



Summary of Notes from the 2022 Qualified Allocation Plan (QAP) Round Table on Supplemental Allocation Monday, September 20, 2021

NOTE: THESE NOTES PROVIDE A SUMMARY OF THE DISCUSSION THAT OCCURRED AT THIS ROUND TABLE. IT IS NOT INTENDED TO SERVE AS A FULL TRANSCRIPT OR MINUTES.

Staff from the Department's Asset Management, Real Estate Analysis, Executive, and Multifamily divisions were present to answer questions and discuss alternatives. No decisions were made at this meeting, nor was the meeting convened as a public hearing. The purpose of the roundtable was to allow interested parties to pose questions and have engaged dialogue with one another with the goal of helping attendees make informed public comment on the Draft 2022 QAP. No comments made at the meeting are considered public comment; attendees were told that all comment must still be submitted in writing by Friday, October 8, 2021, at 5 p.m., Central Time.

1. Welcome and Introductions

- Approximately 40 people were in attendance other than TDHCA staff
- All in attendance introduced themselves
- Cody Campbell was introduced as the new Director of Multifamily
- Homero Cabello is the Deputy Executive Director overseeing Multifamily
- Brooke Boston is the Deputy Executive Director handling the 2022 and 2023 QAPs in coordination with Homero and Cody

2. HUD CHAS Data

- Staff noted that not all data referenced in the QAP or used as source data by TDHCA has been updated by HUD (in particular as of today they have not updated the rent burden CHAS data). QAP states we will use the data available on October 1; therefore TDHCA will use the newer updated data sets if they are available (including the ACS data) but the existing (older) CHAS data for any data points not updated as of October 1.

3. Draft 2022 QAP, Supplemental Housing Tax Credits

NOTE: While notes below are reflected by subject and in order, the discussion was not linear and jumped around among items. However, topics are summarized only once, not in the order of the discussion.

a. Subchapter F

i. §11.1001, General

- Staff mentioned several clarifying revisions likely being added to this section based on the discussion at the September Board meeting: 1) Clarification that the 2022 Forward Commitments made by the Board in September are not subject to the Supplemental Allocation subchapter; and 2) an added sentence that specifies that applications awarded in 2019 or 2020 that have already closed their financing or that have been approved for force majeure consideration are eligible to receive Supplemental credits.
- Staff mentioned that the subchapter is by intention not wanting requests for Supplemental Allocations to be classified as amendments, so changes to apps that would trigger an

amendment cannot be submitted as part of a Supplemental request. Amendments need to be handled separately.

- As it relates to the section that provides that all prior notifications and resolutions are considered to have been satisfied based on their prior year award, staff asked that those in attendance consider any other requirements that need to be included in this list. One addition is likely to be adding clarification that scoring for Cost per Square Foot is not impacted.

ii. **§11.1002, Calendar**

- There was good discussion on the use of a Notice of Intent by all who request a supplemental allocation. There seemed to be general agreement around a notice of intent being a mandatory requirement to be able to access a supplemental allocation, and that the deadline for those notices should be as early as possible, even prior to Governor approval of the QAP.
- There was discussion around whether someone who requests a supplemental allocation could back out of that request without penalty. Some felt applicants shouldn't be allowed to just apply then back out, as it would create 'gaming' and lack of predictability.
- The group discussed that the variability in not knowing if they will get a Supplemental Allocation also affects MFDL applications and that some applicants who have already applied for MFDL, may choose to withdrawal their MFDL app so that they can pursue the supplemental. It was discussed that applicants should not have to pick between MFDL or Supplemental; should have the option to do both; and should not be penalized for doing both or one over the other. Timing needs to be considered to be sure the rules do not inadvertently make decisions more challenging. Staff mentioned that variability in the area of MFDL is a problem for the agency as well because there are NHTF federal obligation deadlines.
- Some noted that if they knew with confidence that they would certainly be getting an MFDL award, they would not compete for a supplemental, but that would mean the MFDL awards happening sooner or the MFDL awards possibly getting a conditional award that could be relied upon.
- Staff explained the constraints on the review process that had led to the recommended April estimated date for Supplemental Allocation awards and asked for any alternative suggestions.
- Suggestion was made, and support for this echoed by others, of having the deadline for Notice of Intent in November/December and requests for Supplemental allocations be due in December instead of January, so that the awards could be done at the March Board meeting, instead of April.

iii. **§11.1003, Max Credits, Requests, Limits**

- Staff noted an inconsistency in the draft rule relating to the Supplemental – in one location the rule mentions that the Supplemental Allocation process will have a wait list; in another the rule indicates any unused credits will roll to the 2022 regular cycle. Staff asked for input on whether there was a preference.
- Staff asked if attendees thought the \$5M designated for this activity was accurate. There was limited conversation around the idea of it being higher, but little interest in further reducing the total funds for the 2022 cycle.
- There was interest in the credit allocation awards having a clear finite deadline and then having any remaining credits go to the 2022 regular 9% cycle, not to a waiting list. It was discussed that this could occur as soon as the allocation awards are made, so that any increases to sub-regional availability would be known as soon as possible. This would mean all language in the draft rule currently relating to a Waiting List would be removed.
- Staff asked whether the cap of 15% had any comment. Discussion included that many LPAs only allow up to a 5% adjustment in credits and equity to be achieved from those credits. It was suggested that for requests that exceed 5% they should have to have a letter from their investor indicating their ability/willingness to provide the equity on the additional credits in excess of the 5%.

