SUPPLEMENTAL BOARD BOOK OF NOVEMBER 10, 2016

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BOARD ACTION REQUEST

COMMUNITY AFFAIRS DIVISION

NOVEMBER 10, 2016

Presentation, Discussion, and Possible Action on the 2017 Section 8 Payment Standards for the Housing Choice Voucher Program ("HCVP")

RECOMMENDED ACTION

WHEREAS, the Department is designated as a Public Housing Authority ("PHA") and operates a HCVP; and

WHEREAS, 24 CFR §982.503 requires PHAs to establish Payment Standards annually for areas served by its vouchers;

NOW, therefore, it is hereby

RESOLVED, that the 2017 HCVP Payment Standards for the Department in its role as a PHA, and in accordance with 24 CFR §982.505, are hereby approved in the form presented to this meeting.

BACKGROUND

The U.S. Department of Housing and Urban Development ("HUD") requires PHAs, such as the Texas Department of Housing and Community Affairs (the "Department") to adopt a payment standard schedule annually that establishes voucher payment standard amounts for each Fair Market Rent ("FMR") area in the PHA jurisdiction. The PHA must establish payment standard amounts for each "unit size," defined as the number of bedrooms (one-bedroom, two-bedrooms, etc.) in each housing unit.

The Department, operating as a PHA, may establish the payment standard amount at any level between 90% and 110% of the published FMR for that unit size. The establishment of the standard is important because it essentially determines whether a household will be able to find a unit they can afford with the voucher. In areas where market rents are high and there is high demand for rental units it can be challenging for a voucher holder to find a unit. Increased FMRs will aid in areas where voucher holders have had difficulty in finding acceptable units or affording units in more desirable areas. Higher FMRs provide additional choices and opportunities to tenants in highly competitive rental markets.

The importance of trying to ensure that a household's voucher provides enough assistance to house them is balanced with the importance of beneficiaries of vouchers not being over-subsidized. Providing more assistance per household than is truly needed to find a decent, safe affordable housing unit means fewer total households can be assisted. It is through these payment standards that the balance is established.

The approach the Department has taken in setting the payment standards is by evaluating the HUD released FMRs against the Hypothetical Small Area FMRs ("SAFMRs"). SAFMRs were created by HUD, in response to increasing demand for more localized measures of rents, and are published at

the ZIP code level for all metropolitan areas. While HUD has limitations on how and in what circumstances SAFMRs can be used, HUD suggests that one possible use for the SAFMRs is that PHAs may use them as a guide to setting their payment standards so long as the payment standards remain within the basic range (90%-110%) of the HUD published FMRs. While metropolitan-wide FMRs give voucher tenants freedom to access the entire area, certain neighborhoods have few affordable units. Alternatively, the SAFMR, by being more localized seeks to provide clients with access to a broader range of neighborhoods, thus allowing them to move into areas with more employment, transportation and educational opportunities. HUD also considers the impact that the use of Small Area FMRs may have when payment standards can be reduced (to below 100% of the FMR) to prevent undue subsidy in lower-rent neighborhoods. The Department compared the counties in its jurisdiction to SAFMRs to generate recommended payment standards. Additionally, HUD requires that PHAs managing programs in the Dallas, TX HUD Metropolitan Fair Market Areas ("HMFA"), which the Department does, utilize its published SAFMR instead of FMRs. The SAFMRS are utilized in Denton and Ellis counties by ZIP code.

The Department currently operates its HCVP in 34 counties. For 2017, staff recommends establishing the payment standard as follows:

- For ZIP codes in which HUDs FMRs are more than 10% below the Hypothetical SAFMRs, staff adjusted the payment standard to 105% of FMR. These areas are identified in red.

- For ZIP codes in which HUDs FMRs are more than 10% above the Hypothetical SAFMRs, staff adjusted the payment standard to 95% of FMR. These areas are identified in green.

- For ZIP codes in which the Hypothetical SAFMR are between 90% to 110% of HUDs FMRs, staff set the payment standard at 97% of the FMR. These areas are identified in white.

- For ZIP codes in which no Hypothetical SAFMR is available by HUD, the HUD FMR was utilized at 100% of FMR. These areas are identified in gray.

- For Denton County, HUD's Dallas - Fort Worth Small Area FMRs are used. Based on current tenant rent analysis, staff is setting the payment standard for one or more of the unit sizes in the following ZIP codes at 105% of the SAFMR: 75006, 75007, 75010, 75019, 75022, 75024, 75028, 75034, 75056, 75068, 75077, 75078, 75093, 76051, 76052, 76177, 76210, 76226, 76227, 76247, 76249, and 76262 (these areas are identified in red). Based on current tenant rent analysis, staff is setting the payment standard for one or more of the unit sizes in the following ZIP codes at 95% of the SAFMR: 75287, 76209, 76271, and 76272 (these areas are identified in green). The payment standard for all other ZIP codes is set at 100% of the SAFMR.

- For Ellis County, HUD's Dallas - Fort Worth Small Area FMRs are used. Based on current tenant rent analysis, staff is setting the payment standard for one or more of the unit sizes in the following ZIP codes at 105% of the SAFMR: 75104 and 76065 (these areas are identified in red). Based on current tenant rent analysis, staff is setting the payment standard for one or more of the unit sizes in the following ZIP codes at 95% of the SAFMR: 75143, 75152, 75154, 75158, 76050, 76064, 76084, 76651 and 76670 (these areas are identified in green). The payment standard for all other ZIP codes is set at 100% of the SAFMR.

These new payment standards will become effective on January 1, 2017, and will be applied at the first annual reexamination following the effective date of the increase in the payment standard. This will affect the tenant upon a subsequent change to the Housing Assistance Payment ("HAP")

contract such as relocating to a new unit or a change in the family's household composition. Households and property owners are given notice a minimum of 30 days to a maximum of 60 days prior to the change.

Staff recommends adopting these 2017 Payment Standards because they allow current tenants continued affordability in the units they have selected and help new tenants find decent, safe, sanitary, and affordable units. The attached Exhibit A details the Department's recommended 2017 Payment Standards. For areas outside of these 34 counties, served by the Department's Project Access program, the Department will adopt the Section 8 payment standards in use by the applicable PHA for its Section 8 program. If there is no applicable PHA in the area, the Department will use 100% of the FMR. The Department's VASH vouchers, operated at Freedom's Path at Kerrville, will utilize the FMR for Kerr County.

