time to mention that staff will --  
20 regardless of whatever public comment we receive during the  
21 public comment period that runs through October 9 -- make  
22 technical corrections to the rule as the draft Chapter 13  
23 board book reflects two subsections titled (f) in Section  
24 13.5.

25 13.5(h) is a new section that allows 9 percent

1 applicants considering requesting direct loan funds to  
2 request preliminary determination at pre-application in  
3 anticipation of submitting a 9 percent layered full  
4 application, which direct loans may be the only permanent  
5 debt.

6 So this preliminary determination would serve as  
7 the documentation necessary for financial feasibility  
8 scoring in 11.9(e)(1) in those instances. Basically, the  
9 rule previously didn't contemplate direct loan funds as a  
10 sole source of permanent debt, so some of those applicants  
11 were caught in a bind when trying to score points in  
12 11.9(e)(1).

13 In 13.67 we added language prohibiting changes  
14 to applications where scoring is utilized. This past year  
15 we had to utilize scoring under a NOFA, which we hadn't  
16 previously done all that much, so we're just trying to  
17 contemplate potential outcomes as we utilize scoring more  
18 often.

19 Under 13.8 we made it clear that the  
20 amortization schedule for direct loan funds can be up to 40  
21 years.

22 And that concludes my summary of some of the  
23 more substantive changes that were made to Chapter 13, so  
24 I'm available for any comments or questions anyone may  
25 have.

1 MS. BINGHAM: Thank you, Andrew.

2 Does the Board have any questions for Andrew?

3 (No response.)

4 MS. BINGHAM: I'm looking for public comments,  
5 and I do not see anybody in the queue to comment on this  
6 item.

7 So Andrew, you mentioned that in addition to the  
8 material changes that you're making that any other kind of  
9 technical changes, errors that need to be resolved, that  
10 you'll do that during this comment period also?

11 MR. SINNOTT: Correct. Some of these changes,  
12 like the two subsections (f) in 13.5, those were caught by  
13 folks, Julie Leung, in our Fair Housing Division, so some  
14 of those changes have already been made in the version that  
15 goes to the *Texas Register*, and then when we come back to  
16 the Board -- or when this rule comes back to the Board in  
17 November those changes will have been made.

18 MS. BINGHAM: Gotcha. So if there were a lot to  
19 be made and the Board needed to, say, extend the period to  
20 make the changes for another year or two, you would be  
21 available to make those changes?

22 MR. SINNOTT: I specifically wouldn't, but  
23 others in the Department would be, I imagine.

24 MS. BINGHAM: Andrew, I am pulling your leg.

25 The Board may not be aware that Andrew is going

1 to be leaving us, and I was just trying to cook up some  
2 scheme to keep him around for a little bit longer.

3 But Andrew, thank you so much for your service  
4 to the agency. We've really benefitted from your  
5 contributions, and you will be missed.

6 MR. SINNOTT: Thank you for having me.

7 MS. BINGHAM: All right. We'll entertain a  
8 motion then on item 5(a).

9 MR. BRADEN: Move to approve.

10 MS. BINGHAM: I heard a motion by Mr. Braden.  
11 Is there a second?

12 MR. VASQUEZ: Second.

13 MS. BINGHAM: Mr. Vasquez seconds the motion.  
14 Any further discussion?

15 (No response.)

16 MS. BINGHAM: We'll take a vote. All those in  
17 favor aye.

18 (A chorus of ayes.)

19 MS. BINGHAM: Opposed?

20 (No response.)

21 MS. BINGHAM: That motion carries on item 5(a).  
22 We move on to item 6(a) is a report, and  
23 Rosalio.

24 MS. NORRED: He should be good to go.

25 MS. BINGHAM: Great. I see him. Good morning.

1 MR. BANUELOS: Good morning. I am Rosalio  
2 Banuelos, director of Asset Management.

3 Item 6(a) is a report on the six-month extension  
4 to the placed-in-service deadline for 2018 9 percent  
5 housing tax credit developments.

6 Under the Internal Revenue Code, owners of 9  
7 percent housing tax credit developments are required to  
8 place in service each building by no later than the close  
9 of the second calendar year following the year in which the  
10 allocation was made. For 2018 developments the placed-in-  
11 service deadline is December 31, 2020. Since this is a  
12 federal requirement, the Department's rules do not address  
13 extensions to this deadline but we rely on guidance  
14 provided federally.

15 Revenue Procedure 2014-49, issued by the  
16 Internal Revenue Service, provides latitude to the  
17 allocating agencies to approve relief to the placed-in-  
18 service requirements for those projects located in a major  
19 disaster area, which is defined as any city, county or  
20 other local jurisdiction for which a major disaster has  
21 been declared by the president and which has been  
22 designated by FEMA as eligible for individual assistance,  
23 public assistance, or both.

24 In accordance with Revenue Procedure 2014-49,  
25 the agency may approve such relief only for project owners

1 who cannot reasonably satisfy the deadline because of an  
2 event that led to a major disaster declaration, and  
3 depending on the extent of the damage in a major disaster  
4 area, the agency's determination may be made on an  
5 individual project basis or the agency may determine that  
6 all owners or a particular group of owners in a major  
7 disaster area warrant the relief.

8           The extension to the placed-in-service deadline  
9 may be for up to one year. An agency has the discretion to  
10 provide shorter periods of relief than the maximum period  
11 allowed or no relief at all, based on the facts and  
12 circumstances.

13           On March 25, 2020, notice was given of a major  
14 disaster declaration resulting from the COVID-19 pandemic  
15 that includes all Texas counties as eligible to receive  
16 individual and public assistance.

17           The COVID-19 pandemic has led to disruptions in  
18 construction for a variety of reasons, including, but not  
19 limited to, suspended site inspections, broken supply  
20 chains for materials, and suspensions on constructions. In  
21 addition, developers and contractors are trying to honor  
22 local restrictions regarding social distancing on  
23 construction sites.

24           Therefore, the Department is proposing to  
25 automatically extend the placed-in-service deadline for



1 2018 9 percent housing tax credit developments in the State  
2 of Texas by six months, changing the deadline from December  
3 31, 2020 to June 30, 2021. Any extensions beyond this six-  
4 month period will require further executive director or  
5 designee approval.

6 And at this time, the staff is not proposing to  
7 extend the deadline for 2019 9 percent housing tax credit  
8 developments.

9 Staff is asking the Board to accept this report,  
10 and at this time I'm available to answer any questions.

11 MS. BINGHAM: Thank you.

12 Does the Board have any questions?

13 (No response.)

14 MS. BINGHAM: Bobby, it's a report item. We're  
15 not going to take any action on it, and you'll continue to  
16 keep us posted on any changes that need to be made in the  
17 future?

18 MR. WILKINSON: Yes, ma'am. I went ahead and  
19 put it on the agenda just to bring it to your attention to  
20 let you know what we're doing. Many states are doing these  
21 kind of extensions. It's not for 2019 deals too. We  
22 thought this was a good middle road at this time.

23 MS. BINGHAM: Great. Thank you.

24 Thanks very much. Thanks, Rosalio.

25 MR. BANUELOS: Thank you.

1 MS. BINGHAM: Moving on to item 7, Bond Finance,  
2 7(a), Teresa.

3 MS. MORALES: Good morning. Teresa Morales,  
4 director of Multifamily Bonds.

5 Item 7(a) involves the issuance of multifamily  
6 housing revenue bonds by the Department for the new  
7 construction of 112 units in Corpus Christi serving the  
8 elderly population. There will be units restricted at 50  
9 percent and 60 percent of area median income.

10 This transaction involves the issuance of  
11 tax-exempt multifamily bonds in an amount not to exceed \$10  
12 million that will be initially publicly offered. Sterling  
13 Bank will provide the construction loan, and the bonds will  
14 be cash collateralized during construction with equal  
15 deposits from the construction loan as bond proceeds are  
16 drawn and spent on project costs.

17 Berkadia Commercial Mortgage will purchase the  
18 loan upon conversion to the permanent phase, and shortly  
19 thereafter, Freddie Mac will acquire the loan and the bonds  
20 from Berkadia where it is expected to be securitized with  
21 other loans. Berkadia will remain as the servicer of the  
22 loan for Freddie Mac, who will be the permanent lender and  
23 bondholder.

24 The purchase of the bonds by Freddie Mac will be  
25 exercised through a mandatory tender provision contemplated

1 in the bond documents and will effectively convert to a  
2 tax-exempt loan under the Freddie Mac platform. This will  
3 result in a re-issuance under state law. As such, the  
4 substantially final bond documents that are being approved  
5 today include the formal documents required at the time of  
6 conversion which will require Board consideration.

7 In addition to the bonds and 4 percent credits,  
8 there is also a direct loan award in the form of TCAP RF.  
9 The loan will be structured as a construction to permanent  
10 repayable loan at a 2.5 percent interest rate, a 15-year  
11 term, and a 35-year amortization.

12 Staff recommends approval of Bond Resolution No.  
13 21-002 in an amount not to exceed \$10 million, a  
14 determination notice of 4 percent housing tax credits in  
15 the amount of \$682,849, and an award of TCAP RF direct loan  
16 funds in the amount of \$4 million.

17 MS. BINGHAM: Thank you, Teresa.

18 Board members, do you have any questions for  
19 Teresa on this item?

20 (No response.)

21 MS. BINGHAM: Hearing none, we'll entertain a  
22 motion.

23 MR. BRADEN: I'll make a motion to approve.

24 MS. BINGHAM: I have a motion from Mr. Braden to  
25 approve staff's recommendation. Is there a second?

1 MS. THOMASON: Second.

2 MR. VASQUEZ: Second.

3 MS. BINGHAM: Ms. Thomason seconds.

4 There is no comment in the queue on this action  
5 item. Any further discussion?

6 (No response.)

7 MS. BINGHAM: I'll call for a vote. All those  
8 in favor aye.

9 (A chorus of ayes.)

10 MS. BINGHAM: Opposed?

11 (No response.)

12 MS. BINGHAM: Motion carries.

13 MS. MORALES: Thank you.

14 MS. BINGHAM: Thank you, Teresa.

15 Item 8(a), this will actually be Marni?

16 MS. HOLLOWAY: Yes.

17 MS. BINGHAM: Hi, Marni. Good morning.

18 MS. HOLLOWAY: Good morning. This is Marni  
19 Holloway. I'm the director of the Multifamily Finance  
20 Division.

21 Item 8(a) is presentation, discussion and  
22 possible action regarding a waiver of 10 TAC 10.402(b)  
23 relating to a determination notice for Gala at Central  
24 Park. This is application 20406.

25 At the June 25 meeting, the Board approved a

1 determination notice for 4 percent credits, along with an  
2 award of \$3 million in multifamily direct loan National  
3 Housing Trust Fund for Gala at Central Park.

4 After Board approval, we issued an award letter  
5 for the direct loan and a determination notice for the  
6 credits. The award letter was executed and timely  
7 returned. The determination notice had an expiration date  
8 of July 27 and was not timely returned with the required  
9 documents and fees.

10 The applicant has requested a waiver to allow an  
11 extension of the notice citing COVID-19 as the reason the  
12 determination notice was late. The required documents were  
13 ultimately received on August 21.

14 The determination notice is required in order to  
15 execute a contract for the direct loan and the contract is  
16 required to meet a federal commitment deadline. Failure to  
17 meet the federal commitment deadline will result in the  
18 loss of \$3 million to the application, rendering it  
19 infeasible, and will probably lose those same funds for the  
20 state as we don't have another application to commit those  
21 funds to before October 2.

22 In general, we would not consider the waiver  
23 request as meeting requirements in the rule; however, the  
24 overriding concern regarding loss of the National Housing  
25 Trust Fund prompts us to recommend approval.

1                   Staff recommends that the waiver of 10 TAC  
2 10.402(b) regarding the determination notice for Gala at  
3 Central Park be approved.

4                   I'd be happy to answer any questions.

5                   MS. BINGHAM: Thank you, Marni.

6                   Does the Board have any questions for Marni on  
7 this item?

8                   (No response.)

9                   MS. BINGHAM: Hearing none, we'll entertain a  
10 motion on item 8(a).

11                   MS. THOMASON: I move to approve.

12                   MS. BINGHAM: I have a motion to approve by Ms.  
13 Thomason. Is there a second?

14                   MR. BRADEN: Second.

15                   MS. BINGHAM: Mr. Braden seconds.

16                   No further discussion, we'd call for a vote.

17 All those in favor aye.

18                   (A chorus of ayes.)

19                   MS. BINGHAM: Opposed?

20                   (No response.)

21                   MS. BINGHAM: Great. Motion carries.

22                   Moving to item 8(b).

23                   MS. HOLLOWAY: All right. Item 8(b) is  
24 presentation, discussion and possible action on the  
25 proposed repeal of 10 TAC Chapter 11 concerning the Housing

1 Tax Credit Program Qualified Allocation Plan, and the  
2 proposed New 10 TAC Chapter 11, and directing their  
3 publication for public comment in the *Texas Register*.

4 So each year at this time we work through the  
5 QAP. This year it's fundamentally the same, not much has  
6 changed. We still have our statutory requirement to adopt  
7 the proposed QAP no later than September 30 and send it to  
8 the governor by November 15 so that he can return our final  
9 QAP by December 1.

10 We will continue to have a public comment period  
11 this year; it will end on October 9, so that we have time  
12 to assemble the comments and provide reasoned response to  
13 you at the November meeting, where the Board will adopt the  
14 final 2021 QAP.

15 The QAP submitted to the *Texas Register* will be  
16 a proposed new version and will not identify the changes  
17 between 2020 and 2021. The Department's public comment  
18 page will include a black line version of the proposed 2021  
19 QAP in order to facilitate stakeholders' understanding of  
20 the changes that we've made.

21 In May you approved an amendment to the 2021 QAP  
22 plan. That amendment substantially changed how we  
23 approached the QAP this year. Without the ability to have  
24 our customary roundtables, and with so many of us focused  
25 in other areas due to the pandemic, the best course of

1 action was determined to be a rollback to only making  
2 necessary changes.

3 We had planned to publish a staff draft in order  
4 to gather informal input before this meeting, but due to  
5 staffing and time constraints, we simply couldn't make that  
6 happen. Stakeholders saw this draft QAP for the first time  
7 this past Monday. We acknowledge this isn't optimal, but  
8 the minimal nature of the changes should help to mitigate  
9 that issue.

10 So briefly, in Subchapter A, under definitions,  
11 the definition of supportive housing was revised to add  
12 clear requirements for criminal background checks, and the  
13 method for underwriting projects was updated to reflect our  
14 recent experience. Corresponding changes were made to the  
15 underwriting subchapters.

16 You'll recall that our revised supportive  
17 housing definition was effective for 2020, so this is  
18 cleaning up the bits and pieces that we didn't get when we  
19 first adopted that new definition.

20 The additional phase limitation was removed with  
21 an exception of the limitation on developer fees for  
22 additional phases to development.

23 For pre-application threshold criteria, the  
24 description of schools that trigger disclosure requirements  
25 has been clarified to remove year-specific references, and



1 this change corresponds to changes in neighborhood risk  
2 factors.

3 As Andrew described, for pre-application we have  
4 also created this request for preliminary determination  
5 that will allow applicants to gain maximum points which was  
6 not possible in the past.