iv. §11.1004, Set-Asides

- It was pointed out that the At-Risk Set-Aside needed to be accounted for so that At-Risk requests would compete only among At-Risk requests. That amount would be backed out prior to calculating the RAF estimates.

v. §11.1005, Allocation Process (RAF with \$40K floor)

- There was discussion around whether there should be any prioritization other than just score in making the allocation decisions in a subregion.
- Some suggested that priority be given to deals that have already closed their financing.
- Others suggested priority tiers for those using the least amount of funds. Tier 1 awards would be for those requesting 5% or less; Tier 2 would be considered next for those between 6% and 10%; and final consideration would be for those requesting between 11% and 15% (the cap). if you could do 3 awards of 5% each instead of 1 deal getting 15%, the 3 deals should get priority). Others though, noted that the deals that only need 5% more may not really need the supplemental to the same extent as those who have larger gaps. This type of structure would create a ‘race to the bottom.’

vi. §11.1006, Procedural

- It was noted that there is no consideration for a tie in the current draft. The rule should address how a tie would be handled.

vii. §11.1008, Underwriting

- It was asked whether soft costs could also be increased. Staff indicated that it would be assumed that soft costs would also be likely to increase. Such increases just need to be justified.
- It was noted that some awarded applications would be able to substantiate the increased allocation amount even without substantiating cost increases based on prior voluntary reductions in basis. It was discussed that the QAP may want to be clear on whether or not the supplemental request will allow for those type of adjustments.
- It was asked whether developer fee can go up. Staff noted that the current draft does not allow increases to developer fee.

b. Other Areas of the QAP

i. §11.3, Deconcentration Factors

- Staff explained that the reason for the supplemental Allocations being attributed to 2022 for deconcentration and elderly calculation is because they are 2022 ceiling and in additional amounts to the original award allocation. Statute often refers to ‘credit ceiling’ or annual credits’ but occasionally refers to ‘application cycle’.
- There was interest among attendees that the applicability of attributing the supplemental allocation to deconcentration factors and elderly calculation be revisited and that staff work with counsel to make sure that it must be interpreted as reflected in the draft.

ii. §11.4, Limits (“Penalty” of \$1.50 per \$1.00 Credit on 2022 \$3M cap)

- Comment was made that perhaps the penalty should be tiered as well. Those using the larger volumes and higher percentages should have a greater penalty.

4. Other Aspects of Supplemental Requests, Draft QAP or Processes at Department

- It was requested that staff go ahead and ask 2019 and 2020 applicants to tell us now if they are planning to apply, and then staff release the results of those responses. We will be doing this.

- A member of the audience had asked whether we would be using the 2010 census tracts still or updating to the 2020 census tracts. Staff indicated 2020, however, there was interest from several attendees that this continue to be 2010 for another year.
- There was discussion around whether 2021 deals should be included in the pool of applications that could request a Supplemental allocation. Most comments made were not in support of this, but preferred to see those applicants pursue MFDL funds.
- CRP was discussed; staff noted that the new higher level of points for CRP in a QCT was because this is a Section 42 requirement that had not previously been in the QAP. It was suggested that the higher 7 point item could be revised to include also having a resolution.
- The group discussed the Proximity to Jobs scoring item voicing interest in seeing the item have less change so the result can be predictable. Staff noted that this will be prompted by the comment received.
- Concern was raised on the timing issue faced by 2019 awards which have to place their deals in service by December 2021, which is prior to knowing if they received a Supplemental Allocation and the associated force majeure treatment. Staff suggested that to err on the side of caution applicants who think they need the extra time still request force majeure. It was suggested that the 2019 deals could just get an extension under Rev. Proc. 2014-49. There was interest in possibly coming up with a universal solution for all 2019 deals. Staff pointed out that use of force majeure would prompt use of the newer (and in some cases lower rents) but that the Rev. Proc. would not require this, so for some deals the Rev. Proc. may be the preferable path. It was commented that we should not have some 2019 treated under force majeure and others under the Rev. Proc, thus creating inconsistency.
- Comment was made that while they liked the switch to Carryover signatures being electronic, they lost 2 months b/c the Department signed them too early. They asked that we still do electronic but not sign that early.
- It was requested that reference to QCTs anywhere in the QAP clearly note which year of HUD QCTs will be used.
- The scoring item for Tenant Right of First Refusal for single-family designed units was brought up. Staff explained that this was added because IRC requires a preference for tenants to have a right of first refusal. There was good dialogue on this having many repercussions down the line, not being clear what the Department wanted, etc. Staff encouraged everyone to make comment. If this item stays in it was requested that it be made clear whether a property that is not 100% single family detached homes could qualify for the points. There were questions raised about the eligible costs for the infrastructure on such type properties, issues around utility allowances, layering with HUD financing, and long term maintenance issues.
- It was requested that staff look into why elderly deals in QCT are excluded from the basis boost.
- It was requested that the VA scoring item be considered and whether proximity to a VA clinic or counseling be allowed.
- It was requested that as staff receives public comment on the Draft QAP it be posted to the Department's website. Staff agreed that we would do this. *(It should be noted that it is quite likely that most of the comment will all come in on the last few days, which may mean it all goes up at once.)*

PLEASE BE SURE TO SUBMIT YOUR PUBLIC COMMENT ON OR BEFORE OCTOBER 8, 2021 AT 5:00 PM AUSTIN LOCAL TIME.