These Payment Standards are proposed based on HUD's publication of FMRs and SAFMRs in the Federal Register. If any FMR or SAFMR changes in the final version adopted by HUD, the Department will adopt HUDs final adopted FMR or SAFMR, but will leave the payment standard rate as that adopted in this board action. If needed, a utility allowance will be established.

Exhibit A

Atascosa						
HUD FMR		510	594	789	1033	1168
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Atascosa	78002	495	624	765	1085	1226
Atascosa	78005	495	624	765	1002	1226
Atascosa	78008	495	624	765	1002	1226
Atascosa	78011	495	576	765	1002	1133
Atascosa	78012	536	624	828	1085	1226
Atascosa	78026	495	576	765	1002	1133
Atascosa	78050	495	624	765	1002	1226
Atascosa	78052	495	576	765	1002	1133
Atascosa	78062	495	624	765	1002	1226
Atascosa	78064	536	624	828	1085	1226
Atascosa	78065	495	576	765	1002	1133
Atascosa	78069	495	576	765	1002	1226
Atascosa	78073	536	624	828	1085	1226
Atascosa	78113	495	624	765	1002	1226
Atascosa	78114	495	576	765	1002	1133
Atascosa	78118	495	624	765	1002	1226
Atascosa	78264	536	624	828	1085	1226

Austin						
HUD FMR		630	663	877	1112	1545
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Austin	77418	599	643	833	1079	1468
Austin	77426	611	643	851	1079	1499
Austin	77452	630	663	877	1112	1545
Austin	77473	611	643	851	1079	1499
Austin	77474	611	696	851	1168	1499
Austin	77485	662	696	921	1168	1622
Austin	77833	611	643	851	1079	1499
Austin	77835	599	643	833	1079	1468
Austin	78931	611	643	851	1079	1499
Austin	78933	611	643	851	1079	1499
Austin	78940	599	643	833	1079	1468
Austin	78944	611	643	851	1079	1499
Austin	78950	662	696	921	1168	1622
Austin	78954	611	643	851	1079	1499

Bandera						
HUD FMR		623	768	964	1273	1529
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Bandera	78003	604	745	935	1235	1483
Bandera	78023	654	806	1012	1337	1605
Bandera	78055	604	745	935	1235	1483
Bandera	78063	604	745	935	1235	1483
Bandera	78883	604	745	935	1235	1483
Bandera	78884	592	730	916	1209	1453
Bandera	78885	604	745	935	1235	1483

Bosque						
HUD FMR		536	541	704	881	970
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Bosque	76528	520	525	683	925	1019
Bosque	76633	563	568	739	925	1019
Bosque	76634	563	568	739	925	1019
Bosque	76637	536	541	704	881	970
Bosque	76649	536	541	704	881	970
Bosque	76652	536	541	704	881	970
Bosque	76665	536	541	704	881	970
Bosque	76671	536	541	704	881	970
Bosque	76689	509	524	682	855	1019
Bosque	76690	536	541	704	881	970
Bosque	76692	536	541	704	881	970

Caldwell						
HUD FMR		799	968	1195	1619	1948
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Caldwell	78610	775	939	1159	1570	1890
Caldwell	78616	759	920	1135	1538	1851
Caldwell	78622	759	920	1135	1538	1851
Caldwell	78629	799	968	1195	1619	1948
Caldwell	78632	759	920	1135	1538	1851
Caldwell	78640	839	1016	1255	1700	2045
Caldwell	78644	759	920	1135	1538	1851
Caldwell	78648	759	920	1135	1538	1851
Caldwell	78655	759	920	1135	1538	1851
Caldwell	78656	775	939	1159	1570	1890
Caldwell	78661	759	920	1135	1538	1851

Caldwell	78662	775	920	1159	1570	1890
Caldwell	78666	759	920	1135	1538	1851
Caldwell	78719	775	939	1159	1570	1890
Caldwell	78953	759	920	1135	1538	1851
Caldwell	78959	759	920	1135	1538	1851
Caldwell	78661	759	920	1135	1538	1851

Chambers						
HUD FMR		701	797	976	1333	1690
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Chambers	77514	666	757	927	1266	1606
Chambers	77520	680	773	947	1293	1639
Chambers	77521	680	773	947	1293	1639
Chambers	77523	680	773	947	1293	1639
Chambers	77532	680	773	947	1293	1639
Chambers	77535	680	773	947	1293	1639
Chambers	77538	666	757	927	1266	1606
Chambers	77560	680	773	947	1293	1639
Chambers	77571	736	837	1025	1400	1775
Chambers	77575	666	757	927	1266	1606
Chambers	77580	680	773	947	1293	1639
Chambers	77597	680	773	947	1293	1639
Chambers	77622	666	757	927	1266	1606
Chambers	77640	666	757	927	1266	1606
Chambers	77661	680	773	947	1293	1639
Chambers	77665	666	757	927	1266	1606
Chambers	77713	680	773	947	1293	1639

Colorado						
HUD FMR		518	547	681	991	1200
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Colorado	77412	518	547	681	991	1200
Colorado	77434	518	547	681	991	1200
Colorado	77435	544	574	715	1041	1260
Colorado	77442	518	547	681	991	1200
Colorado	77460	518	547	681	991	1200
Colorado	77470	518	547	681	991	1200
Colorado	77474	544	574	715	1041	1260
Colorado	77475	518	547	681	991	1200
Colorado	77964	518	547	681	991	1200
Colorado	78933	544	574	715	1041	1260
Colorado	78934	518	547	681	991	1200
Colorado	78935	518	547	681	991	1200

Colorado	78940	502	531	661	961	1164
Colorado	78943	518	547	681	991	1200
Colorado	78945	544	574	715	1041	1260
Colorado	78950	544	574	715	1041	1260
Colorado	78956	518	547	681	991	1200
Colorado	78962	518	547	681	991	1200

Comal						
HUD FMR		623	768	964	1273	1529
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Comal	78006	654	806	1012	1337	1605
Comal	78015	654	806	1012	1337	1605
Comal	78070	654	806	1012	1337	1605
Comal	78108	654	806	1012	1337	1605
Comal	78130	654	806	1012	1337	1605
Comal	78131	654	806	1012	1337	1605
Comal	78132	604	745	935	1235	1483
Comal	78133	654	806	1012	1337	1605
Comal	78135	623	768	964	1273	1529
Comal	78154	654	806	1012	1337	1605
Comal	78163	654	806	1012	1337	1605
Comal	78257	654	806	1012	1337	1605
Comal	78260	654	806	1012	1337	1605
Comal	78261	654	806	1012	1337	1605
Comal	78266	654	806	1012	1337	1605
Comal	78606	592	745	935	1235	1483
Comal	78623	654	806	1012	1337	1605
Comal	78666	654	806	935	1337	1605
Comal	78676	654	806	1012	1337	1605