7 Under opportunity index, the distance to many of  
8 the amenities was increased for both urban and rural  
9 scoring which should make more properties eligible to reach  
10 the full seven points.

11 Readiness to proceed was modified so that  
12 Harvey-impacted counties still qualify and it clarified  
13 that the statewide declaration, such as for COVID, does not  
14 apply for readiness to proceed, so we don't have everybody  
15 in the state trying to close by the end of November.

16 Financial feasibility was revised to allow USDA  
17 and direct loan applications to receive the full 26 points.

18 Cost per square foot, costs were increased  
19 across all categories.

20 Under neighborhood risk factors, because TEA  
21 will not be publishing school ratings for the 2019-2020  
22 academic year, mitigation requirements for schools is  
23 suspended for 2021. The ratings won't be available, and  
24 school districts are busy enough trying to deal with  
25 distance learning, so we figured that was the best way to

1 handle that.

2 Under Subchapter C, applicants who withdraw  
3 their bond reservation will be required to notify the  
4 department and they are notified they may lose their place  
5 in line for review if they withdraw their bond reservation.

6 We've changed the order of review of  
7 applications under various programs due to changes in the  
8 bond statute that impact when we receive 4 percent  
9 applications. So this past year for 2020 our full  
10 application deadline for the 9 percent was on February 28  
11 and then a week later we got eight, ten -- something like  
12 that -- 4 percent applications that actually had to be to  
13 you before the 9 percent, so we wound up having to adjust  
14 our review order on the fly, but now it's in the rule.

15 We made some minor changes to the feasibility  
16 report requirement. We've received a request from the  
17 Rural Rental Housing Association that USDA developments be  
18 exempted from the feasibility report requirement. We  
19 believe we can make changes that will be acceptable to the  
20 group through the public comment process, and we look  
21 forward to finding a solution with them.

22 In Subchapter D, which is underwriting, changes  
23 to the acquisition cost section remove the identity of  
24 interest provisions for acquisition rehab developments.  
25 Instead, an appraisal will be required on any acquisition

1 regardless of if the applicant is claiming building  
2 acquisition tax credit basis.

3 Related changes include a provision for all  
4 appraisals submitted to the department will be reviewed by  
5 a third-party appraiser, an allowance for developer fee on  
6 the acquisition of building basis regardless of whether the  
7 transaction is an identity of interest or not.

8 We've added a section regarding methodology for  
9 over-enrichment testing on direct loan awards in order to  
10 meet federal requirements.

11 And then lastly, under fee schedule we've added  
12 a determination notice reinstatement fee and an appraisal  
13 review fee.

14 Staff recommends that the proposed repeal of 10  
15 TAC Chapter 11 and the proposed New 10 TAC Chapter 11,  
16 concerning the Housing Tax Credit Qualified Allocation  
17 Plan, together with the preambles presented to this  
18 meeting, be approved for publication in the *Texas Register*  
19 for public comment.

20 I'd be happy to take any questions.

21 MS. BINGHAM: Any questions from the Board?

22 (No response.)

23 MS. BINGHAM: I think we have just a few people  
24 that want to make some general comments.

25 Marni, what opportunities do we have to get

1 stakeholder feedback?

2 MS. HOLLOWAY: At this point we're going into  
3 the public comment period, so this will be a more formal  
4 process.

5 We are limited to some extent in the changes  
6 that we can make. We can't make big sweeping changes from  
7 what has been published in the book. We can remove things  
8 that we've changed, and we can tweak or correct things in  
9 response to those comments.

10 MS. BINGHAM: Gotcha. Very good. Okay.

11 Is there a motion from the Board on this item  
12 prior to hearing the speakers?

13 MR. VASQUEZ: Yes. I'd move to accept staff's  
14 recommendation to publish the new QAP as presented.

15 MS. BINGHAM: We have a motion by Mr. Vasquez in  
16 support of staff's recommendation. Is there a second?

17 MS. THOMASON: Second.

18 MS. BINGHAM: Ms. Thomason seconds.

19 Renee, I have that you have the order: Janine  
20 Sisak, Nathan Kelley, and then Joy Horak-Brown.

21 MS. NORRED: And then followed by Cynthia Bast.

22 MS. BINGHAM: Great.

23 MS. NORRED: And one more, Emily Abeln.

24 Janine wants to view on camera so we are getting  
25 that ready right now.

1 MS. BINGHAM: Thank you.

2 MS. NORRED: Janine, you should be ready to go.

3 MS. SISAK: Great. Thank you.

4 Good morning, everyone. Janine Sisak. I'm here  
5 on behalf of the Texas Affiliation of Affordable Housing  
6 Providers today.

7 Nathan will deliver our full set of comments on  
8 behalf of TAAHP, but I wanted to speak briefly about  
9 schools, and I appreciate staff's changes to the draft in  
10 light of the COVID-19 environment. We just don't think  
11 they go far enough. We would like to see the whole school  
12 provision out of the threshold requirements for the  
13 program, although we are completely fine and supportive of  
14 giving positive points for well performing schools.

15 But to step back a little bit, the QAP threshold  
16 requirement regarding schools is a remnant from the  
17 remediation plan that was developed by TDHCA during the  
18 litigation of the ICP versus TDHCA lawsuit, which, if I  
19 need to remind anyone, was a lawsuit won by TDHCA based on  
20 the facts on remand.

21 And so here we are many, many years later, the  
22 provision is still in our QAP, and over the years we have  
23 all just learned to kind of live with it and we were always  
24 allowed to mitigate it until recent years where there is  
25 now a full prohibition against building housing tax credits

1 near certain poorly performing schools with no ability to  
2 mitigate.

3 In 2020 we're looking at a threshold requirement  
4 again based on an outdated accountability rating system,  
5 when many of Texas's school aren't even open for in-person  
6 learning. What we have learned from this time is that  
7 schools are not just important for the education of our  
8 children, but they are places that provide non-educational  
9 aspects that are critical, critical in stabilizing the  
10 lives of all children and families of Texas. They provide  
11 meals, they provide opportunities for socialization, but  
12 most importantly, in my opinion, they're a place where  
13 children can physically go while their parents go to work.

14 If parents can't go to work, as we are seeing now, the  
15 economic and social divide worsens.

16 Stable housing has been proven to increase  
17 school performance for those children in that stable  
18 housing. Therefore, to deny certain communities affordable  
19 housing based on one single determinant -- that is, how a  
20 certain school teaches and tests through a culturally  
21 biased standard -- creates a circular problem and a race to  
22 the bottom. It really sells both our public school system  
23 and this housing program short. Housing and all schools --  
24 all schools must go hand-in-hand to create stable and  
25 routine environments that children so desperately need

1 right now.

2           Again, we ask that you delete this provision  
3 regarding school performance from the undesirable  
4 neighborhood risk factors. Again, TAAHP is still in  
5 support of positive points to encourage developers to go to  
6 well performing schools. We just want the ability to build  
7 near all schools.

8           Thank you.

9           MS. BINGHAM: Thanks, Janine.

10           Any questions for Janine?

11           (No response.)

12           MS. BINGHAM: Renee, I think we're ready for  
13 Nathan.

14           MS. NORRED: We are looking for Nathan.

15           MS. BINGHAM: Just a friendly reminder. We'll  
16 have the time clock with three minutes. We're asking  
17 speakers to please honor their time limit.

18           MS. NORRED: Nathan Kelley should be unmuted and  
19 ready to go.

20           MS. BINGHAM: Great. We see him. Hi, Nathan.

21           MR. KELLEY: All right. Can everybody hear me  
22 okay? Can you hear me?

23           MS. BINGHAM: Yes.

24           MR. KELLEY: Good morning, Vice Chair Bingham  
25 and members of the Board. My name is Nathan Kelley, CFO of

1 Blazer. I'm speaking today as a board member of the Texas  
2 Affiliation of Affordable Housing Providers and chairperson  
3 of the QAP committee.

4 TAAHP is grateful for having been given an  
5 opportunity to provide some recommendations to staff  
6 earlier this year, and we're happy to see some of those in  
7 the draft 2021 QAP. That said, we would like to  
8 respectfully request the Board consider the following  
9 changes: first, an expansion of the radius used to  
10 determine the proximity to jobs scoring category from one  
11 mile to two miles; second, as Ms. Sisak noted, removal of  
12 the TEA school ratings from threshold entirely; third,  
13 elimination of the readiness to proceed point category.

14 So first, the new proximity to jobs scoring  
15 category was very impactful in last year's application  
16 round. It provided an effective alternate for the urban  
17 core point option, and in the Houston and Austin subregions  
18 the number of deals that used proximity versus the urban  
19 core points was roughly 50/50, and in San Antonio, seven  
20 out of nine used proximity to jobs versus urban core.

21 However, the one mile radius used to factor  
22 proximity to jobs has prioritized commercial sites located  
23 along major highways, transportation corridors rather than  
24 more traditional residential sites, and while not  
25 intentional, this prioritization brings added noise



1 pollution for residents and potentially worse air quality,  
2 plus more expensive and complicated development sites for  
3 owners.

4 As an example, of the seven proximity deals in  
5 Houston urban subregion on the award and waiting list  
6 currently, the average site size was 2.76 acres costing  
7 nearly \$40 per square foot on average, and in four out of  
8 seven of those cases the sites cost well over \$50 per  
9 square foot. In past years sites outside of the urban core  
10 point category tended to be larger and a fraction of that  
11 cost.

12 TAAHP would like to see the radius expanded from  
13 one mile to two miles prior to the publication of the draft  
14 for public comment, and the reason for the immediate need  
15 of the change is that this point category will impact  
16 competitiveness in the 2021 application round. A change  
17 now will impact site selection where one later this year  
18 will have markedly less effect.

19 Just as important, this change will provide a  
20 buffer between proposed developments and highly trafficked  
21 transportation corridors and will allow for more  
22 residential oriented sites to be nearer to residential  
23 oriented amenities.

24 Our second item next, as Ms. Sisak noted, TAAHP  
25 appreciates staff's proposed change eliminating the

1 mitigation requirements for schools for certain TEA ratings  
2 but would like to see that change made permanent, and would  
3 also like to see that mitigation be made available for all  
4 schools, including those that had both an F and Improvement  
5 Required rating for 2018 and 2019 years respectively.

6 I'll also note that TAAHP has been advocating  
7 for many years -- sorry, I'm just trying to get our timer  
8 up here -- for the wholesale removal of school ratings from  
9 threshold even absent the current crisis, as it only serves  
10 to deter developments that are using 4 percent credits in  
11 areas otherwise well suited and in great need of more  
12 affordable housing units.

13 And lastly, regarding readiness to proceed, we  
14 understand this change will most likely have to come from  
15 the Governor's Office, but reiterate that the category  
16 should be removed from the 2021 QAP. The November 30  
17 closing deadline concentrates review and permitting of the  
18 readiness developments in too short a window.

19 As per prior written comment from the City of  
20 Houston, its administration is balancing the strain of  
21 limited staff and constrained budgets, and as was evident  
22 in Houston urban subregion in 2019, concentrating these  
23 reviews and approvals of readiness deals put an  
24 unmanageable burden on the city and the Texas GLO, both of  
25 which were unable to meet the November 30 deadline in

1 virtually all cases.

2 And as you can guess, COVID-19 has only  
3 exacerbated these issues forcing staff of municipalities to  
4 work from home, slowing the permitting process further. So  
5 with that, we request that this point category be  
6 eliminated in the 2021 QAP.

7 And I appreciate the opportunity to speak today  
8 and welcome any questions.

9 MS. BINGHAM: Thank you, Nathan.

10 Any questions for Nathan from the Board?

11 MR. BRADEN: I had a question. I'm not quite  
12 sure what the school mitigation -- what change you want  
13 there.

14 MR. KELLEY: With respect to school mitigation,  
15 what we were looking for was the ability to mitigate in  
16 every instance. Where the draft currently sits there are  
17 still some instances where mitigation is not available,  
18 even given the modification to the rule, essentially  
19 eliminating the need for mitigation on other school  
20 ratings.

21 So for instance, if a school had a 2019 rating  
22 of F and a 2018 rating of Improvement Required, then the  
23 opportunity to mitigate is not available, even in the  
24 current draft.

25 MS. BINGHAM: Thank you.

1 Renee, how about Joy? Is Joy in the queue?

2 MS. NORRED: Joy should be ready to go.

3 MS. HORAK-BROWN: Thank you so much, and good  
4 morning. I'm Joy Horak-Brown, the president and CEO of New  
5 Hope Housing.

6 As New Hope's CEO, I have more than 25 years of  
7 experience developing and operating supportive housing for  
8 Texans most marginalized citizens, and that would be the  
9 homeless and those at risk of homelessness. We are the  
10 leading provider of supportive housing in the State of  
11 Texas with more than 1,000 units, and we're known for our  
12 meticulous management standards and our detailed execution.

13 I'm speaking today -- and will make more  
14 extensive written comment later -- on the supportive  
15 housing definition which now has inserted into it a  
16 criminal history screening criteria that is comprehensive.

17 First, I'm unclear as to the problem we're trying to solve  
18 here because I'm completely unaware of problems with crime  
19 in TDHCA-funded supportive housing properties.

20 What I am aware of is the strong potential for  
21 fair housing violation or a HUD disparate impact violation  
22 embedded in an across-the-board screening policy such as  
23 the one that's being proposed.

24 Further, the opportunities for mitigation of  
25 aspects of this criminal criteria presented in the rule

1 appear to require case management or treatment programs as  
2 a condition of tenancy.

3 Now, I've always understood that to be a real  
4 fast way for me to get in trouble with Patricia and with  
5 TDHCA Compliance, which is something I always try very  
6 studiously to avoid.

7 The definition, as it's proposed, inhibits  
8 access to housing for citizens who are already at the  
9 fringes, whose challenged lives and backgrounds already  
10 result in limited access to the housing that they direly  
11 need. I believe the Department is opening itself to a  
12 considerable level of legal exposure proposing such a  
13 granular rule which then becomes part of a 45-year land use  
14 restriction agreement.

15 I wonder if you have a legal opinion that  
16 addresses the concerns I'm raising, and I look forward to  
17 speaking with you more about this with staff in writing and  
18 verbally.

19 I have more than a quarter century of experience  
20 in this housing type and am happy to make myself available  
21 to craft an equitable solution that respects the needs of  
22 the homeless and near homeless who have lived challenged  
23 lives and also respects whatever problem this rule is  
24 attempting to resolve.

25 Thank you to the Board and to the staff for all

1 you have done over time to consider the needs and concerns  
2 of the least among us and to include them in your important  
3 work. Thank you very much.

4 MS. BINGHAM: Thank you, Joy.

5 Any questions for Joy?

6 (No response.)

7 MS. BINGHAM: Thank you.

8 Renee, is it Cynthia Bast next?

9 MS. NORRED: No. Before Cynthia Bast we have  
10 Emily Abeln, and we are finding her to unmute her.

11 MS. BINGHAM: Great. Thank you.

12 MS. ABELN: Good morning. This is Emily Abeln,  
13 and since Joy spoke, I have nothing further to add. She  
14 did all the heavy lifting, so I'll sign off.

15 MS. BINGHAM: Great. Thank you very much,  
16 Emily.

17 Renee, we're ready for Cynthia.

18 MS. NORRED: We're finding her to unmute her.

19 Cynthia Bast, you are good to go.

20 MS. BAST: Thank you. Good morning. This is  
21 Cynthia Bast with Locke Lord.

22 I just wanted to give a brief note of  
23 appreciation to Brent Stewart and other members and the  
24 others on the staff who worked on the identity of interest  
25 rule changes. The identity of interest rule has been

1 somewhat of an impediment to preservation for a number of  
2 years now. Brent has talked to me about this rule much  
3 more than he ever wanted to as we tried to work our way  
4 through it, and I think that this change is going to have a  
5 really positive impact on preservation. Thank you for  
6 that.

7 MS. BINGHAM: Great. Thank you very much,  
8 Cynthia.

9 MS. NORRED: We are finding Tracey Fine to  
10 unmute her.

11 Tracey, you are unmuted, you are good to go.  
12 You are self-muted; can you please unmute yourself?

13 MS. FINE: Good morning. Can you hear me?

14 MS. NORRED: Yes, ma'am.

15 MS. BINGHAM: Good morning, Tracey.

16 MS. FINE: I spoke to this issue last year and I  
17 was hoping I'd have the opportunity to speak with staff  
18 here, and of course, that did not happen. But I do want to  
19 bring up again sponsor characteristics. I wanted to remind  
20 you that there are two ways for applicants to receive  
21 points under this category. The first one requires a  
22 nonprofit meet a special definition in the code which  
23 requires board members to live within 90 miles of your  
24 site.

25 I'm with National Church Residences, I've spoken

1 before, and our portfolio stretches from the Panhandle to  
2 the Coast, and our primary business so far in the 9 percent  
3 program have been aimed at preserving that program, but I  
4 will never be able to create 15 nonprofits across the State  
5 of Texas to win that point.

6 A few years ago I worked with TDHCA to get a  
7 second option to encourage regional and national nonprofits  
8 to compete in the 9 percent program. In response, in 2019  
9 TDHCA added a second one-point option to pick up nonprofits  
10 that serve Texans but do not meet the Board's 90-mile  
11 residency requirement. This one point typically is not  
12 enough to win, yet it does play a very important role in  
13 the at-risk set-aside.

14 Last year, without discussion, staff added that  
15 the participation of the nonprofit could not be an  
16 affiliate of the developer. An application affiliated with  
17 National Church Residences will have extensive onsite  
18 services.

19 Nonprofit management teams specializing in  
20 residents of advanced age and a developer team that has  
21 reinvested in a unique and impactful social service  
22 programs aimed at keeping our seniors home for life. Yet  
23 we are now prohibited from even taking this one-point  
24 option based on our own merit.

25 There can be a very minor change to the way the



1 wording is in the current QAP. I believe possibly the issue  
2 had to do with HUBs and not nonprofits. Simply by removing  
3 the word nonprofit -- simply by striking a couple of words  
4 and the way the wording is currently laid would currently  
5 solve the issue which would prohibit HUBs from having an  
6 affiliate but not prohibit nonprofits from having an  
7 affiliate. And I hope that is considered prior to this  
8 draft going to publication.

9 MS. BINGHAM: Thank you, Tracey.

10 Does the Board have any questions for Tracey?

11 (No response.)

12 MS. BINGHAM: Thank you, Tracey.

13 Renee, I think we're ready for Robbye Meyer.

14 MS. NORRED: Yes, Robbye Meyer. She's ready to  
15 go.

16 MS. MEYER: Can you hear me?

17 MS. NORRED: Yes, ma'am.

18 MS. MEYER: Good morning, Madam Chair, Board.

19 My name is Robbye Meyer, and I'm going to be wearing two  
20 hats this morning. First, I'll be representing the Rural  
21 Rental Housing Association, and second, I'll be  
22 representing myself with Arx Advantage.

23 The Rural Rental Housing Association represents  
24 714 members and over 23,700 units throughout the state of  
25 Texas. The association has asked me to speak today on the

1 readiness to proceed. The association realizes this is a  
2 scoring item that was added by the governor, and staff does  
3 not have the authority to remand or remove it.

4 We request the Board direct staff to seek  
5 guidance from the Governor's Office from this public  
6 comment received to eliminate or exempt USDA developments  
7 from this scoring category for the following reasons.

8 The first, these developments are existing and  
9 should have been repaired by this time. Second, these  
10 developments compete statewide, not just in the regions  
11 that are affected by Hurricane Harvey.

12 The intent of the USDA set-aside is to preserve  
13 existing housing units throughout the State of Texas, and  
14 these points are preventing the preservation dollars to  
15 benefit all areas of the state.

16 Lastly, the developments are having to  
17 coordinate with other federal agencies to close all the  
18 financing by the end of November. This is USDA and  
19 sometimes HUD coordination to expedite in this time frame.

20 This squeezes rural development applications into one very  
21 short closing window that's the same under USDA.

22 Now I'll put on my Arx hat for myself, and I'd  
23 like to speak on the experience requirement. There's new  
24 language added this year for the 2021 that says serving  
25 only as a HUB does not meet the requirement for experience.

1           This new language will deny an experienced HUB  
2 the opportunity to obtain an experience certificate. The  
3 requirements of a HUB participation in the rules state that  
4 a HUB must materially participate in the development and  
5 operation of the development throughout the compliance  
6 period and must have experience directly related to  
7 housing.

8           Material participation means a HUB is regularly,  
9 continuously and substantially involved in providing  
10 services integral to the development team.

11           This language change contradicts the mandatory  
12 participation requirement for a HUB. If the Department is  
13 going to require material participation on the development  
14 and operation of the development throughout the compliance  
15 period, then a HUB should have the opportunity to obtain an  
16 experience certificate for that participation just as any  
17 other principal in the development. There may be some HUBs  
18 that aren't complying with the material participation but I  
19 ask you not to penalize the ones that are abiding by the  
20 rules for the failure of others.

21           Thank you, and those are my comments.

22           MS. BINGHAM: Thanks very much, Robbye.

23           Any questions from the Board for Robbye?

24           (No response.)

25           MS. BINGHAM: We'll loop back around and talk to

1 Marni after we finish public comment?

2 Do we have one more, Abigail?

3 MS. NORRED: Yes. Abigail, you're unmuted, you  
4 should be ready to go.

5 MS. BINGHAM: Renee -- I'm sorry, Abigail, just  
6 for a minute -- did we need to -- I see a note here about  
7 going over quick housekeeping items?

8 MS. NORRED: Yes. Let me just do that really  
9 quick.

10 Just a note. If you are wanting to speak on an  
11 agenda item, please indicate in the questions box. Even if  
12 you pre-registered to speak on item 8(b), we do need you to  
13 indicate it in the questions box with the agenda item, of  
14 course, your name, organization and your position. And  
15 that's all I have for that.

16 MS. BINGHAM: Awesome. Thank you very much.

17 Abigail, thank you for waiting.

18 MS. TATKOW: Yes, thank you so much for the  
19 opportunity to speak. My name is Abigail Tatkov, and I'm  
20 speaking both as a realtor and developer, as well as an  
21 affordable housing advocate in Texas, and I would like to  
22 speak just quickly to reiterate some of the comments that  
23 Joy made earlier -- which she did a fantastic job --  
24 speaking to the modifications in the QAP that were made to  
25 Section 11.1(d) pertaining to the definition of supportive

1 housing as it relates to the criminal background checks.

2 So I would like to call on the Board to strike  
3 this language completely from the QAP, as I believe it's  
4 unnecessary and will directly prevent individuals  
5 experiencing homelessness from getting back into housing.

6 So just quickly to contextualize, I just wanted  
7 to first speak with my advocate hat on. I recently heard a  
8 statistic that while being over the age of 65 leads to  
9 increased risk factors for contracting and having a higher  
10 rate of morbidity from COVID-19 for the general population.

11 For individuals experiencing homelessness this  
12 age is actually as low as 55. So to me this really  
13 highlights what we're up against and what we already know  
14 to be true which is that every single day that an  
15 individual is experiencing homelessness can literally take  
16 years off their life, so I believe that we really have  
17 moral obligation here to provide housing swiftly and to  
18 prevent untimely death of our vulnerable community members.

19 So I believe that adding this additional barrier  
20 with additional stipulations on criminal history may  
21 prevent them from accessing housing and will not accomplish  
22 the swift rehousing of folks.

23 So my second point I just quickly wanted to make  
24 is with my realtor and property management hat on. In my  
25 profession I have represented both individuals who are

1 experiencing homelessness who are searching for housing as  
2 well as landlords who are seeking tenants.

3           And I'm always puzzled, consistently puzzled  
4 when additional requirements are put on that screening  
5 process, because there really are already so many tools and  
6 methods at our disposal to determine someone's ability to  
7 be a good tenant, a/k/a their ability to pay rent in a  
8 timely manner, including previous rental history, income,  
9 enrollment in assistance programs, and that list really  
10 does go on.

11           So in this role of connecting folks to housing  
12 and housing to people, my goal is always to do this in the  
13 fastest, most efficient manner possible, and adding  
14 additional stipulations that are not directly tied to  
15 somebody's ability to pay rent directly affects my ability  
16 to do this, to get those things connected.

17           Adding this additional requirement will not add  
18 any benefit to the properties that you're trying to lease  
19 up quickly to qualified applicants and to applicants that  
20 are trying to find that safe stable housing, so I really  
21 implore the Board to consider removing this language  
22 altogether. And I thank you so much for your time and  
23 consideration.

24           MS. BINGHAM: Thank you. Thanks very much.

25           Are those all the speakers on 8(b), Renee?

1 MS. NORRED: Yes, ma'am.

2 MS. BINGHAM: Great. Does the Board have any  
3 questions? We're going to bring Marni back up -- hey,  
4 Marni -- and see if the Board has any questions regarding  
5 any of the comments.

6 MR. BRADEN: I do have a couple of questions.

7 MS. BINGHAM: Mr. Braden.

8 MR. BRADEN: Is Marni back up?

9 MS. HOLLOWAY: Yes, I'm here.

10 MR. BRADEN: So on the school mitigation factor,  
11 I'm trying to understand what the old rule was. Because I  
12 think the concern I would have is I thought the old rule  
13 was basically you had to have a D and an F, so sort of like  
14 a two-year test, if you didn't get good enough grades in  
15 the last two years, that was a mark against you and it  
16 wouldn't be a good site.

17 But the problem we're going to have this coming  
18 cycle is we don't know the most recent because TEA isn't  
19 going to publish anything, and therefore, a school that  
20 could have had an F at least theoretically could have an A  
21 or a B this year, therefore, it would be available, but we  
22 don't have that information so we're sort of holding them  
23 accountable with data that's at least two years old. The  
24 point being made of do we really have anything in there  
25 this round for that may be valid.

1           So if you could remind me of what the old rule  
2 was. I read through it.

3           MS. HOLLOWAY: The rule for 2020 -- and the  
4 Board at that time was very clear regarding a prohibition,  
5 a bright line prohibition for schools that had received an  
6 F rating and an IR for the previous rating.

7           Of course, this year we have this problem in  
8 that we don't have a 2019-2020 rating, but we still would  
9 still maintain that structure of prohibition for the Fs and  
10 the IRs and mitigation for Fs with that standard behind  
11 them.

12           What we have sought to do for 2021 is remove the  
13 requirement to present mitigation for those schools that  
14 had a Met Standard previously and then had started to  
15 slump. We didn't touch any of the other structures within  
16 the neighborhood risk factors.

17           You know, it's one of those you pull a string  
18 and all sorts of things happen. We did not include the  
19 prohibited schools in the suspension for 2021 just because  
20 it had seemed like such a strong measurement or strongly  
21 considered policy decision that was made last year.

22           MR. BRADEN: And I'm sorry; my computer was  
23 glitching a little bit. But just to restate, so the  
24 current rule, the rule used for 2020 was an F and  
25 Improvement Required classification for two years is not an



1 acceptable site, but a D and Improvement Required or Met  
2 Standard?

3 MS. HOLLOWAY: A D-rated school, regardless of  
4 the previous year's rating, that site can be eligible with  
5 acceptable mitigation.

6 MR. BRADEN: So that means currently if somebody  
7 walked that's in a zone that has a D-rated school for the  
8 current year, they could be accepted.

9 MS. HOLLOWAY: Yes.

10 MR. BRADEN: So now we're put in a position that  
11 we're holding these people to a standard that's two years  
12 old, so somebody who had an F two years ago but maybe  
13 that school is a D or better now, that site is still  
14 ineligible because of something that's two years old.

15 MS. HOLLOWAY: Correct.

16 MR. BRADEN: I'm not sure that's correct. Is  
17 that statutorily required?

18 Bobby, do you know that?

19 MS. HOLLOWAY: Our statute does not allow us to  
20 use schools for scoring purposes, as we had years ago, but  
21 it does allow us to use schools as a threshold measurement.

22 MR. WILKINSON: We can use for scoring and  
23 threshold now. It passed again. It was vetoed by the  
24 governor.

25 MS. HOLLOWAY: That's correct.

1 MR. WILKINSON: So that we may use it. Don't  
2 really use it for scoring much. It's like one blank on a  
3 menu of things; it's not as strong of a point item as it  
4 was years ago during the ICP environment.

5 But this was, I think, the first year we did  
6 kind of a bright line, and it was one year of failure and  
7 in the Rules Committee they softened it to two years of  
8 failure is equivalent to that, and didn't count for  
9 elderly, rehab or supportive housing, they were all  
10 exempted. New construction, general population  
11 development, and in an attendance zone of a school that's  
12 been failed twice in a row are we going to put a tax credit  
13 development in that attendance zone? I mean, we're not  
14 education experts here, and I understand the development  
15 community's concern.

16 So Marni, we went halfway to them this year and  
17 said, well, for the F-D, the IR-D, if it wasn't a double F,  
18 you don't even have to show mitigation this time, which  
19 mitigation typically is a letter from the superintendent, a  
20 plan to improve.

21 So we offered relief in that area, but we kept  
22 the bright line in what we presented to you today. If you  
23 wanted to soften it, you could go to three years, you know,  
24 IR, IR, but we thought that some standard, some bright line  
25 was helpful. And it's not permanent, you know, schools

1 improve, they're not Fs forever.

2 MR. BRADEN: I guess that's my point. You know,  
3 we've had this two-year standard that actually indicates  
4 schools improve, we don't know for this coming year.

5 So it's not going to be a two-year standard,  
6 because we won't have the most recent information, or if  
7 you're going to say it's two years, it's two years that's  
8 at least one-year old in terms of the stale information.

9 I don't know what other Board members think or  
10 what their feelings are about this.

11 MR. VASQUEZ: Well, if I could chime in here. I  
12 actually thought we had come to a pretty good solution to  
13 this when we talked about allowing for them having  
14 exhibited mitigation and going on the right track.

15 And again, I think it's still board discretion,  
16 and we've had groups come before the Board and come with  
17 the superintendent and the consultants and talking about  
18 how much money they're putting into the schools and  
19 everything like that which has compelled us to let the  
20 projects continue. So I think what we have in place is a  
21 reasonable and workable solution.