Comanche						
HUD FMR		515	518	681	922	1079
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Comanche	76432	515	518	681	922	1079
Comanche	76435	515	518	681	922	1079
Comanche	76436	515	518	681	922	1079
Comanche	76442	515	518	681	922	1079
Comanche	76444	515	518	681	922	1079
Comanche	76445	515	518	681	922	1079
Comanche	76446	515	518	681	922	1079
Comanche	76452	515	518	681	922	1079

Comanche	76454	515	518	681	922	1079
Comanche	76455	515	518	681	922	1079
Comanche	76468	515	518	681	922	1079
Comanche	76471	515	518	681	922	1079
Comanche	76474	515	518	681	922	1079
Comanche	76531	515	518	681	922	1079
Comanche	76565	515	518	681	922	1079
Comanche	76857	515	518	681	922	1079
Comanche	76864	515	518	681	922	1079
Comanche	76870	515	518	681	922	1079
Comanche	76890	515	518	681	922	1079

Crockett						
HUD FMR		518	590	681	991	1079
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Crockett	76930	544	620	715	1041	1133
Crockett	76932	518	590	681	991	1079
Crockett	76936	518	590	681	991	1079
Crockett	76941	544	620	715	1041	1133
Crockett	76943	518	590	681	991	1079
Crockett	76950	518	590	681	991	1079
Crockett	78837	518	590	681	991	1079
Crockett	78840	518	590	681	991	1079
Crockett	78851	518	590	681	991	1079
Crockett	79731	518	590	681	991	1079
Crockett	79743	518	590	681	991	1079
Crockett	79744	518	590	681	991	1079
Crockett	79752	518	590	681	991	1079
Crockett	79755	518	590	681	991	1079
Crockett	79781	518	590	681	991	1079

Denton						
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Denton	75006	714	851	1050	1418	1817
Denton	75007	798	910	1120	1520	1940
Denton	75009	650	780	960	1300	1660
Denton	75010	914	1092	1344	1817	2321
Denton	75019	914	1092	1355	1838	2342
Denton	75022	1071	1281	1586	2142	2741
Denton	75024	903	1082	1334	1806	2310
Denton	75027	700	840	1040	1410	1800
Denton	75028	1071	1281	1586	2142	2741
Denton	75029	700	840	1040	1410	1800

Denton	75033	730	870	1080	1460	1870
Denton	75034	914	1092	1355	1838	2342
Denton	75056	861	1029	1271	1722	2195
Denton	75057	690	830	1020	1380	1760
Denton	75065	710	850	1050	1420	1820
Denton	75067	700	830	1030	1390	1780
Denton	75068	1071	1281	1586	2142	2741
Denton	75077	924	1103	1365	1848	2363
Denton	75078	1019	1218	1502	2037	2594
Denton	75093	861	1029	1271	1722	2195
Denton	75287	630	713	930	1260	1610
Denton	76051	830	998	1229	1659	2121
Denton	76052	1071	1281	1586	2142	2741
Denton	76078	700	830	1030	1390	1780
Denton	76092	660	790	980	1330	1690
Denton	76177	998	1197	1481	2006	2562
Denton	76201	550	660	820	1110	1420
Denton	76202	700	840	1040	1410	1800
Denton	76204	700	840	1040	1410	1800
Denton	76205	670	800	990	1340	1710
Denton	76207	730	870	1080	1460	1870
Denton	76208	700	840	1040	1410	1800
Denton	76209	589	703	874	1240	1511
Denton	76210	872	1050	1292	1743	2237
Denton	76226	1071	1281	1586	2142	2741
Denton	76227	1071	1281	1586	2142	2741
Denton	76234	650	780	960	1300	1660
Denton	76247	851	1008	1250	1691	2163
Denton	76249	914	1092	1355	1838	2342
Denton	76258	680	810	1000	1350	1730
Denton	76259	750	900	1110	1500	1920
Denton	76262	819	977	1208	1638	2090
Denton	76266	740	890	1100	1490	1900
Denton	76271	504	618	789	1130	1207
Denton	76272	523	627	770	1100	1330

Ellis						
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Ellis	75101	670	800	990	1340	1710
Ellis	75104	893	1071	1323	1785	2289
Ellis	75119	640	760	940	1270	1630

Ellis	75125	640	770	950	1290	1640
Ellis	75143	551	665	817	1102	1416
Ellis	75146	660	790	980	1330	1690
Ellis	75152	630	713	930	1260	1610
Ellis	75154	840	950	1240	1680	2140
Ellis	75158	542	646	798	1083	1378
Ellis	75159	680	810	1000	1350	1730
Ellis	75165	680	820	1010	1370	1750
Ellis	75167	1000	1200	1480	2000	2560
Ellis	75168	670	800	990	1340	1710
Ellis	76041	670	800	990	1340	1710
Ellis	76050	494	589	732	988	1264
Ellis	76055	670	800	990	1340	1710
Ellis	76063	850	1020	1260	1700	2180
Ellis	76064	494	589	732	988	1264
Ellis	76065	830	987	1218	1649	2111
Ellis	76084	523	627	770	1045	1330
Ellis	76623	670	800	990	1340	1710
Ellis	76626	670	800	990	1340	1710
Ellis	76641	670	800	990	1340	1710
Ellis	76651	513	618	760	1026	1311
Ellis	76670	504	608	751	1017	1302

Erath						
HUD FMR		651	655	804	1034	1108
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Erath	76043	631	635	780	1086	1163
Erath	76401	651	655	804	1034	1108
Erath	76402	651	655	804	1034	1108
Erath	76433	618	635	780	1003	1163
Erath	76436	651	655	804	1034	1108
Erath	76444	651	655	804	1034	1108
Erath	76445	651	655	804	1034	1108
Erath	76446	651	655	804	1034	1108
Erath	76453	651	655	804	1034	1108
Erath	76457	651	655	804	1034	1108
Erath	76461	651	655	804	1034	1108
Erath	76462	618	635	780	1086	1163
Erath	76463	651	655	804	1034	1108
Erath	76465	651	655	804	1034	1108
Erath	76470	651	655	804	1034	1108
Erath	76472	651	655	804	1034	1108
Erath	76476	631	688	844	1086	1163