22 A question that I have that the materials I  
23 thought were presented I think are different than what I  
24 think I just heard you answer Paul's question on. I  
25 thought that we were suspending this whole requirement for

1 this next year because we're not going to get any school  
2 ratings for this year. Is that correct or not?

3 MS. HOLLOWAY: No. We aren't proposing to  
4 suspend the entire requirement. We're proposing to suspend  
5 the mitigation requirement so that schools that applicants  
6 on a normal year would have to provide us that neighborhood  
7 risk factor packet with all of the mitigation information  
8 in, we're suspending that requirement so those schools that  
9 are Ds that normally would have required all of that extra  
10 documentation, that documentation requirement is removed  
11 for the 2021 calendar year.

12 MR. WILKINSON: But the double F is still in  
13 there.

14 MR. VASQUEZ: The double F is still in there.

15 MS. HOLLOWAY: Yes.

16 MR. VASQUEZ: So Paul, are you concerned that if  
17 a school is improving this year but there's no rating  
18 showing that?

19 MR. BRADEN: Right. I mean, Leo, I generally  
20 agree with you, I thought the rule we came up with in the  
21 Rules Committee worked; it's just that this year we don't  
22 have the data.

23 I also heard staff's position that we don't want  
24 superintendents and people to be dragged before our Board  
25 to prove up that they're doing mitigation considering all

1 the challenges they're dealing with right now, so I agree  
2 with that completely.

3 But the issue I'm just raising -- and maybe what  
4 staff has proposed is enough -- is if somebody was a double  
5 F they might not really be a double F anymore because  
6 they've improved.

7 We don't know the degree of improvement because  
8 TEA is not going to provide these ratings in this coming  
9 year. Maybe the risk is slight, but the issue is do we  
10 suspend this requirement altogether for the 2021 QAP or do  
11 we just accept staff's recommendation.

12 You know, if you had a D and an F two years ago,  
13 then you kind of can just go forward without mitigation,  
14 but if you had a double F and your school has improved  
15 greatly in the last year, we just don't know about it,  
16 you're still not allowed.

17 MS. HOLLOWAY: If I may -- and Bobby mentioned  
18 issues with the Houston ISD. There are schools in Texas  
19 that have been IR or Fs for a number of years, five, six,  
20 seven years.

21 The chances that those schools improved in 2020,  
22 yes, it could happen, doesn't seem real likely, it seems  
23 like they would just dip back down again, unless there's  
24 some really dramatic efforts to improve the educational  
25 experience for the children attending those schools.

1 Bobby mentioned potentially going to three  
2 years, so if it was an F and an IR/IR, then that history is  
3 there, maybe that would help mitigate concerns about  
4 schools that had just dipped down but were coming back up  
5 again.

6 MR. BRADEN: I think that's a valid point. And  
7 you wonder how much improvement a school can do under the  
8 current situation with all the challenges that their  
9 teachers are dealing with right now, which is probably part  
10 of the reason TEA is suspending those requirements for this  
11 year.

12 I mean, a school that's been earning IRs or not  
13 acceptable gradings, we don't want to just give them all a  
14 pass necessarily. I don't know. I have to think about it  
15 some more. I'm okay with going forward with that  
16 recommendation if nobody else on the Board feels that  
17 strongly about it.

18 MR. VASQUEZ: I think we go forward with the  
19 recommendation and if a situation comes up that we need to  
20 deal with on a one-off basis, we'll look at that situation  
21 in that one-off basis.

22 MS. BINGHAM: Any other items that were brought  
23 up either in the review of the proposed changes for  
24 publication or by public comment? Does the Board have any  
25 other questions of Marni regarding any of the other issues

1 that have come up?

2 MR. VASQUEZ: I would just like to ensure that  
3 we get a little bit more explanation and background on the  
4 criminal background check issue. I mean, coming from my  
5 prior board, the Texas Department of Criminal Justice, the  
6 reentry back into society of ex-offenders is really  
7 important, and I think there are some of these  
8 organizations, like the New Hope Housings of Texas, that  
9 can make a difference.

10 So I don't know if there are some narrow  
11 exceptions that we could put in place or just beefing it up  
12 a little bit rather than just across the board having a  
13 broad requirement. So if we could just look a little bit  
14 more into is some of that feasible I think would be  
15 important.

16 MS. BINGHAM: Marni, I have questions about that  
17 too. Can you give us just a little bit of background on  
18 that one?

19 MS. HOLLOWAY: Well, so this past year we had a  
20 couple of applications from groups proposing to create  
21 supportive housing developments that would not have a  
22 criminal background check in place for residents.

23 There was quite an outpouring from community  
24 members and others regarding the lack of what they felt to  
25 be sort of a safety check to have a supportive housing

1 development in their community.

2           What we've put into the rule is an amalgamation  
3 of current tenant selection criteria from organizations  
4 that we work with, and is designed such that none of those  
5 organizations would have to -- hopefully, I think, if I got  
6 it right -- would have to change what they're doing right  
7 now.

8           The difference -- and Joy pointed it out -- is  
9 that if it's in a rule then becomes part of their LURA for  
10 their entire affordability period, and it could be that  
11 years on, you know, they're going to be looking for a LURA  
12 amendment because of a change in program or a change in  
13 policy or something like that, but those LURA amendments  
14 are available further on down.

15           Does that help?

16           MS. BINGHAM: Yes. So if you took what you just  
17 said and what Joy and Emily and Abigail's concerns were and  
18 combined that with Leo's question about are there ways that  
19 we can clarify or identify exceptions or specify anything -  
20 - in other words, publish it in the *Register* but then be  
21 able to make some refinements to it that didn't materially  
22 change, you know, the actual intent, then how would that  
23 impact like the LURA question? Right? If you further  
24 narrowed or specified that rule, how would that play out in  
25 terms of the LURA?



1 MS. HOLLOWAY: So for every development that is  
2 created under a QAP, their LURA applies those requirements  
3 throughout the affordability period, just as amenity  
4 requirements or resident services requirements that are  
5 part of our QAP become part of that LURA and are applied to  
6 that development throughout its affordability period and  
7 become something that we monitor for.

8 So something that our compliance folks, when  
9 they go out and look at files, we look at records, are  
10 looking to make sure that those requirements are met all  
11 the way through the affordability period.

12 As Joy mentioned, having the criminal background  
13 check requirements in the QAP means that those same  
14 criminal background check requirements will apply to the  
15 development for the entire affordability period.

16 As I said, if policies change or there's a  
17 change in how certain offenses are dealt with or viewed or  
18 adjudicated or whatever, it is possible to amend a LURA  
19 later on to meet the requirements of the development at  
20 some future point in time. Something like removing all the  
21 requirements would be a material LURA amendment that would  
22 have to come back to the Board for sure.

23 MS. BINGHAM: Okay. Gotcha.

24 Any other questions on the background check?

25 (No response.)

1 MS. BINGHAM: I have one more, just going back  
2 to Tracey's question about the proximity, or the issue that  
3 Tracey brought up. So she mentioned that she felt like  
4 maybe the intent wasn't for nonprofits, maybe the intent  
5 was for -- I can't remember.

6 MS. HOLLOWAY: HUBs?

7 MS. BINGHAM: Yeah, that's right. So let me ask  
8 you if you guys huddled on that and you decided to make the  
9 minor change in wording that she was referencing, is that a  
10 material change that wouldn't be able to happen in the  
11 *Texas Register* after it's published, or could it still be  
12 made?

13 MS. HOLLOWAY: The request that she's making  
14 would actually -- I don't know for sure that we could or  
15 could not. I can tell you that it would be a pretty big  
16 change for our program to allow nonprofits that aren't  
17 locally based to participate in these points.

18 It would allow nonprofit organizations from  
19 outside of the state to come work in Texas, and that's, I  
20 think, a larger conversation that we need to have.

21 You'll recall when we first proposed the 2021  
22 QAP plan sponsor characteristics, this section was one that  
23 we really wanted to work on this year because it does seem  
24 to put together two kind of different things, one being the  
25 HUB and the other being the nonprofit, and then there's a

1 definition of a qualified nonprofit that we also would need  
2 to do some work on. So it's not necessarily -- while the  
3 change that Tracey requested would benefit her programs, it  
4 also would have a much broader impact on the 9 percent  
5 program in Texas.

6 MR. WILKINSON: Vice Chair, would you like Beau  
7 to weigh in on whether the Administrative Procedures Act  
8 would allow that?

9 MS. BINGHAM: Sure.

10 MR. WILKINSON: Beau.

11 MR. ECCLES: Well, as Marni often does, she's  
12 not a lawyer but she very convincingly plays one on TV.

13 (General laughter.)

14 MR. ECCLES: I think that her summation was  
15 actually quite accurate. It feels like it's a very slight  
16 language change but it's actually a much broader policy  
17 change that would belie a simple twist in wording following  
18 publication, because what it would entail is everybody who  
19 wanted to comment on what that does to them and the impact  
20 on the program, they would be deprived of that because it  
21 wasn't presented in the language that was actually put in  
22 the *Register* for comment.

23 MS. BINGHAM: It sounds material to me too.

24 MS. HOLLOWAY: Okay.

25 MS. BINGHAM: Not that I'm a lawyer either, but

1 I get it.

2 MS. HOLLOWAY: Sponsor characteristics is  
3 something that we really do need to work on, and Robbye's  
4 point about HUBs and material participation is part of that  
5 conversation. You know, if we're not able to get back to  
6 roundtables or whatever pretty quickly here, we probably  
7 need to organize some very focused online conversations  
8 with the folks who are impacted here.

9 MS. BINGHAM: I agree. Great.

10 Okay. And I don't think there is anybody else  
11 in the queue at this point.

12 MR. ECCLES: Actually, Chair Bingham, Tracey  
13 Fine, I think, would probably like to respond to that.

14 MS. NORRED: Also, Vice Chair Bingham, we also  
15 have Sarah Anderson in queue for this.

16 MS. BINGHAM: I might have missed that one, I  
17 don't see Sarah Anderson. Okay, very good. Let's do that  
18 so that we can move forward. Do you want to do Tracey back  
19 first?

20 MS. NORRED: We are finding Tracey to unmute her  
21 now.

22 Tracey, you are unmuted and you should be good  
23 to go.

24 MS. FINE: Thank you for taking a look at this.  
25 I do just really want to clarify. There are two items in

1 this scoring category.

2           The first one is definitely based in the Texas  
3 Legislative Code, and it has that definition what a  
4 qualified nonprofit is as it relates to the nonprofit  
5 set-aside, and that is not what I'm asking.

6           The second one is relatively minor participation  
7 required to get this point. National Church Residences, we  
8 can't this up because of that wording "affiliate," but a  
9 for-profit developer -- even ourselves, I could go out and  
10 find a nonprofit to deliver a dozen cans of food for my  
11 food pantry every month and that is a participation in  
12 tenant services, and I can pick that point up, or a for-  
13 profit developer can pick that point up, but National  
14 Church Residences, a developer that is way beyond bricks  
15 and sticks, we cannot get this point based on our merit.

16           And I don't think that's a material change, it's  
17 a very small strike, and I will not win a deal with this  
18 one point, I lost a deal this year because of it, you will  
19 not win any deal other than perhaps in the at-risk set-  
20 aside without picking up the second point which prohibits  
21 regional nonprofit from being able to take it.

22           So I really don't believe that it will impact  
23 hardly anyone but myself and any other regional or national  
24 nonprofits, and in my six years of being here that number  
25 is at zero because they are discouraged from participating

1 in this program because of this language.

2 Thank you for letting me speak one more time on  
3 this.

4 MS. BINGHAM: Great. Thank you, Tracey.

5 MS. NORRED: We are looking for Sarah Anderson.

6 Sarah Anderson, you are self-muted; if you could  
7 unmute yourself, please.

8 MS. ANDERSON: All right. Can you hear me?

9 MS. NORRED: Yes, ma'am.

10 MS. ANDERSON: Okay, fantastic. Thank you so  
11 much. I'm calling from my phone, and somehow I ended up  
12 not getting in at the right time, but I just wanted to  
13 reiterate something that Nathan had brought up related to  
14 the jobs scoring item.

15 And this year what we noticed was the jobs  
16 scoring item was the number one driving factor for all  
17 applications, and the other thing we noticed is that we  
18 were yet again all over and on top of each other this year  
19 looking for sites.

20 Costs have been driven up outrageously because  
21 of the competition for the few number of sites that score,  
22 and I feel like if we could, at a minimum, expand the  
23 radius for the jobs points that that might give us a little  
24 bit of buffer, a little bit some more choices on sites.

25 Last year when we were doing our final

1 discussion on this item, there had been some discussion  
2 about trying to maybe not have a one-size-fits-all but have  
3 it be where maybe rural had a different litmus test for the  
4 jobs numbers than urban.

5 I think we're too late for that, but I think  
6 that the increase from one mile to two miles might at least  
7 give us some relief for this year while staff maybe looks  
8 at this for next year to see how we can differentiate urban  
9 and rural in the mix.

10 And that's it.

11 MS. BINGHAM: Thank you, Sarah.

12 MS. ANDERSON: Thank you.

13 MS. BINGHAM: Any questions for Sarah?

14 (No response.)

15 MS. BINGHAM: Okey-doke. So we did start with a  
16 motion by Mr. Vasquez and a second by Ms. Thomason to  
17 approve staff's recommendation regarding the publication in  
18 the *Texas Register*. That's the motion and the second  
19 that's not the floor. Any further questions or comments  
20 about that?

21 MR. BRADEN: I have one additional comment. The  
22 point she brought up in terms of proximity to job areas, I  
23 thought about that a little bit when Nathan brought it up,  
24 and I'm not suggesting we change it now, but I would like  
25 staff to keep track of that, and maybe the next time around

1 we take a look at the split of urban and rural and do  
2 something else.

3 I mean, the whole idea that if you're in a low  
4 income housing complex you want to have a job close by, I  
5 guess a mile you can theoretically walk, I think is a good  
6 idea, but two miles does seem a little kind of longer. But  
7 I mean, I think we ought to look at that, because two miles  
8 in a rural area might not be anything, but two miles in a  
9 city may be no longer walkable, so I think we ought to look  
10 at it.

11 MS. HOLLOWAY: We will do that.

12 MS. BINGHAM: Yes, Mr. Vasquez.

13 MR. VASQUEZ: Before we finalize the vote here,  
14 I guess I would like a little more clarification on the  
15 process again that all the constituents out there, what  
16 ability do they have to put in a change that we would  
17 accept at this point, and is it just minor kind of  
18 typographical that we accept or is there some opportunity  
19 to change something of substance. Because what Beau just  
20 said made it sound like, well, there's not really going to  
21 be much more opportunity to edit this.

22 MS. HOLLOWAY: There is an opportunity for  
23 stakeholders to provide public comment that leads to  
24 changes to the QAP, to the final QAP as presented. I would  
25 suggest that probably Beau is going to be the better source



1 of an answer to that question, because while I can play an  
2 attorney, I'm not always really very good at it.

3 So Beau, can you speak to changes that could be  
4 made after comment?

5 MR. ECCLES: Absolutely. The Administrative  
6 Procedures Act envisions that an agency is able to modify a  
7 proposed rule based on public comment; otherwise, it really  
8 wouldn't make any sense to give the public the opportunity  
9 to comment.

10 Nevertheless, if an agency changes a rule in  
11 nature or scope so much that it could be deemed a different  
12 rule if the rule is adopted, would affect individuals who  
13 wouldn't have been impacted by the rule as proposed or if  
14 the rule as adopted imposed more stringent requirements for  
15 compliance than the proposed version, then we would be  
16 placed in a position where we would need to republish a new  
17 proposed rule, and as we've discussed repeatedly, we don't  
18 have the statutory leeway in our timeline to do that.

19 So we have to make sure that the rule doesn't  
20 change in a way that prejudices those who would have been  
21 able to effectively navigate that rule as it was proposed,  
22 if it doesn't diminish them, if it doesn't bring new people  
23 into regulation that weren't in before, and it's obviously  
24 a subjective line. Right?

25 But I think if I could give some practical

1 guidance, we've said in the past we could tweak the number  
2 of points but we couldn't eliminate a category, we couldn't  
3 add a category that granted new points after it was already  
4 published.

5 You can change a definition a little bit but if  
6 you change it too much that it's going to eliminate people  
7 who would have been able to be successful under the rule as  
8 it was proposed, then aren't you effectively creating a new  
9 rule.

10 I realize that, characteristic of lawyers, I've  
11 given you an answer that doesn't really provide you much of  
12 an answer, but it is the Administrative Procedures Act, and  
13 it's going to be nebulous and the subject of dozens of  
14 court opinions as to what goes too far and what's allowable  
15 in terms of tweaks that can be made on the basis of public  
16 comment.

17 MR. WILKINSON: Beau, specifically like the  
18 radius for proximity to jobs, if we bumped it from one mile  
19 to two miles after the comment period, that would be  
20 allowable. Right?

21 MR. ECCLES: I think it would be.

22 MR. WILKINSON: Exempting USDA from readiness to  
23 proceed, do you think that would be allowable?

24 MR. ECCLES: That one gets close, but, you know,  
25 our procedure does allow, since readiness to proceed is

1 something that the governor, it originated there, that  
2 could be something that we could say it's possible that  
3 could be modified. That one is a little bit closer since  
4 it's more a wholesale exemption than a tweak.

5 MS. BINGHAM: Thanks, Bobby.

6 Any other discussion from the Board members?

7 (No response.)

8 MS. BINGHAM: Great. So we have a motion to  
9 approve staff's recommendation by Mr. Vasquez and a second  
10 by Ms. Thomason. If there's no further discussion, we'll  
11 call for a vote. All those in favor of the motion aye.

12 (A chorus of ayes.)

13 MS. BINGHAM: All those opposed?

14 (No response.)

15 MS. BINGHAM: And the motion carries.

16 MS. HOLLOWAY: Thank you.

17 MS. BINGHAM: Thank you. Really good work from  
18 everybody on that.

19 So unless there's a request for a break, we'll  
20 go ahead and move into the last agenda item 8(c), and this  
21 one is on Dian Street.

22 And just in kind of communicating back and forth  
23 with Renee here, there are a number of speakers on this.  
24 We've asked to try to organize them in a support or not  
25 support order, and would just all speakers that are

1 preparing themselves to, one, please honor the three-minute  
2 timer, and two, please don't repeat points that other  
3 speakers have already made unless you have something very  
4 specific to add to that.

5 Right now it looks like we have in order so far  
6 Kelly Hyde, Cynthia Bast, Kevin Strickland, Jervon Harris,  
7 Janine Sisak, and Ray Miller.

8 First, is Brent going to present on this one,  
9 item 8(c)?

10 MR. STEWART: Can you see me now?

11 MS. BINGHAM: Hi, Brent.

12 MR. STEWART: Good morning. Thank you.

13 Item 8(c) is the presentation, discussion and  
14 possible on an appeal filed under the Department's Real  
15 Estate Analysis rules for application 20116, Dian Street  
16 Villas.

17 Pursuant to 10 TAC 302(i)(4), the underwriting  
18 rules relating to initial feasibility require that the  
19 expense-to-income ratio must not exceed, in this case, 65  
20 percent. The expense-to-income ratio is calculated by  
21 using the first year pro forma total operating expense  
22 number, dividing it by the first year pro forma effective  
23 gross income.

24 The applicant submitted the original application  
25 with an annual operating expense exhibit indicating an

1 expense-to-income ratio of 67.98 percent, exceeding the 65  
2 percent feasibility limitation.

3 In response to an administrative deficiency  
4 issued on April 29, 2020, relating to utility allowances,  
5 the applicant submitted a revised annual operating expense  
6 exhibit on May 5 that modified the expense-to-income ratio  
7 to 67.69, which still exceeded the 65 percent feasibility  
8 limitation.

9 The file came to REA for underwriting after the  
10 Board approved an appeal on an unrelated issue, and we, on  
11 July 27, issued a denial of the application because the  
12 applicant's own stated expense-to-income ratio, both as  
13 originally submitted and revised, triggered infeasibility  
14 under the rule. The applicant timely filed an appeal and  
15 the executive director denied the appeal, and so now it's  
16 before you.

17 A little background. The application proposes  
18 new construction of 108 units for general population in  
19 Houston. The sponsor is Texas Inter-Faith Housing  
20 Corporation, Russ Michaels as the executive director, and  
21 Texas Inter-Faith serves as the sole member of the general  
22 partner, as well as co-developer. Super Urban Realty  
23 Ventures, Jervon Harris, is the other co-developer.

24 There are five feasibility criteria in the  
25 underwriting rules, and only two of these, the expense-to-

1 income ratio and the debt coverage ratio, are tests related  
2 to operating of the property and are calculated using the  
3 pro forma of operations for the property.

4 It is the expense-to-income ratio that is at  
5 issue on this appeal. The calculation of these two ratios  
6 is shown on the annual operating expenses exhibit, which is  
7 part of the application. It uses the expense information  
8 entered on that same exhibit by the applicant. The  
9 calculations also use data from other exhibits entered by  
10 the applicant at the time of application.

11 In total there are five exhibits involved for  
12 the calculation of the expense and debt coverage ratio on  
13 the annual operating expenses exhibit. Because these  
14 ratios change with any changes made in the expenses entered  
15 on that exhibit, the applicant can see in real time what is  
16 happening to both the DCR and the expense ratio.

17 In this case the applicant submitted the  
18 original application with an expense ratio of 67.98, which  
19 exceeded the maximum. Consequently, the application, as  
20 they put it together, they submitted it as infeasible.

21 On initial review, the Multifamily Finance  
22 Division issued an administrative deficiency on April 29.  
23 One of the eight deficiency items was related to the  
24 incorrect use of utility allowances; they used an incorrect  
25 source.

1           On May 5 the applicant provided a response to  
2 that deficiency. The correction of the utility allowances  
3 required submission of a revised utility allowance  
4 schedule, rent schedule, and the annual operating expense  
5 exhibit. The revised exhibits showed changes to total  
6 expenses and net operating income, stemming from correcting  
7 the utility allowances, and it produced an expense ratio of  
8 67.69, which also exceeded the 65 percent feasibility  
9 limitation.

10           The application was transferred to us. We  
11 didn't start to review it, like I said before, until the  
12 Board granted the appeal on the other issue on July 14.  
13 Based on review of the exhibits provided by the  
14 application, stating that the deal was infeasible, again we  
15 denied the application.

16           The applicant filed an appeal with the executive  
17 director and argued three things: One, that we have a duty  
18 to underwrite applications that have received a full  
19 program review, and we now must conclude that the  
20 application is feasible. Two, that our underwriting  
21 conclusions can only ensure the amount of credits that is  
22 necessary, should not attempt to determine actual financial  
23 feasibility. And three, that here's a requirement in the  
24 rules for us, REA, to consider an alternative structure and  
25 additional documents prior to finding the development

1       infeasible.

2                   The appeal generally requests the ability to  
3 clarify this ratio by submitting alternative documentation  
4 and an expense structure that conforms to the rules. For  
5 their appeal to the Board, the applicant brought forward an  
6 additional argument that this application was treated by  
7 staff differently than other applications in the 2020  
8 allocation round.

9                   They have highlighted three applications where  
10 the underwriter requested revised annual operating expense  
11 exhibits. The circumstances causing the underwriters'  
12 request for clarification of an inconsistency in those  
13 cases -- which is allowed under the deficiency process --  
14 is due to the rounding of the debt coverage ratio  
15 calculation on the annual operating expenses exhibit.

16                   The DCR calculation on the exhibits is rounded  
17 to two decimal places. In each of these three 2020  
18 applications, the debt coverage ratio shown on the  
19 application exhibit rounded up to 1.15, which would  
20 indicate to the applicant that their application was  
21 compliant with the rule.

22                   When the application comes to us and we throw it  
23 in our template, it showed that the debt coverage ratios  
24 are actually 1.149, which is .001 lower than the  
25 requirement. In circumstances like this involving



1 rounding, we will give the applicant an opportunity to  
2 slightly adjust their pro forma such that they take care of  
3 the rounding issue. Again, they would not have known that  
4 it didn't conform to the rules based on our own application  
5 formula.

6 The rounding issue is only applicable when  
7 you're dealing with a floor because, you know, you're  
8 either at a 115 or lower. On the high side of the range  
9 the rounding issue does not cause the same infeasibility  
10 problem.

11 So in the case of the expense-to-income ratio  
12 there was no rounding on the application form that caused  
13 an inconsistency or caused infeasibility. There was no  
14 minor adjustment that you could make to any one figure in  
15 the application that would clarify and cure that issue.

16 The application as submitted and substantiated  
17 significantly exceeded the expense-to-income ratio and  
18 would have required substantial modification and  
19 alteration.

20 So with that -- well, this is from the rule  
21 book: The purpose of the deficiency process is to allow an  
22 applicant to provide clarification, explanation or non-  
23 material missing information to resolve inconsistencies in  
24 the original application or to assist staff in an efficient  
25 and effective review of the application. This process may

1 not be used to increase a scoring items points or to change  
2 any aspect of the proposed development, the financing  
3 structure or other element of the application, because the  
4 changes required to solve this expense-to-income ratio  
5 problem would have involved many changes that are not  
6 clarification or explanation or provision of missing of  
7 non-material or missing information, because of all that  
8 the underwriter rejected the application for an award.

9 So that's it for me right now.

10 MS. BINGHAM: Thanks, Brent.

11 Any questions for Brent?

12 (No response.)

13 MS. BINGHAM: So we'll entertain a motion on  
14 either the agenda item or to hear comment first. It looks  
15 like we have seven people in the queue to speak on this  
16 item.

17 I'll entertain a motion.

18 MR. VASQUEZ: I'd move to hear public comment on  
19 the item.

20 MS. BINGHAM: A motion to hear public comment.  
21 Is there a second?

22 MR. BRADEN: Second.

23 MS. BINGHAM: Mr. Braden seconds. All those in  
24 favor aye.

25 (A chorus of ayes.)

1 MS. BINGHAM: Great. So Brent, stand by and  
2 we'll start -- I think, Renee, are we starting with Kelly  
3 Hyde?

4 MR. DARUS: Vice Chair, we will be starting with  
5 Kelly Hyde, and we did just want to remind both the Board  
6 and all of the attendees and speakers that we will be  
7 losing our closed captioning at noon, so just as a  
8 reminder.

9 MS. BINGHAM: Thank you very much.

10 MS. NORRED: And there is a letter that Michael  
11 Lyttle would like to read into the record as well.

12 MS. BINGHAM: Is it okay if we hold on Kelly for  
13 just a minute and get Michael to read into the record  
14 first?

15 MS. NORRED: Yes, ma'am. I believe he's ready.

16 MR. LYTTLE: Members, I have a letter submitted  
17 to the agency last night from State Representative Anna  
18 Eastman. It reads as follows:

19 "Dear TDHCA Board Members, I am writing to you  
20 today to support Texas Inter-Faith Housing Corporation, a  
21 local 501(c)(3) nonprofit organization, and its Dian Street  
22 Villas development in my district in Houston. To date Dian  
23 Street Villas has conditionally been awarded \$11 million in  
24 disaster recovery funds from the City of Houston and it has  
25 already received a conditional commitment of housing tax

1 credits from this TDHCA Board.

2 "Dian Street Villas is deserving of a full  
3 commitment of tax credit funds which will greatly assist  
4 not only the constituents of my district but all of  
5 Houston.

6 "I stand by Texas Inter-Faith Housing  
7 Corporation for this underwriting appeal today and support  
8 this development advancing through the feasibility stages.

9 If you have questions regarding my support of this  
10 proposed development, please contact me at your  
11 convenience.

12 "Sincerely, State Representative Anna Eastman,  
13 House District 148."

14 MS. BINGHAM: Thank you. Thanks, Michael.

15 All right, Renee.

16 MS. NORRED: Vice Chair Bingham, we have Kelly  
17 Hyde.

18 You should be good to go, you are unmuted.

19 MS. HYDE: Can you hear me?

20 MS. NORRED: Yes, ma'am.

21 MS. HYDE: Good morning, members of the Board.

22 My name is Kelly Hyde, and I oppose the Dian Street Villas,  
23 application 20116.

24 I am a resident of the neighborhood. While I am  
25 not acting in my professional capacity as an appraiser and

1 MAI, I do have experience writing market studies and  
2 appraisals for TDHCA while working for Valbridge Property  
3 Advisors.

4 I understand the underwriters currently do not  
5 recommend the allocation of tax credits to the development  
6 due to an infeasible expense ratio. If for any reason this  
7 were to change, I urge the underwriters and the Board to  
8 look closely at the submitted construction costs and debt  
9 coverage ratio.

10 Although the City of Houston does not have  
11 zoning, it does have building codes which require a  
12 developer to expand Dian Street from two lanes to four.  
13 According to the developer's plans in the application, this  
14 widening will incorporate an area of the right of way which  
15 contains overhead electrical lines.

16 The developer failed to account for these  
17 offsite costs relating to burying or moving said electrical  
18 lines. This significant oversight could exceed any  
19 contingency included in their budget. I've submitted  
20 documentation regarding this issue with my public comments.

21 I appreciate the opportunity to speak, and I  
22 welcome any questions.

23 MS. BINGHAM: Thank you, Kelly.

24 If there are no questions, we'll move to Cynthia  
25 Bast.

1 MS. NORRED: We are finding Cynthia to unmute  
2 her now.

3 Cynthia Bast, you are unmuted.

4 MS. BAST: Thank you. This is Cynthia Bast of  
5 Locke Lord, representing the applicant for Dian Street  
6 Villas.

7 (Audio interference.)

8 MS. THOMASON: I'm having trouble hearing.

9 MS. BINGHAM: Are the Board members having some  
10 trouble hearing Ms. Bast?

11 Cynthia, we're having a little bit of trouble  
12 with your volume of your speaker.

13 MS. BAST: All right. Is that any better?

14 MS. BINGHAM: That's great. Thank you.

15 MS. BAST: Okay. Terrific. Thank you. Would  
16 you like me to start again or do you want me to keep going?

17 MS. BINGHAM: I think if you don't mind starting  
18 again, that would probably be best, and we'll restart the  
19 timer.