Falls						
HUD FMR		504	512	681	863	1118
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Falls	76501	489	497	661	906	1084
Falls	76519	489	497	661	906	1084
Falls	76524	529	538	715	906	1174
Falls	76570	479	497	661	837	1084
Falls	76579	489	497	661	906	1084
Falls	76629	489	497	661	906	1084
Falls	76630	529	538	715	906	1174
Falls	76632	479	497	661	837	1084
Falls	76653	489	538	715	906	1084
Falls	76655	529	538	715	906	1174
Falls	76656	479	497	661	837	1084
Falls	76661	479	497	661	837	1084
Falls	76664	489	538	715	906	1174
Falls	76680	479	497	661	837	1084
Falls	76682	489	497	661	906	1084
Falls	76685	479	497	661	837	1084

Fort Bend						
HUD FMR		701	797	976	1333	1690
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Fort Bend	77031	666	757	927	1266	1606
Fort Bend	77047	736	837	1025	1400	1775
Fort Bend	77053	736	837	1025	1400	1775
Fort Bend	77071	666	757	927	1266	1606
Fort Bend	77082	680	773	947	1293	1639
Fort Bend	77083	736	837	1025	1400	1775
Fort Bend	77085	680	773	947	1293	1639
Fort Bend	77094	736	837	1025	1400	1775
Fort Bend	77099	666	757	927	1266	1606
Fort Bend	77406	736	837	1025	1400	1775
Fort Bend	77407	736	837	1025	1400	1775
Fort Bend	77417	666	757	927	1266	1606
Fort Bend	77420	736	837	1025	1400	1775
Fort Bend	77423	666	757	927	1266	1606
Fort Bend	77430	680	773	947	1293	1639
Fort Bend	77435	666	757	927	1266	1606
Fort Bend	77441	736	837	1025	1400	1775
Fort Bend	77444	666	757	927	1266	1606

Fort Bend	77450	736	837	1025	1400	1775
Fort Bend	77451	736	837	1025	1400	1775
Fort Bend	77459	736	837	1025	1400	1775
Fort Bend	77461	666	757	927	1266	1606
Fort Bend	77464	736	837	1025	1400	1775
Fort Bend	77469	680	773	947	1293	1639
Fort Bend	77471	680	773	947	1293	1639
Fort Bend	77476	736	837	1025	1400	1775
Fort Bend	77477	736	837	1025	1400	1775
Fort Bend	77478	736	837	1025	1400	1775
Fort Bend	77479	736	837	1025	1400	1775
Fort Bend	77481	736	837	1025	1400	1775
Fort Bend	77485	680	773	947	1293	1639
Fort Bend	77487	736	837	1025	1400	1775
Fort Bend	77489	736	837	1025	1400	1775
Fort Bend	77493	736	837	1025	1400	1775
Fort Bend	77494	736	837	1025	1400	1775
Fort Bend	77496	736	837	1025	1400	1775
Fort Bend	77497	736	837	1025	1400	1775
Fort Bend	77498	736	837	1025	1400	1775
Fort Bend	77545	736	837	1025	1400	1775
Fort Bend	77583	680	773	947	1293	1639
Fort Bend	77584	736	837	1025	1400	1775

Freestone						
HUD FMR		518	553	681	991	1079
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Freestone	75144	518	553	681	991	1079
Freestone	75148	518	553	681	991	1079
Freestone	75801	518	553	681	991	1079
Freestone	75803	518	553	681	991	1079
Freestone	75831	518	553	681	991	1079
Freestone	75838	518	553	681	991	1079
Freestone	75840	518	553	681	991	1079
Freestone	75846	518	553	681	991	1079
Freestone	75848	518	553	681	991	1079
Freestone	75855	518	553	681	991	1079
Freestone	75859	518	553	681	991	1079
Freestone	75860	518	553	681	991	1079
Freestone	75861	518	553	681	991	1079
Freestone	76667	518	553	681	991	1079
Freestone	76681	518	553	681	991	1079
Freestone	76693	518	553	681	991	1079

Frio						
HUD FMR		510	513	682	930	1081
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Frio	78005	495	539	716	977	1135
Frio	78016	495	539	716	977	1135
Frio	78017	510	513	682	930	1081
Frio	78057	495	539	716	977	1135
Frio	78061	510	513	682	930	1081
Frio	78830	510	513	682	930	1081
Frio	78839	510	513	682	930	1081

Galveston						
HUD FMR		701	797	976	1333	1690
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Galveston	77058	680	773	947	1293	1639
Galveston	77510	680	773	947	1293	1639
Galveston	77511	666	773	947	1293	1606
Galveston	77517	736	837	1025	1400	1775
Galveston	77518	680	773	947	1293	1639
Galveston	77539	680	773	947	1293	1639
Galveston	77546	736	837	1025	1400	1775
Galveston	77549	680	773	947	1293	1639
Galveston	77550	666	757	927	1266	1606
Galveston	77551	680	773	947	1293	1639
Galveston	77552	680	773	947	1293	1639
Galveston	77553	680	773	947	1293	1639
Galveston	77554	680	773	947	1293	1639
Galveston	77555	701	797	976	1333	1690
Galveston	77563	680	773	947	1293	1639
Galveston	77565	736	837	1025	1400	1775
Galveston	77568	680	773	947	1293	1639
Galveston	77573	736	837	1025	1400	1775
Galveston	77574	680	773	947	1293	1639
Galveston	77577	666	757	927	1266	1606
Galveston	77581	680	773	947	1293	1639
Galveston	77586	680	773	947	1293	1639
Galveston	77590	680	773	947	1293	1639
Galveston	77591	680	773	947	1293	1639
Galveston	77598	680	773	947	1293	1639
Galveston	77623	666	757	927	1266	1606
Galveston	77650	680	773	947	1293	1639

Gillespie						
HUD FMR		730	735	975	1282	1545
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Gillespie	76856	730	735	975	1282	1545
Gillespie	78028	730	735	975	1282	1545
Gillespie	78058	730	735	975	1282	1545
Gillespie	78618	730	735	975	1282	1545
Gillespie	78624	694	713	946	1244	1499
Gillespie	78631	730	735	975	1282	1545
Gillespie	78635	730	735	975	1282	1545
Gillespie	78636	730	735	975	1282	1545
Gillespie	78663	708	772	1024	1346	1622
Gillespie	78671	730	735	975	1282	1545
Gillespie	78675	730	735	975	1282	1545

Grimes						
HUD FMR		514	518	688	947	948
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Grimes	77316	540	544	722	994	995
Grimes	77320	514	518	688	947	948
Grimes	77340	514	518	688	947	948
Grimes	77356	540	544	722	994	995
Grimes	77363	499	502	667	919	995
Grimes	77484	540	544	722	994	995
Grimes	77808	540	544	722	994	995
Grimes	77830	514	518	688	947	948
Grimes	77831	514	518	688	947	948
Grimes	77845	540	544	722	994	995
Grimes	77861	514	518	688	947	948
Grimes	77864	514	518	688	947	948
Grimes	77868	499	502	667	919	995
Grimes	77872	514	518	688	947	948
Grimes	77873	499	544	722	919	995
Grimes	77875	514	518	688	947	948
Grimes	77876	514	518	688	947	948
Grimes	77880	514	518	688	947	948

Guadalupe						
HUD FMR		623	768	964	1273	1529
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Guadalupe	78108	654	806	1012	1337	1605
Guadalupe	78121	654	806	1012	1337	1605
Guadalupe	78123	604	745	935	1235	1483
Guadalupe	78124	604	745	935	1235	1483
Guadalupe	78130	654	806	1012	1337	1605
Guadalupe	78132	604	745	935	1235	1483
Guadalupe	78140	592	730	916	1209	1453
Guadalupe	78148	604	745	935	1235	1483
Guadalupe	78154	654	806	1012	1337	1605
Guadalupe	78155	592	730	916	1209	1483
Guadalupe	78156	604	745	935	1235	1483
Guadalupe	78638	592	730	916	1209	1453
Guadalupe	78648	604	745	916	1235	1483
Guadalupe	78655	654	806	1012	1337	1605
Guadalupe	78666	654	806	1012	1337	1605
Guadalupe	78670	604	745	935	1235	1483

Johnson						
HUD FMR		671	770	973	1338	1702
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Johnson	76009	637	747	944	1271	1651
Johnson	76028	705	809	1022	1405	1787
Johnson	76031	637	747	944	1271	1617
Johnson	76033	651	747	944	1298	1651
Johnson	76035	651	747	944	1298	1651
Johnson	76036	705	809	1022	1405	1787
Johnson	76044	651	809	944	1298	1651
Johnson	76049	651	809	944	1298	1651
Johnson	76050	637	732	924	1271	1617
Johnson	76058	651	747	944	1298	1651
Johnson	76059	637	747	924	1271	1617
Johnson	76061	651	747	944	1298	1651
Johnson	76063	705	809	1022	1405	1787
Johnson	76070	637	747	944	1271	1617
Johnson	76084	637	732	924	1271	1617
Johnson	76093	651	747	944	1298	1651
Johnson	76097	651	747	944	1298	1651
Johnson	76126	705	809	1022	1405	1787

Johnson	76627	671	770	973	1338	1702

Karnes						
HUD FMR		514	518	688	992	1144
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Karnes	77963	540	544	722	962	1110
Karnes	78102	514	518	688	992	1144
Karnes	78111	514	518	688	992	1144
Karnes	78113	499	544	722	1042	1201
Karnes	78116	514	518	688	992	1144
Karnes	78117	514	518	688	992	1144
Karnes	78118	499	544	722	1042	1201
Karnes	78119	540	544	722	962	1110
Karnes	78141	514	518	688	992	1144
Karnes	78144	514	518	688	992	1144
Karnes	78151	514	518	688	992	1144
Karnes	78159	514	518	688	992	1144
Karnes	78164	499	502	667	962	1087

Kendall						
HUD FMR		715	906	1106	1508	1949
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Kendall	78004	694	879	1073	1463	1891
Kendall	78006	694	879	1073	1463	1891
Kendall	78013	694	861	1073	1433	1852
Kendall	78015	751	951	1161	1583	2046
Kendall	78027	694	879	1073	1463	1891
Kendall	78070	751	951	1161	1583	1891
Kendall	78074	715	906	1106	1508	1949
Kendall	78606	679	861	1051	1433	1852
Kendall	78624	679	861	1051	1433	1852

Kerr						
HUD FMR		673	755	871	1133	1201
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Kerr	76849	673	755	871	1133	1201
Kerr	78003	639	732	845	1099	1261
Kerr	78010	673	755	871	1133	1201
Kerr	78013	653	732	915	1190	1261
Kerr	78024	673	755	871	1133	1201
Kerr	78025	673	755	871	1133	1201
Kerr	78028	673	755	871	1133	1201

Kerr	78029	673	755	871	1133	1201
Kerr	78055	639	732	845	1099	1261
Kerr	78058	673	755	871	1133	1201
Kerr	78624	653	732	915	1190	1261
Kerr	78631	673	755	871	1133	1201
Kerr	78873	673	755	871	1133	1201
Kerr	78880	673	755	871	1133	1201

Lee						
HUD FMR		611	634	802	1167	1271
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Lee	76567	580	615	762	1109	1233
Lee	76577	592	666	842	1132	1335
Lee	76578	642	666	842	1225	1335
Lee	77836	580	615	778	1132	1233
Lee	77853	611	634	802	1167	1271
Lee	77879	580	615	778	1132	1233
Lee	78621	642	666	842	1225	1335
Lee	78650	592	666	842	1132	1335
Lee	78659	642	666	842	1225	1335
Lee	78942	642	666	842	1225	1335
Lee	78946	611	634	802	1167	1271
Lee	78947	611	634	802	1167	1271
Lee	78948	611	634	802	1167	1271

Llano						
HUD FMR		582	623	765	1040	1212
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Llano	76820	582	623	765	1040	1212
Llano	76831	582	623	765	1040	1212
Llano	76832	582	623	765	1040	1212
Llano	76869	582	623	765	1040	1212
Llano	76877	582	623	765	1040	1212
Llano	76885	582	623	765	1040	1212
Llano	78607	582	623	765	1040	1212
Llano	78609	582	623	765	1040	1212
Llano	78611	582	623	765	1040	1212
Llano	78624	565	654	803	1092	1273
Llano	78639	582	623	765	1040	1212
Llano	78643	582	623	765	1040	1212
Llano	78654	611	654	803	1092	1273
Llano	78657	582	623	765	1040	1212