20 MS. BAST: Thank you.

21 As I was saying, this applicant wants to abide  
22 by the rules. I think we just have an honest dispute as to  
23 what the rules are telling us to do and perhaps a  
24 misunderstanding of what they're trying to do.

25 The applicant acknowledges that he has made a

1 mistake in this exhibit that caused the expense-to-income  
2 ratio to exceed 65 percent. Many applicants make mistakes  
3 in their applications, and they're allowed to correct it  
4 when it's an administrative deficiency. Our client was not  
5 given that opportunity, and we believe the law allows our  
6 client to make that correction.

7 This particular situation has felt different to  
8 me from former situations over the years. If you'll refer  
9 to page 281 of the board book, it illustrates how the rule  
10 has been interpreted and applied consistently for a decade,  
11 a period during which the language of the rule has not  
12 changed substantially.

13 Disregarding all the issues about debt coverage  
14 ratio, which is a different examination, the expense-to-  
15 income ratio has been treated as curable when it comes in  
16 over 65 percent 50 times in ten years. Yet the staff's  
17 response is different this time.

18 It appears staff now wants the expense-to-income  
19 ratio to be an inflexible threshold item, as reflected by  
20 the fact that they have just proposed new language for this  
21 rule in the 2021 draft.

22 The 2021 draft removes the flexibility to arrive  
23 at the ability to find an alternative structure. The staff  
24 and the Board want the expense-to-income ratio to be a  
25 threshold item that cannot be corrected through an

1 administrative deficiency. That's fine, but that is for  
2 next year.

3 Right now you have a rule that says an  
4 application will deemed feasible with an expense-to-income  
5 ratio over 65 percent unless the underwriter can determine  
6 an alternative structure. That same alternative structure  
7 must be given to [inaudible]. The logical interpretation  
8 of this phrase is that it gives the underwriter an  
9 opportunity to get additional information, and the statute  
10 allows the submission of additional information.

11 All we're asking you to do is to follow this  
12 rule. We are not saying that you should find this  
13 application feasible, we are saying that there should at  
14 least be an inquiry to take additional information to  
15 determine whether there is an alternative structure that  
16 will allow this application to meet the request.

17 Finally, I expect you will hear from someone on  
18 the waiting list that this applicant did not follow the  
19 rules and the application should be terminated. You may  
20 recall that this is where we started this application  
21 cycle, and there was an issue regarding community  
22 participation, and that same argument was held by the  
23 opposition.

24 So I will just say one more time that we believe  
25 the law specifically allows for this matter to be



1 addressed, and if you grant this appeal, you will be  
2 following the rule.

3 I thank you very much. I'm happy to take  
4 questions.

5 MS. BINGHAM: Thank you, Cynthia.

6 Does the Board have any questions for Cynthia?

7 (No response.)

8 MS. BINGHAM: Brent, we'll come back to you in a  
9 minute.

10 We'll move forward with the next speaker, Kevin  
11 Strickland.

12 MS. NORRED: We are finding Kevin Strickland to  
13 unmute him.

14 Kevin, you should be unmuted. Can you hear us?

15 MR. STRICKLAND: I can. Can you hear me?

16 MS. NORRED: Yes, sir.

17 MR. STRICKLAND: Excellent.

18 I've spoken before and provided my public  
19 comment so I'm not going to try to re-litigate what we've  
20 already talked about before.

21 I oppose this project. I'm one of the original  
22 organizers behind the efforts to show the many problems  
23 with the project. I want to do a couple of things. One,  
24 I'm going to talk about Eastman's letter that was just  
25 read; that's interesting. And two, I'm going to talk about

1 the future.

2 First, to Eastman's letter, her original letter  
3 of support was issued with no interaction with her  
4 constituents. When she didn't engage with her  
5 constituents, we engaged and she lost her runoff, so she  
6 won't be in office or the legislature next year. I don't  
7 know that her current letter carries much weight.

8 But second, I want to pivot and talk about a  
9 much larger big picture. I appreciated the prior speaker  
10 on a prior agenda item talking about the difficulty in  
11 finding sites and how difficult it is.

12 I'm also interested that in the state when you  
13 look at where -- how these applications are organized,  
14 there's a distinction made between urban and rural. In  
15 Texas even the urban areas tend to be very spread out.  
16 That's changing. And if we gave as a forced goal that  
17 affordable housing should be where people need it, the  
18 current process is broken, and I think Dian Street Villas  
19 is an example of that.

20 This project is situated -- I don't know how  
21 many of you have ever driven by or looked at it -- Mr.  
22 Vasquez lives nearby, so he knows the area -- in the middle  
23 of an already dense neighborhood. Nothing in the state's  
24 process or the city's process takes into account what's  
25 needed to make a project fit in a dense urban area. So I

1 would encourage the state, you, to work on improving that  
2 part of the process.

3 The community engagement notification process is  
4 also badly flawed. On paper it looks great. In practice -  
5 - and again I refer to Dian Street Villas -- it was pretty  
6 much ignored. Sorry, I lost my train of thought.

7 I offered to work with Eastman and the next  
8 legislator to improve the community improvement  
9 notification process. The process is so broken that the  
10 city council member in Houston gave up in trying to fix it,  
11 so right now, as you see, the ability for neighborhood  
12 organizations to successfully register either their  
13 boundaries or just their status so they get notification is  
14 still broken. The super neighborhoods in Houston -- and I  
15 know that's unique to Houston -- are now taking a look at  
16 that, because that needs to be addressed for next year.

17 Lastly, the reason that this particular point  
18 came up, the reason that the application may be terminated  
19 is because of the expense of being in this neighborhood.  
20 Right? So the city and state needs to change the process  
21 to take into account -- it's not just the expenses within  
22 the boundaries of a project but also the expenses beyond  
23 the project so that these projects can actually be  
24 successful.

25 MS. BINGHAM: Mr. Strickland, just wrap it up

1 for us.

2 MR. STRICKLAND: Yes, ma'am. Thank you.

3 I'll just wrap it up by saying we were  
4 criticized for being against affordable housing. That's  
5 never been the case. And because Ray Miller is on the  
6 call, I've reached out to city council members to suggest a  
7 different format. It doesn't speak to the 9 percent  
8 program that you guys are looking at, but there's still an  
9 opportunity to take this site and make it affordable  
10 housing which works for families.

11 Thank you very much.

12 MS. BINGHAM: Thank you. Thanks, Mr.  
13 Strickland.

14 Any questions for Mr. Strickland?

15 (No response.)

16 MS. BINGHAM: We'll move to Jervon Harris.

17 MS. NORRED: Jervon Harris, you are unmuted.

18 Can you hear us?

19 MR. HARRIS: I can. Can you hear me?

20 MS. NORRED: Yes, sir.

21 MR. HARRIS: Okay. Good morning. I'm Jervon  
22 Harris, co-developer for Dian Street Villas. My remarks  
23 will focus on the underwriting for Dian Street Villas.

24 The essence of this appeal relates to the  
25 ability to make changes to initial underwriting

1 assumptions. At application we submitted a few imprecise  
2 operating assumptions that resulted in an expense ratio of  
3 67.98. Under the rules this is curable.

4 There's an abundance of precedents where  
5 original applications' underwriting assumptions submitted  
6 at application were allowed to change and the changes were  
7 utilized by the REA division towards completing  
8 underwriting reports.

9 Based on the rules and the precedent, it seems  
10 reasonable for the Board to conclude similar changes to the  
11 underwriting assumptions for our application should be  
12 considered allowable and not a material change.

13 I refer the Board back to page 281 of the board  
14 book supplement. There's eight prior applications where  
15 the expense ratio exceeded the limit at original  
16 application and the offending expense ratio was cured and  
17 resolved in the final underwriting report.

18 The changes that were allowed included expense  
19 items such as admin fees, management fees, payroll and  
20 utilities. The applicant is requesting the same fair  
21 treatment and the opportunity to cure essentially using  
22 changes to the same general assumptions.

23 In this 2020 cycle there are three applications  
24 on this exhibit technically that did not meet the  
25 requirements for debt coverage ratio. The applications

1 were issued administrative deficiencies to cure and were  
2 allowed to change several underwriting assumptions.

3 Being that the changes were allowed this year,  
4 it again seems reasonable to conclude that changes to the  
5 underwriting assumptions were not material changes to those  
6 applications. A consistent implementation of the rules and  
7 procedures would be to allow Dian Street Villas to provide  
8 staff with documentation supporting changes to a few  
9 underwriting assumptions.

10 In conclusion, we kindly request the Board  
11 consider that the rules for an initial infeasibility  
12 determination allows that to be corrected. Furthermore,  
13 based on the abundance of precedents, changes to  
14 underwriting assumptions are allowed frequently, leading to  
15 the reasonable conclusion that changes to underwriting  
16 assumptions can be deemed non-material changes.

17 I also urge the Board to consider that the next  
18 development in line that would benefit from this  
19 application not moving forward received an administrative  
20 deficiency and was allowed to change assumptions that  
21 resulted in changes to the exact same worksheets that would  
22 be affected by the changes that we would propose. It seems  
23 highly ironic and patently unfair should that happen.

24 Thank you, and I welcome any questions.

25 MS. BINGHAM: Thank you, Jervon.

1 Any questions for Mr. Harris?

2 (No response.)

3 MS. BINGHAM: Thank you.

4 Renee, Janine Sisak.

5 MS. NORRED: We're getting ready to unmute her  
6 now.

7 Janine, can you hear us?

8 MS. SISAK: Me again. It's Janine Sisak, senior  
9 vice president and general counsel at DMA Development  
10 Company. We are the developer for Ella Grands, which is  
11 the application next in line. We submitted a clean,  
12 feasible application that has completed full program review  
13 and received all the points requested, and it has received  
14 a favorable underwriting report. It's been really smooth  
15 sailing.

16 Dian Street Villas' application has not sailed  
17 smoothly through the process, with major hiccups on three  
18 separate occasions. As Cynthia alluded to, in early March  
19 it failed to select the QCP points on its full application,  
20 and now it's been recently terminated due to the fact that  
21 the submitted application on its face violated the expense-  
22 to-income ratio, not just once but twice.

23 I appreciate this Board's willingness to give  
24 applications some forgiveness to the small admin mistakes.  
25 The process has become too draconian over the years. But

1 this mistake was not administrative and it was not minor  
2 and it was made twice.

3 Giving this application yet another reprieve on  
4 a major underwriting rule is simply unfair to the other  
5 applicants and does not fulfill any policy objective since  
6 there are always good applications willing to step in.

7 Finally, a word about the examples that Cynthia  
8 has provided regarding staff's allowing applicants to  
9 correct debt service coverage ratios this year. As Brent  
10 mentioned, that problem was due to a rounding error in  
11 TDHCA's application, and this discrepancy was several  
12 hundredths of a percent, currently material.

13 The other precedents provided were at least five  
14 years old and address concerns of the starting point and  
15 the ending point of the cost-to-income ratio. Without  
16 seeing all the back and forth between staff and the  
17 applicant in those cases, it's impossible to draw the  
18 conclusion that they submitted an infeasible application  
19 and it was allowed to be cured.

20 As Brent mentioned, you know, there's a lot of  
21 back and forth between underwriting and applicants when  
22 there are discrepancies in the application or  
23 inconsistencies, stuff that needs to be cleaned up, but as  
24 Brent mentioned in this case, staff didn't see any  
25 opportunity in the application to correct certain things



1 that would result in an expense-to-income ratio that was  
2 less than 65 percent.

3 So based on those reasons, we support staff's  
4 recommendation in this regard.

5 I don't know if Jervon was referring to our  
6 application in terms of having a problem with one of our  
7 exhibits. We did have a mistake on our rent schedule with  
8 the rents, but when we corrected it we were under the 65  
9 EGI in both cases. We were under it with the wrong rents,  
10 we were under it with the right rents, we got it right the  
11 first time and the second time, which is different from  
12 getting it wrong the first time and the second time.

13 So I appreciate your time and consideration. I  
14 also want to note that the City of Houston has indicated to  
15 us that if we are so lucky to receive an award that our  
16 request for that funding will be there from the City of  
17 Houston.

18 Again, thank you.

19 MS. BINGHAM: Thanks, Janine.

20 Any questions for Janine?

21 (No response.)

22 MS. BINGHAM: All right. Mr. Ray Miller.

23 MS. NORRED: Yes. Ray Miller, you are unmuted  
24 and you should be good to go. Can you hear us? You are  
25 self-muted; please unmute yourself.

1 MR. MILLER: Thank you very much. Can you hear  
2 me?

3 MS. NORRED: Yes.

4 MR. MILLER: Great. Thank you, Chair, thank you,  
5 Board members, this morning. My name is Ray Miller. I'm  
6 assistant director in the Housing and Community Development  
7 Department at the City of Houston.

8 The purpose of my comments today is not  
9 necessarily to talk about the underwriting process by TDHCA  
10 but rather to reiterate the city's support for this  
11 particular project.

12 Dian Street did meet the city's criteria to  
13 receive a resolution of support that was approved by city  
14 council in February of this years. In addition, in January  
15 of this year the department released a NOFA to award a  
16 portion of its CDBG DR-17 funds for rental developments  
17 throughout the city.

18 During that process we received 44 applications  
19 and over half a billion dollars in requests for CDBG funds.

20 In June of this year we released initial announcements for  
21 14 transactions to be the recipients of these funds or at  
22 least recommendations to be recipients of these funds, with  
23 Dian Street being one of the recommended transactions of  
24 \$11 million of CDBG DR-17 funds.

25 So during this process we have posted a notice

1 of public comment for this transaction. We have begun our  
2 own underwriting analysis. I will say that a city has the  
3 benefit of working with the tax credit lenders and  
4 investors of the deal towards the transaction versus the  
5 challenges that the state agency has having to do this  
6 ahead of time, so we have a little bit of benefit to see  
7 what a base product looks like at the end.

8 And so we will continue that process, and if it  
9 meets our threshold and criteria to receive award and  
10 support, we will be presenting the recommendation to city  
11 council later this year after our underwriting review.

12 So to conclude, we're just reiterating our  
13 support for this particular transaction. That concludes my  
14 comments, and I'll welcome any questions if you have them.

15 MS. BINGHAM: Thank you, Mr. Miller.

16 Any questions for Mr. Miller?

17 (No response.)

18 MS. BINGHAM: One more speaker. I think Russ  
19 Michaels is in the queue.

20 MS. NORRED: Russ Michaels, you have been  
21 unmuted. Can you hear us?

22 MR. MICHAELS: I can hear you. Can you hear me?

23 MS. NORRED: Yes, sir.

24 MR. MICHAELS. Great. Before you start the  
25 timer, real quick, Madam Chair, if you don't mind, because

1 Cynthia's feed was a little scratchy, I'm going to cover a  
2 couple of her things, and Ray left me a little bit of time.  
3 Is there any way I can get an extra 30 seconds or maybe  
4 just 40 seconds? I promise I'll be quick. I just want to  
5 make sure that that's heard.

6 MS. BINGHAM: If you can put three minutes, 30  
7 seconds on the clock, please.

8 MR. MILLER: Thank you so much.

9 Good morning, Board members. My name is Russ  
10 Michaels. I'm the executive director of Texas Inter-Faith.  
11 We're the nonprofit applicant for Dian Street Villas.  
12 It's good to see you guys.