Llano	78672	582	623	765	1040	1212

McLennan						
HUD FMR		517	617	811	1108	1345
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
McLennan	76524	543	598	787	1075	1305
McLennan	76557	501	598	787	1075	1305
McLennan	76561	501	598	787	1075	1305
McLennan	76621	501	598	787	1075	1305
McLennan	76622	501	598	787	1075	1305
McLennan	76624	543	648	852	1163	1412
McLennan	76630	543	648	852	1163	1412
McLennan	76633	543	648	852	1163	1412
McLennan	76638	543	648	852	1163	1412
McLennan	76640	543	648	852	1163	1412
McLennan	76642	517	617	811	1108	1345
McLennan	76643	543	648	852	1163	1412
McLennan	76654	501	598	787	1075	1305
McLennan	76655	543	648	852	1163	1412
McLennan	76657	501	598	787	1053	1278
McLennan	76664	501	598	787	1075	1305
McLennan	76673	501	598	787	1075	1305
McLennan	76676	517	617	811	1108	1345
McLennan	76678	517	617	811	1108	1345
McLennan	76682	491	586	770	1053	1278
McLennan	76684	517	617	811	1108	1345
McLennan	76689	491	586	770	1053	1278
McLennan	76691	501	598	787	1053	1278
McLennan	76701	501	598	787	1075	1305
McLennan	76702	501	598	787	1075	1305
McLennan	76703	501	598	787	1075	1305
McLennan	76704	491	586	770	1053	1278
McLennan	76705	501	598	787	1075	1305
McLennan	76706	501	598	787	1075	1305
McLennan	76707	501	598	787	1075	1305
McLennan	76708	501	598	787	1075	1305
McLennan	76710	501	598	787	1075	1305
McLennan	76711	543	648	852	1163	1412
McLennan	76712	543	648	852	1163	1412
McLennan	76714	501	598	787	1075	1305
McLennan	76716	501	598	787	1075	1305
McLennan	76797	517	617	811	1108	1345
McLennan	76798	501	598	787	1075	1305
McLennan	76799	517	617	811	1108	1345

McMullen						
HUD FMR		563	584	739	975	1171
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
McMullen	78007	563	584	739	975	1171
McMullen	78014	563	584	739	975	1171
McMullen	78019	546	566	776	1024	1136
McMullen	78021	563	584	739	975	1171
McMullen	78022	563	584	739	975	1171
McMullen	78026	535	566	717	946	1136
McMullen	78071	563	584	739	975	1171
McMullen	78072	563	584	739	975	1171
McMullen	78075	563	584	739	975	1171
McMullen	78357	563	584	739	975	1171
McMullen	78384	563	584	739	975	1171

Medina						
HUD FMR		456	531	706	1028	1138
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Medina	78003	479	558	741	1079	1195
Medina	78009	479	558	741	1079	1195
Medina	78016	479	558	741	997	1195
Medina	78023	479	558	741	1079	1195
Medina	78039	442	558	685	997	1104
Medina	78052	442	558	685	997	1104
Medina	78056	479	558	741	997	1195
Medina	78057	479	558	741	997	1195
Medina	78059	442	515	685	977	1104
Medina	78066	442	515	685	977	1104
Medina	78245	479	558	741	1079	1195
Medina	78252	479	558	741	1079	1195
Medina	78253	479	558	741	1079	1195
Medina	78254	479	558	741	1079	1195
Medina	78829	456	531	706	1028	1138
Medina	78850	442	558	685	997	1104
Medina	78861	442	558	685	997	1104
Medina	78881	456	531	706	1028	1138
Medina	78886	479	558	741	997	1195

Waller						
HUD FMR		701	797	976	1333	1690
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Waller	77354	680	773	947	1293	1639
Waller	77355	736	837	1025	1400	1775
Waller	77363	666	757	927	1266	1606
Waller	77423	666	757	927	1266	1606
Waller	77445	666	773	947	1293	1606
Waller	77447	736	837	1025	1400	1775
Waller	77484	680	773	947	1293	1639
Waller	77493	736	837	1025	1400	1775
Waller	77494	736	837	1025	1400	1775
Waller	77868	666	757	927	1266	1606
Waller	77446	680	773	947	1293	1639
Waller	77466	680	773	947	1293	1639

Wharton						
HUD FMR		590	646	795	995	1138
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Wharton	77420	620	678	835	1045	1195
Wharton	77432	590	646	795	995	1138
Wharton	77434	590	646	795	995	1138
Wharton	77435	572	627	771	1045	1195
Wharton	77436	590	646	795	995	1138
Wharton	77437	590	646	795	995	1138
Wharton	77443	590	646	795	995	1138
Wharton	77448	590	646	795	995	1138
Wharton	77453	590	646	795	995	1138
Wharton	77454	590	646	795	995	1138
Wharton	77455	590	646	795	995	1138
Wharton	77456	590	646	795	995	1138
Wharton	77458	590	646	795	995	1138
Wharton	77467	590	646	795	995	1138
Wharton	77468	590	646	795	995	1138
Wharton	77482	590	646	795	995	1138
Wharton	77488	590	646	795	995	1138
Wharton	77957	590	646	795	995	1138
Wharton	77962	590	646	795	995	1138

Wilson						
HUD FMR		623	768	964	1273	1529
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Wilson	78064	604	745	935	1235	1483
Wilson	78101	604	745	935	1235	1605
Wilson	78112	604	745	935	1235	1483
Wilson	78113	592	730	916	1209	1453
Wilson	78114	592	730	916	1209	1453
Wilson	78121	654	806	1012	1337	1605
Wilson	78140	592	730	916	1209	1453
Wilson	78143	592	730	916	1209	1483
Wilson	78147	592	730	916	1209	1453
Wilson	78152	592	730	916	1209	1453
Wilson	78160	604	745	935	1235	1483
Wilson	78161	592	730	916	1209	1483
Wilson	78223	592	730	916	1209	1483
Wilson	78263	604	745	935	1235	1483

Wise						
HUD FMR		616	685	910	1138	1254
Payment Standard						
County	Zip	0 BDR	1 BDR	2 BDR	3 BDR	4 BDR
Wise	76020	647	719	883	1195	1317
Wise	76023	598	719	883	1195	1317
Wise	76052	647	719	956	1195	1317
Wise	76071	647	719	956	1195	1317
Wise	76073	598	719	883	1195	1317
Wise	76078	647	719	956	1195	1317
Wise	76082	598	719	883	1195	1317
Wise	76179	647	719	956	1195	1317
Wise	76225	598	719	883	1104	1216
Wise	76230	585	664	865	1104	1216
Wise	76234	598	719	883	1195	1317
Wise	76239	616	685	910	1138	1254
Wise	76246	616	685	910	1138	1254
Wise	76247	647	719	956	1195	1317
Wise	76249	647	719	956	1195	1317
Wise	76259	647	719	956	1195	1317
Wise	76270	598	719	883	1195	1317
Wise	76426	598	719	883	1195	1317
Wise	76431	585	664	883	1104	1317
Wise	76458	598	719	883	1195	1317

Wise	76486	598	664	883	1104	1317
Wise	76487	647	719	883	1195	1317

Note 1: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

NOVEMBER 10, 2016

Presentation, Discussion, and Possible Action regarding Amendments to HOME Direct Loan Terms for The Trails at Carmel Creek (HTC # 13201, HOME # 1002027)

RECOMMENDED ACTION

WHEREAS, in 2013 The Trails at Carmel Creek (the "Development") was allocated $500,000 in 9% Housing Tax Credits ("HTC") and was awarded a $1,000,000 HOME loan at 0% interest with an 18 year term and 30 year amortization period to construct 61 new elderly units in Hutto;

WHEREAS, in conjunction with the Development's final cost certification for tax credits the Development Owner is now requesting approval to modify the HOME loan terms from a hard debt second lien to a surplus cash note to accommodate a permanent loan conversion with an FHA 223(f) loan as generally allowed under Subchapter D, §10.307(a)(3), Direct Loan Requirements;

WHEREAS, the FHA 223(f) permanent loan will add approximately $1,000,000 in additional first lien debt senior to the Department's HOME loan, removing the need for a previously anticipated $600,000 Owner note to cover construction cost overruns, and will cause the annual debt service senior to the Department's HOME loan to increase slightly (by $4,591);

WHEREAS, the Department's rules regarding Amendments to Direct Loan Terms, under Subchapter E, §10.405(c)(7), require that post closing loan modifications requiring changes in the Department's loan terms, lien priority, or amounts will generally only be considered as part of a work out arrangement or other condition intended to mitigate financial risk and will not require additional Board approval except where the post closing change could not have been anticipated prior to closing, which is not the case for this Development;

WHEREAS, staff's recommendation of the requested loan modifications will mitigate the Department's financial risk of repayment to HUD by lessening the Development Owner's debt burden for this transaction while strengthening the owner's position to keep the long term affordability required by the Department's HOME funds in place;

WHEREAS, Subchapter D, §10.307(a)(3) allows for a Direct Loan to be structured as payable from surplus cash flow provided the first lien mortgage is a federally insured HUD or FHA mortgage and the debt coverage ratio, inclusive of the loan, continues to meet the requirements in subchapter D, including an acceptable Debt Coverage Ratio ("DCR") between 1.15 and 1.50 (for HTC Developments at cost certification), and there was no requirement for a set term or amortization period in the 2013 HOME NOFA;

WHEREAS, the Development Owner has nearly completed its cost certification and the Asset Management Division is seeking the Board's approval to recommend this loan modification and offer the Development Owner new terms on the HOME loan of a surplus cash structure at 0% interest, at a 30 year amortization and 35 year term; and

WHEREAS, the requested changes do not negatively affect the Development or impact the viability of the transaction based on an updated underwriting at cost certification;

NOW, therefore, it is hereby

RESOLVED, that the requested and recommended changes are approved conditional to the Compliance Division's approval of the proposed utility allowances under review and the Executive Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

On October 17, 2016, the Department received a HOME loan modification request from DMA Companies (Diana McIver and Janine Sisak) for The Trails at Carmel Creek (a 9% 2013 HTC deal with a $1,000,000 HOME loan at 0% interest) seeking to approve a change in the HOME loan structure from hard debt payment on an 18 year term and 30 year amortization to a cash flow structure with a 35 year term and amortization to achieve parity with a new, permanent 223(f) FHA loan through Capital One as negotiated with Capital One at the time of construction loan closing.

According to the Owner and the proposal term sheet provided, closing into a permanent loan with a 223(f) FHA loan would require the HOME debt to be structured as repayable from surplus cash. The senior loan amount exceeds the amount of the permanent loan demonstrated at HOME loan closing ($3,812,200 at 3.10% interest vs. $2,829,000 at a 5.25% at the time of HOME loan closing). According to the Owner, the additional funds will be used to finance construction cost overruns (the development costs increased by $1,602,503 from the time of initial application, which according to the Owner was largely due to increased costs in labor and materials in the area as noted in the underwriting report dated October 16, 2014), and staff notes that the additional debt will also allow the Development to remove the need for a previously anticipated $600K Owner note.

Staff currently has the Development's cost certification packet and has reviewed the senior debt and HOME loan changes within the analysis. A copy of that analysis is included behind this Board action. Staff changed the senior debt and the HOME loan terms as requested, except for the amortization which staff recommends keeping at 30 years to remain consistent with other surplus cash notes modified by the Department in instances of a first lien HUD or FHA loan (but still considering the HOME repayment as hard debt at the Owner's requested terms in order to ensure that repayment can be made, which is the Department's current practice as the HOME loan lender). The result of the changes previously described, along with updating income and expenses with updated 2016 data and actual operating statements from the Owner, the Development achieves a 1.21 minimum DCR. Staff spoke with a HUD representative to discuss the Department's recommendation to keep the amortization to 30 years but still match the requested 35 year term to match the FHA loan, and received confirmation from HUD that this type of structure would be acceptable and meet HUD's guidelines. The Owner and the Owner's lender, in conversations with staff, is amenable to this change.

The underwriter's pro forma is used and the Owner's operating statements reflecting stabilized expenses between the six months of March and August were used in the underwriter's expense analysis. The operating statements, in general, provided a more accurate picture of the Development's expenses than the Owner's estimates on the 11C Annual Operating Expenses exhibit of the Cost Certification. Any large discrepancies were discussed with the Owner as the analysis was completed, explaining items such as a higher than estimated G&A cost, which included several outlier, one-time expenses (for furniture and fixtures, accounting expenses from 2015, and a tax consultant fee) and reflected the higher costs of a year in initial lease up, higher property tax estimates, which did not account for the 2016 Travis County CAD rate, and the higher property insurance estimate, which did not reflect the new 2016-17 insurance binder, for which the Owner submitted invoices. Payroll was also over-estimated, as the 11C included an apartment allowance for Development staff in the payroll item, which was treated in the analysis as a concession by staff and deducted from rental income.