13 My request right now is just that we all lean in  
14 a little bit and listen for a solution. There is a  
15 solution here today. We completely agree with Cynthia Bast  
16 of Locke Lord in this issue. It's good public policy to  
17 treat this issue with flexibility, and it's curable as an  
18 admin deficiency today.

19 Plus, there's been a lot of discussion today by  
20 Brent and others about the expense ratio and 65 percent  
21 standard needing to be treated as punitive and  
22 disciplinary.

23 We don't agree with that approach at all. It  
24 doesn't make any sense to be punitive right now. We're now  
25 half a year into the program after we've received our

1 commitment from staff and after we've been following all  
2 the rules this entire time, and the Board has approved us  
3 on two appeals already.

4           Therefore, we believe the ratio standards put  
5 forth in 11.302(i) are to be interpreted with flexibility  
6 and helpfulness, especially after a commitment notice is  
7 issued in our case. It's soundly anchored to the rule,  
8 it's quality procedural policy, it's consistent with  
9 precedent, and it is very practical because these ratios  
10 are all based on assumptions of change and everyone knows  
11 they change all the time.

12           In addition, staff has already indicated that  
13 this rule is flexible and can be very misleading, which is  
14 why they're suggesting that all this language be taken out  
15 of next year's QAP. They're recommending that for next  
16 cycle that going into 2021 the flexibility of 11.302(i)  
17 should be removed. We just talked about that on the agenda  
18 item.

19           Now, we can't step over that fact today so we're  
20 going to have -- and what I want to make sure we know is  
21 that staff is indicating that this is a curable opportunity  
22 and it's flexible in this cycle, which governs Dian Street  
23 right now, and we have Exhibit B -- which Jervon and  
24 Cynthia spoke to -- on page 281 which illustrates how this  
25 rule has been interpreted for 10 straight years now and

1 that too applies to Dian Street right now, this precedent  
2 and in this cycle.

3 So I want to pick up quickly where Cynthia Bast  
4 left off. The rule states that an application that is  
5 characterized as infeasible can go forward when an  
6 underwriter conditions it upon receipt of an alternative  
7 structure.

8 In other words, if an application comes in over  
9 or under an expense or debt coverage ratio in 11.302(i),  
10 then it can still go forward. The rule procedure does not  
11 end just because an application comes in over 65 percent.  
12 There's another step in the language to cure, and that's  
13 where we are today.

14 Now, I'm not a rocket scientist, unfortunately,  
15 I'm a lawyer, but that's the flexibility in the 2020 QAP,  
16 and we've got to heed that today. It's been that  
17 flexibility in the QAP for 10 straight years now, and  
18 that's why there's been almost 30 cases where this flexible  
19 and helpful language was used to advance quality weighing  
20 and real good applications.

21 In fact, every one of those applications on that  
22 Exhibit B they all advanced forward, they won their  
23 allocations and they received their commitments, so that's  
24 putting 3,000 affordable housing units on the ground.

25 Now, we're seven months into the program right

1 now and we're one of the highest scoring applications in  
2 the entire state and these types of procedural gotcha  
3 moments, they gotta go.

4 And I agree with staff, we should totally change  
5 them in 2021 in the off season, but sadly for all of us  
6 it's still 2020 and we're called upon to be flexible and  
7 helpful like the rules indicate. Otherwise, we're just  
8 wasting time and everybody's effort, and in our case, as a  
9 Houston local nonprofit, thousands and thousands of  
10 dollars.

11 And I just want to make one quick point here.  
12 Okay? And I'll be finished and I promise it will be fast.

13 Brent mentioned an administrative issue on April 29. This  
14 was only for a utility allowance, which is allowed. What  
15 he didn't mention is that we aren't allowed to expand the  
16 scope of staff's request so we couldn't change anything  
17 then.

18 Secondly, Janine had mentioned too that she  
19 makes mistakes and she was able to fix all of them, and we  
20 should receive the same treatment. And we didn't make the  
21 mistake twice. We were never asked to correct it even  
22 once, and that's why we're here today.

23 So lastly, our request, echoing Cynthia Bast of  
24 Locke Lord, is that the Board makes a very quick motion to  
25 remand this back to staff today to be treated as an

1 administrative deficiency, and if we do that we can keep  
2 Dian Street Villas moving forward for the City of Houston.

3 So thank you so much for your time, and I'm  
4 happy to answer any questions you might have on behalf of  
5 Cynthia or our application, and I can still pursue  
6 11.302(i) or on page 247 or even Exhibit B on page 281 if  
7 anybody needs that.

8 MS. BINGHAM: Thank you.

9 Any questions for Mr. Michaels?

10 (No response.)

11 MS. BINGHAM: Okay. Thank you.

12 I think that concludes the comments that were in  
13 the queue.

14 Brent, have you heard anything for which you'd  
15 like to provide any additional information?

16 MR. STEWART: Sure. First off, you know, this  
17 is hard. Right? It's always hard to be in these  
18 situations, and I don't think staff enjoys this kind of  
19 thing at all, and you know, like Russ said, the problem  
20 here is it's not a gotcha moment. Right? There's nothing  
21 staff did to submit an application with an expense-to-  
22 income ratio above 65 percent. That's not a gotcha moment.

23 And I think that the argument that's Cynthia's  
24 and Russ's is should we or should we not have issued an  
25 administrative deficiency, should we have declared this as



1 an administrative deficiency or material. And quite  
2 frankly, I'm going to let Marni or Beau kind of talk about  
3 that a little bit.

4           You know, they went back to 2010 and they come  
5 up with 28 or 29 deals. We've underwritten 1,500 deals  
6 since 2010, and the ones that they come up with, 20 of  
7 those were related to DCR, which relates to rounding, which  
8 is an issue with our form. You can't fix that, you can't  
9 undo the rounding, and you can't not have the rounding.  
10 The solution to that is to go back, work with that  
11 applicant, because they believe they submitted an  
12 application that was compliant with the rule. So that  
13 leaves eight.

14           You know, in 2015 and prior to that, you know,  
15 the underwriting staff has changed over time. It's changed  
16 independently of program, it's changed because of the  
17 underwriting. You know, it used to be a very kind of  
18 independent, you know, check and balance on the program,  
19 the REA rules were there and somewhat linked to the program  
20 rules, they were not in the program rules.

21           Since 2015 via actions by the Board and so  
22 forth, considering appeals, considering things -- specific  
23 things, specific issues, you know, looks at material  
24 deficiencies and administrative deficiencies and what's  
25 significant, what's not, you know, all that stuff has

1 changed over time and within the rules.

2 So yeah, there are eight deals. I had staff go  
3 back and pull up 434 applications since Wednesday of last  
4 week to check what it is they're submitting and to check  
5 what we've done since 2015. Yeah, I agree that the issues  
6 related to those ones we asked for revised schedules for  
7 different reasons and we were in the process of  
8 underwriting those and asked for those.

9 But 2015 was a different world. We're talking  
10 about eight deals over, you know, ten years. And again, I  
11 don't know how this is a gotcha moment at all. In looking  
12 at the application itself, to fix this problem they have  
13 suggested to the expenses, changes to the income, they've  
14 gone back to the City of Houston to get some changes to the  
15 debt because if you fix the expense-to-income ratio, that  
16 throws you into a DCR problem. So you have to go and take  
17 on more debt or more debt service to solve the DCR problem.

18 So this isn't just a clarification, this isn't  
19 just, you know, there's some missing information or  
20 whatever. The changes needed here are pretty substantial.

21 So you've got that, and then you've got the fact that in  
22 2015, you know, and prior, REA operated a little bit more.

23 So I think Beau or Marni can better speak to the  
24 differences between an administrative deficiency and a  
25 material deficiency. I think Beau can speak to the

1 relevance of precedent. And so with that, is there any  
2 other question you think I can answer?

3 On, on the alternative structure, yeah, here's a  
4 clear example of some situation happens that causes a  
5 change to the rule that affects everybody, and I've been  
6 talking about this for years because we have this knee-jerk  
7 reaction to change a rule when some appeal happens or  
8 something happens, and what happens is it removes some  
9 flexibility that we have to deal with issues, because  
10 effectively it's taking away discretion of the staff, and  
11 granted, discretion is a balance thing, but that's where  
12 we're at in a change like that.

13 REA has never gone out and just holistically  
14 created an alternative structure to make their deal work.  
15 That is not what we do. And we're not supposed to fix  
16 their deal.

17 MR. WILKINSON: Brent, have you terminated an  
18 application because of a busted expense ratio since 2015?

19 MR. STEWART: No. We have not received an  
20 application that has been submitted by the applicant with  
21 an expense ratio above 65 or above 68 if it's a rural deal  
22 with little units.

23 Now, USDA deals, supportive housing deals,  
24 there's some deals that do submit expense-to-income ratio  
25 above 65 or 68, but under the REA rules they're exempt from

1 that restriction. So yes, we've received applications, all  
2 those applications are exempt. We have not received  
3 applications that don't have the exemptions that were  
4 submitted with a ratio that busted the rule.

5 So Marni or Beau?

6 MS. HOLLOWAY: So administrative deficiencies  
7 versus material deficiencies, is that the question?

8 MR. STEWART: Yeah, if you'd just explain that a  
9 little bit.

10 MS. HOLLOWAY: Well, I think that this  
11 particular application really illustrates the difference  
12 very clearly. When we were going through our program  
13 review, our reviewer identified that the applicant had  
14 submitted an incorrect utility allowance.

15 This is something that happens fairly  
16 frequently, people get confused. I think there are five or  
17 six different kinds of utility allowances. If they  
18 submitted something we can ask for a clarification, we can  
19 ask for that correction, and that's what happened in this  
20 case: you gave us the wrong utility allowance, give us the  
21 right one and fix the things that are impacted by this  
22 mistake.

23 In order to get to an expense ratio below 65  
24 percent, the deficiency would sound something like go  
25 rework your finance structure and bring us something back.

1 It's not give us this piece of information, it's go take  
2 this major part of your application, do whatever you need  
3 to do to it, and send it back to us. And while one is a  
4 piece of documentation that was provided by mistake, the  
5 other is rework your deal, and that's material.

6 Does that help with the difference?

7 MR. STEWART: And so, Beau, would you address  
8 the precedent issue?

9 MR. ECCLES: Sure. There was discussion of  
10 since staff did it in 2015 or did something that sounds  
11 similar, then they should be allowed to do it now. This  
12 Board and staff is not like a court in terms of stare  
13 decisis or precedent.

14 Obviously, staff and the Board would want to be  
15 consistent in their application of rules, but it is not  
16 something that is incumbent that because a particular  
17 application was treated one way, therefore, all other  
18 applications must look to a previous one and how it was  
19 treated.

20 From an administrative law standpoint, that's  
21 not really how it works. The Board needs to look at the  
22 current law, the current application of the facts to that  
23 law and our rules.

24 One of the things that we are dealing with, just  
25 to simplify this, is that for the 9 percent round Texas

1 Government Code 2306.6708 prohibits changing or  
2 supplementing an application after the filing deadline  
3 unless it is to clarify information or correct  
4 administrative deficiencies in the application at the  
5 request of the Department.

6 So the real question is all of these changes  
7 that are being asked to be made are they administrative  
8 deficiencies. And then we go to our rule on that, which is  
9 10 TAC 11.2017, which says that the purpose of the  
10 deficiency process is to allow -- that would be an  
11 administrative deficiency -- an applicant to provide  
12 clarification, explanation or non-material missing  
13 information to resolve inconsistencies in the original  
14 application.

15 So just to be really clear, at the bottom of  
16 that first part of our rule on the deficiency process, the  
17 final determination regarding the distinction between  
18 material and non-material missing information is reserved  
19 for you guys on the Board.

20 The full list is the director of Multifamily  
21 Finance, executive director, and the Board. So staff has  
22 made its decision that this was a material deficiency,  
23 because it's right there in the rules, that the original  
24 application, the conclusion of the expense-to-income ratio  
25 was over the 65 that's required, so the conclusion was made

1 that was a material deficiency.

2 The executive director similarly concluded. And  
3 now it is before you, the Board, to determine whether what  
4 the applicant is asking to do in terms of the changes or  
5 clarification constitutes an administrative deficiency, and  
6 if you do so, it would be then to remand the matter back to  
7 underwriting for them to seek the clarification in order to  
8 change that expense-to-income ratio.

9 MR. WILKINSON: So the Board can decide in this  
10 instance if they think it's a clarification.

11 Mr. Vasquez is having some connectivity issues.  
12 He has switched to his home computer. Let's make sure  
13 he's back on before we go ahead.

14 MR. VASQUEZ: Can y'all hear me?

15 MR. WILKINSON: Yes.

16 MR. VASQUEZ: Okay. And I'm hearing everything  
17 perfectly clearly, but I was told that my camera is not  
18 connecting properly. Can you see me?

19 MS. BINGHAM: No.

20 MR. VASQUEZ: Okay. Bear with me one second.  
21 I'm going to try to switch my system and pray that I don't  
22 get dropped. Here we go. Can you hear me now?

23 MS. BINGHAM: Yes.

24 MR. VASQUEZ: Can you see me now?

25 MS. BINGHAM: Yes.

1 MR. VASQUEZ: Okay. Technology works. Please  
2 continue.

3 MS. BINGHAM: Okay. I think we've finished  
4 hearing summaries from Marni and Brent and Beau. At this  
5 point we deferred a motion in favor of comment first, I  
6 believe, so we don't have a motion yet or a second on this  
7 item. I would just check with the Board on any further  
8 clarification that the Board needs or questions.

9 MR. BRADEN: I have one sort of clarification.  
10 I think I know the answer, but something from Brent. So if  
11 the Board were to grant this appeal, you know, obviously  
12 you're not accepting this higher expense-to-income ratio,  
13 you're just giving an opportunity for the applicant to  
14 correct and clarify that ratio. Agreed?

15 MS. HOLLOWAY: Correct. If you grant the  
16 appeal, what you would be doing is sending the application  
17 back to Real Estate Analysis and telling them to work with  
18 the applicant somehow on this alternative structure, this  
19 alternative to what they submitted.

20 MR. BRADEN: And the same thing, you know, Brent  
21 mentioned it might mess up their debt coverage ratio.  
22 Well, we're not saying accept anything that's not required  
23 by our rule, and if they come back and their fix to the  
24 expense-to-income ratio messes up the debt coverage ratio,  
25 that's a problem, and they either clarify or correct that



1 or they get kicked out because of that as well.

2 MR. STEWART: Can anybody hear me?

3 MS. HOLLOWAY: Yes, we can hear you.

4 MR. STEWART: Okay. My camera dropped off as  
5 well, so I am here.

6 MS. BINGHAM: Brent, did you hear the question,  
7 do you want to answer it? I think Paul just asking about  
8 if we did remand it back to underwriting -- and you had  
9 mentioned before that they're moving pieces, right, that  
10 you probably could not correct the expense ratio issue  
11 without some other quirk popping up and then that having to  
12 be addressed.

13 And so Mr. Braden is just asking just because  
14 it's remanded back for underwriting to ask for  
15 clarification from the applicant, it doesn't necessarily  
16 mean that all of those quirks will eventually get held out,  
17 all those variables can be controlled and make it a viable  
18 application -- feasible.

19 MR. STEWART: Sure. If you fix the expense-to-  
20 income ratio and using the rents that they have which are  
21 what they provided -- but if you fix the expense-to-income  
22 ratio then you have higher cash flow, right, because you  
23 reduced expenses, you have higher cash flow, which then is  
24 factored into the debt coverage ratio.

25 So to fix the debt coverage ratio you have to

1 increase your debt service -- and that can be done in lots  
2 of different ways -- but you know, they've got a finance  
3 structure that they've given to us, they have provided --  
4 they went back to the city and got a change to their CDBG  
5 money.

6           It went from a forgivable type situation to a  
7 cash flow loan where 50 percent of the revenue from the  
8 property they basically include it in the debt coverage  
9 calculation to bring the debt coverage down into the box.  
10 That would be part of the solution, you know, that they're  
11 saying would be part of the [audio cut out]. So yes, the  
12 answer is one change leads to another change.

13           MR. BRADEN: To me a higher cash flow, that's a  
14 good problem. Right? I mean, you can pay down debt sooner  
15 or pay down debt at all.

16           MS. HOLLOWAY: That's not exactly how it works  
17 in our world.

18           MR. STEWART: You know, the existence of the 135  
19 debt coverage, which is what they would be dealing with, is  
20 a gap sizing of credit issue. It's really not a  
21 feasibility issue with respect to how well the deal does or  
22 doesn't work.

23           If somebody submits a deal at a 150 debt  
24 coverage, that means they could have taken on more debt,  
25 and if you don't assume that, then they get more tax

1 credits. And so that part of the debt coverage is not  
2 really related from an operational standpoint as much as it  
3 is to figure out the gap.

4 So if they didn't -- that part of it is  
5 complicated particularly given that the money from the city  
6 is federal money, which then there's these other issues  
7 about valid debt and how does that factor into the debt  
8 coverage ratio.

9 But you know, we would get there -- if we were  
10 actually underwriting the deal and these changes were made  
11 to solve the expense-to-income ratio, we would still have  
12 to deal with changes to solve the debt coverage ratio.

13 MS. THOMASON: And I'm struggling with how to  
14 get to where I don't feel like this is a material  
15 deficiency, so I guess I may be looking for someone to  
16 explain how reworking the whole deal would not be  
17 considered material.

18 MS. HOLLOWAY: Well, I think that's exactly what  
19 staff is saying. It's that reworking all the financing of  
20 the deal to get the one issue to another issue to another  
21 issue is in fact material. That's why we're discussing  
22 this here today.

23 If it was just one small thing, the debt  
24 coverage ratio that Brent discussed, yes, we would  
25 absolutely deal with it. But this is fix this leads to

1 that, leads to that, leads to that. And actually in the --  
2 I don't know if in the material deficiency definition or in  
3 the deficiency process section it speaks to a group of  
4 administrative deficiencies taken together can be a  
5 material deficiency, and that also is included in our rule.

6 MS. THOMASON: Thank you.

7 MS. BINGHAM: Okay. So as you guys can imagine,  
8 there are speakers that would like to come back up and  
9 speak. What I'm trying to do is it looks like Donna  
10 Rickenbacker had wanted to speak when we thought we were  
11 already closing out, so if the Board is okay, we'll see if  
12 we can get Donna Rickenbacker on, and then Jervon, I think,  
13 is going to come back. Unless there's additional  
14 questions, we'll start wrapping up.

15 MS. NORRED: Vice Chair Bingham, Donna  
16 Rickenbacker, you are unmuted. Can you hear us?

17 MS. RICKENBACKER: Yes, I can. And thank you  
18 very much for allowing me to speak. I wasn't going to  
19 speak on this matter, but hearing what has been said --

20 MS. BINGHAM: Donna, is there any way you can  
21 push your volume up just a little bit?

22 MS. RICKENBACKER: If I can figure out how to do  
23 that. Does this work?

24 MS. BINGHAM: That should be good, yes.

25 MS. RICKENBACKER: Okay, good.

1           Anyway, I wasn't planning on speaking on this  
2 matter, but so far I believe it's important to provide  
3 public comment. This is more than a material deficiency  
4 argument, it's about the applicant submitting an infeasible  
5 application. Day one they submitted an infeasible  
6 application.

7           I don't understand this alternative structure  
8 argument. I don't believe that our rules provide for such  
9 a broad-based consideration that allows an applicant to  
10 materially change the financial modeling of their  
11 application after the fact.

12           I support staff's recommendation. Brent and his  
13 staff do a great job of working with applicants to ensure  
14 their applications meet all underwriting requirements to  
15 the extent that he can, which, based on the appeal  
16 information, was done in this instance. And I really hope  
17 the Board will support your staff in this regard.

18           Thank you very much.

19           MS. BINGHAM: Thank you, Donna.

20           And Renee, do we have Jervon?

21           MS. NORRED: We're getting ready to unmute him  
22 now.

23           MR. HARRIS: Can you hear me?

24           MS. NORRED: Yes.

25           MR. HARRIS: I omitted a portion from my

1 presentation in the interest of time related to the LOI and  
2 the CDBG funding.

3 REA staff is already underwriting applications  
4 in the manner that was indicated in the LOI, so the LOI is  
5 extraneous information because staff is already aware and  
6 already taking applications -- in the terms for the CDBG  
7 loan, taking those payments from cash flow payments at  
8 application and underwriting them as must pay debt service  
9 reduced down to as low as 50 percent of the available cash  
10 flow. That is being applied to other applications.

11 We submitted the documentation to show that it  
12 could be applied to our application, but staff is already  
13 putting that into practice. So the issue with the  
14 potential to stay within the debt coverage ratio is already  
15 an existing solution being applied to applications that  
16 could be applied to ours.

17 And the crux of what we're asking is to be  
18 allowed to change underlying underwriting assumptions, and  
19 that is done routinely on applications. Those applications  
20 may not have had an initial determination of infeasibility,  
21 but they're allowed to do exactly what we're asking to do,  
22 so that can't be a material change.

23 The difference is that this was identified as  
24 being infeasible initially, but there's also a rule that  
25 allows for it to be cured that allows for staff to receive

1 additional documentation, so we're asking that that part of  
2 the rule not be ignored.

3 And there is a way to arrive at a solution that  
4 would not result in material changes, because apparently  
5 changes to underlying underwriting assumptions are not  
6 material changes because REA is allowing it.

7 Thank you.

8 MS. BINGHAM: Thank you very much, Jervon.

9 Any other questions of Marni or Brent or Bobby  
10 or Beau?

11 (No response.)

12 MS. BINGHAM: Then we'll entertain a motion on  
13 staff's recommendation.

14 MS. THOMASON: I would make a motion to uphold  
15 staff's recommendation.

16 MS. BINGHAM: Sol we have a motion from Ms.  
17 Thomason to uphold staff's recommendation to deny the  
18 appeal. Is there a second?

19 (No response.)

20 MS. BINGHAM: Hearing none, is there another  
21 motion?

22 MR. WILKINSON: No one is hungry?

23 (General laughter.)

24 MR. VASQUEZ: I sense that Paul wants to make a  
25 motion one way or another.

1 MR. BRADEN: This is a hard one.

2 MR. WILKINSON: That's why I brought it back to  
3 y'all.

4 MR. VASQUEZ: Since Bobby just spoke, can we  
5 ask -- technically this isn't a staff recommendation; this  
6 is the executive director not having granted the appeal.  
7 Right?

8 MR. WILKINSON: Correct. It went to me, and I  
9 denied the appeal.

10 MR. VASQUEZ: Can you just sort of recap after  
11 all of this why you --

12 MR. WILKINSON: So I struggled, because it's a  
13 great location, it's supported by the city, we've been  
14 through some appeals already with this development, but  
15 guided by staff and looking at what we've considered  
16 material before. The flip side of it -- and you've heard  
17 from the developers about the fairness of it all and my  
18 application was feasible at full app. I was swayed in that  
19 and I didn't think at my level I could just decide that it  
20 was [audio cut out], and I passed the buck where the buck  
21 stops.

22 MS. BINGHAM: So hearing that -- and I know it's  
23 a difficult decision also -- I'll make a motion to remand  
24 the application back to underwriting to seek clarification  
25 on the lack of feasibility on the expense-to-income ratio.



1 MR. BRADEN: I'll second that.

2 MS. BINGHAM: So Bingham made the motion to  
3 remand back to underwriting, deny staff's recommendation,  
4 or executive director's; Braden seconds.

5 I appreciate all the thought that's gone into  
6 this. Any further questions?

7 MR. ECCLES: May I seek a clarification? Is  
8 your motion a finding by the Board that what has been  
9 presented is an administrative deficiency?

10 MS. BINGHAM: Okay. Beau, yes, if that's what  
11 the motion needs to include, then yes. So the executive  
12 director then denied it based on the fact that it was too  
13 material to be considered an administrative deficiency?

14 MR. ECCLES: Yes.

15 MS. BINGHAM: Okay. Then yes, I'll amend my  
16 motion to include that. I make a motion that the Board  
17 finds the failure of the expense-to-income ratio  
18 calculation to meet the 65 percent an administrative  
19 deficiency and remands it back to underwriting to take a  
20 further look.

21 MR. BRADEN: Second.

22 MS. BINGHAM: So motion and second. If there's  
23 no further discussion, we'll take a vote. All those in  
24 favor of the motion?

25 (Ayes: Bingham, Braden, Vasquez.)

1 MS. BINGHAM: Opposed?

2 MS. THOMASON: Opposed.

3 MS. BINGHAM: One opposed. Motion carries on  
4 item 8(c).

5 So that does conclude the action items for  
6 today. We do have time for public comment on matters other  
7 than items that were presented as agenda items today. And  
8 I think I saw Zachary in the queue, so we'll take a moment  
9 to see if there's anyone else, and we'll invite Zachary to  
10 speak.

11 Renee, do you have Zachary in the queue?

12 MS. NORRED: Yes, ma'am.

13 Zachary, you're unmuted.

14 MR. KROCHTENGEL: Hello, members of the Board.

15 Zachary Krochtengel from Harmony Square Development.

16 I wanted to actually make a comment on the QAP,  
17 and unfortunately I was having some technical difficulty  
18 getting through. I know that there were a number of  
19 speakers that spoke about changing the radius for the jobs  
20 scoring category, and I wanted to make sure that my voice  
21 was heard in opposition to changing the radius.

22 I think every year people come to the Board with  
23 the same arguments that they want it easier to score points  
24 and they say that every time people are all competing for  
25 the same site.

1 I believe if you make it easier to score points  
2 and to get that maximum score, people will still be  
3 competing for the same site because then they will go to  
4 the census tract that has the best tiebreaker number.

5 So I prefer to see less flat scoring, and I  
6 think that right now between Region 3, Region 6 and Region  
7 7 there is a two-point to three-point scoring gap between  
8 deals that were awarded and deals that weren't, and I think  
9 that's important to keep that up and distinguish what are  
10 the best sites that score the most points instead of having  
11 every site score the maximum points, because if you  
12 increase that job radius by another mile, then you're going  
13 to more than double the area that you're looking at for  
14 jobs and you're going to more than double the areas that  
15 score maximum points.

16 We're going to turn into having multiple  
17 applications all scoring maximum points, and I think that  
18 that's really one to steer away from, and we really want to  
19 be able to distinguish scoring as saying the places closest  
20 to jobs they should be prioritized; they should score  
21 higher and we should keep that mile radius the same.

22 I think that staff has already increased the  
23 radiuses for the opportunity index, which I believe really  
24 makes the opportunity index, especially in the larger urban  
25 areas, I think everybody is going to get it if they're in

1 an urban area because those distances are so far.

2 So I think that keeping the jobs at one mile,  
3 and also combining it with urban core really is a  
4 distinguishing factor that needs to remain, as opposed to  
5 maximizing everybody's score and pushing those radiuses out  
6 to two miles.

7 Thank you.

8 MS. BINGHAM: Thank you, Zachary.

9 Kelly Hyde wants to make a comment on an issue  
10 that's not on the agenda.

11 MS. NORRED: We are finding her.

12 Kelly, you are unmuted. Are you seeing us?

13 Hold on just one second, we're still trying to  
14 get her.

15 MS. HYDE: Can you hear me?

16 MS. BINGHAM: Yes.

17 MS. HYDE: Great. And I know that this isn't an  
18 item on the agenda, and it's related to Dian Street Villas.

19 You know, I've done a lot of work for submitting  
20 appraisals and market studies over the years for TDHCA, and  
21 I'm really disappointed with the Board's decision just now.

22 The idea that changing expenses is an administrative  
23 deficiency is absurd. What kind of developer mistakenly  
24 overstates their expenses? I mean, to come back through  
25 and say that this is an administrative deficiency and send

1 it back to Real Estate Analysis is a waste of that staff's  
2 time.

3 I'm blown away by the Board's decision just now,  
4 and I want to remind everyone that we submit market studies  
5 and then the developers and the market study analysts  
6 concur on their pro forma.

7 So not only did the developer submit this pro  
8 forma with these expenses, with the incorrect expense  
9 ratio, they also submitted a market study with an appraiser  
10 that confirmed they agreed with this pro forma. So there  
11 are multiple forces for these expenses, and whether this  
12 relates to the application as an administrative deficiency  
13 versus material or not, it's not on the agenda but that is  
14 not an administrative deficiency, that is material, and I'm  
15 very disappointed with that decision.

16 Thank you.

17 MS. BINGHAM: Thank you.

18 Renee, is there anybody else in the queue?

19 MS. NORRED: No, ma'am, we have no one else  
20 queued up in the comments.

21 MS. BINGHAM: Okay. That concludes the meeting  
22 today.

23 Before we adjourn, I think I scared off Andrew,  
24 but staff, if Andrew is not out there anymore, if you'll  
25 please give him our sincere best wishes in his new venture.

1 I'm sure we'll be hearing about or from him.

2 And just a general thank you to all the staff  
3 for all the work you've put in. I know everything that  
4 comes on to our agenda makes it to us with a tremendous  
5 amount of effort and thought.

6 And we know that the decisions we make somebody  
7 is not going to be happy, but I appreciate the leadership  
8 that the Board shows at every meeting and the support that  
9 we get from the staff.

10 If there are no further items for discussion  
11 today, we'll move to adjourn. Is there a motion?

12 MR. VASQUEZ: So moved.

13 MS. BINGHAM: Very good. Mr. Vasquez, I'm sure  
14 everybody else seconds. All those in favor and meeting is  
15 adjourned. Thank you guys.

16 Whereupon, at 12:13 p.m., the meeting was  
17 adjourned.)

C E R T I F I C A T E

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2  
3 MEETING OF: TDHCA Board  
4 LOCATION: via GoToWebinar  
5 DATE: September 3, 2020

6 I do hereby certify that the foregoing pages,  
7 numbers 1 through 134135, inclusive, are the true,  
8 accurate, and complete transcript prepared from the verbal  
9 recording made by electronic recording by Nancy H. King  
10 before the Texas Department of Housing and Community  
11 Affairs.

12 DATE: September 8, 2020  
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19 \_\_\_\_\_  
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