In conversations with the Owner, it was also discussed that the deal is currently waiting for approval of its new utility allowance package, which was submitted to the Department on July 29, 2016. The new utility allowance package proposed new rents and utility allowances intended to take effect on 11/1/2016 that will allow the Owner to take advantage of a much greater rent potential. The same utility model is proposed for use, the HUD Utility Model Schedule, but the consultant, Zeffert and Associates, has proposed an adjustment based on Energy Star rated consumption. The utility allowance proposed will decrease utility allowances for 1 bedroom units from $76 to $45 and for 2 bedroom units from $98 to $58, which achieves a rent potential of $618,408 at the maximum gross rents charged (an increase of $19,464 annually from the prior rent potential of $598,944). The Development has been underwritten including this increase in rent potential, though without it the Development can still be underwritten to a DCR (1.16) which falls within the requirements in subchapter D, including an acceptable DCR between 1.15 and 1.50 (for HTC Developments at cost certification). The change proposed will also allow the HOME loan note to remain consistent with other surplus cash notes created by the Department in instances of a first lien HUD or FHA loan. Regardless of the surplus cash structure, the loan has been underwritten as if hard payment will be made.

The Owner requested to be placed on the agenda of the November 10th Board meeting because of the FHA 223(f)'s commitment expiration date prior to the December Board meeting. Staff determined that a 15 day posting period subject to §10.405(a)(2) and Texas Government Code §2306.6712 and §2306.6717(4) was not necessary due to the fact that the amendment being requested is related to a change in Direct Loan Terms, which does not affect the Development's allocation or Housing Tax Credit application.

The Owner has stated that being able to take advantage of the terms of the FHA 223(f) loan will result in more financial stability for the Development due to the lower than expected interest rate and longer amortization period. The Department agrees that while more debt is senior to our loan and a change to cash flow repayment, the changes in terms will have a positive effect on the Development and seeks to assist the Owner in taking advantage of the FHA financing. The Asset Management Division, therefore, seeks authorization and empowerment to approve a modification of the HOME Direct Loan Terms (subject to the approval of the proposed utility allowances with which this cost certification has been reviewed) under Subchapter D, §10.307(a)(3) in order to allow the conversion with the FHA 223(f) loan to take place.

UNIT MIX/RENT SCHEDULE

The Trails at Carmel Creek, Hutto, # 13201

UNIT MIX / MONTHLY RENT SCHEDULE

HTC		HOME (Rent/Inc)		Unit Mix				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS		
Type	Gross Rent	Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Tenant Pd UA's (Verified)	Max Net Program Rent	Rent per NRA	Net Rent per Unit		Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent per NRA	Delta to Max Program	Market Rent	Rent per NRA	TDHCA Savings to Market
TC30%	$438	LH/50%	$730	5	1	1	713	$438	$45	$393	$0.55	$393		**$1,965**	**$1,965**	$393	$2.76	$0		0.00	
TC50%	$730	LH/50%	$730	1	1	1	713	$730	$45	$685	$0.96	$685		**$685**	**$685**	$685	$0.96	$0		0.00	
TC50%	$730	0%		2	1	1	713	$730	$45	$685	$0.96	$685		**$1,370**	**$1,370**	$685	$1.92	$0		0.00	
TC50%	$730	LH/50%	$730	1	1	1	738	$730	$45	$685	$0.93	$685		**$685**	**$685**	$685	$0.93	$0		0.00	
TC60%	$876	0%		3	1	1	738	$876	$45	$831	$1.13	$831		**$2,493**	**$2,493**	$831	$3.38	$0		0.00	
TC50%	$730	0%		1	1	1	753	$730	$45	$685	$0.91	$685		**$685**	**$685**	$685	$0.91	$0		0.00	
TC60%	$876	0%		1	1	1	753	$876	$45	$831	$1.10	$831		**$831**	**$831**	$831	$1.10	$0		0.00	
TC50%	$730	0%		2	1	1	803	$730	$45	$685	$0.85	$685		**$1,370**	**$1,370**	$685	$1.71	$0		0.00	
TC60%	$876	0%		1	1	1	817	$876	$45	$831	$1.02	$831		**$831**	**$831**	$831	$1.02	$0		0.00	
TC60%	$876	0%		7	1	1	824	$876	$45	$831	$1.01	$831		**$5,817**	**$5,817**	$831	$7.06	$0		0.00	
TC60%	$876	0%		15	1	1	855	$876	$45	$831	$0.97	$831		**$12,465**	**$12,465**	$831	$14.58	$0		0.00	
MR		0%		4	1	1	855	$0	$45		$1.11	$950		**$3,800**	**$3,800**	$950	$4.44	NA	$950	1.11	$0
TC60%	$876	0%		1	1	1	859	$876	$45	$831	$0.97	$831		**$831**	**$831**	$831	$0.97	$0		0.00	
MR		0%		1	1	1	859	$0	$45		$1.11	$950		**$950**	**$950**	$950	$1.11	NA	$950	1.11	$0
TC60%	$876	0%		1	1	1	893	$876	$45	$831	$0.93	$831		**$831**	**$831**	$831	$0.93	$0		0.00	
TC60%	$876	0%		1	1	1	923	$876	$45	$831	$0.90	$831		**$831**	**$831**	$831	$0.90	$0		0.00	
TC60%	$1,051	0%		3	2	2	1,131	$1,051	$58	$993	$0.88	$993		**$2,979**	**$2,979**	$993	$2.63	$0		0.00	
MR		0%		5	2	2	1,131	$0	$58		$1.11	$1,250		**$6,250**	**$6,250**	$1,250	$5.53	NA	$1,250	1.11	$0
TC60%	$1,051	0%		1	2	2	1,101	$1,051	$58	$993	$0.90	$993		**$993**	**$993**	$993	$0.90	$0		0.00	
MR		0%		1	2	2	1,101	$0	$58		$1.14	$1,250		**$1,250**	**$1,250**	$1,250	$1.14	NA	$1,250	1.14	$0
TC50%	$876	LH/50%	$876	1	2	2	1,115	$876	$58	$818	$0.73	$818		**$818**	**$818**	$818	$0.73	$0		0.00	
TC50%	$876	LH/50%	$876	1	2	2	1,155	$876	$58	$818	$0.71	$818		**$818**	**$818**	$818	$0.71	$0		0.00	
TC60%	$1,051	0%		1	2	2	1,155	$1,051	$58	$993	$0.86	$993		**$993**	**$993**	$993	$0.86	$0		0.00	
TC60%	$1,051	0%		1	2	2	1,208	$1,051	$58	$993	$0.82	$993		**$993**	**$993**	$993	$0.82	$0		0.00	
TOTALS / AVERAGES:				**61**			**54,015**				**$0.95**	**$845**		$51,534	$51,534	$845	**$5.90**	**$0**	**$201**	**$0.23**	**($644)**

ANNUAL POTENTIAL GROSS RENT:		**$618,408**	**$618,408**	

PROFORMA ANALYSIS & DEVELOPMENT COSTS

				TDHCA CC	TDHCA-HOME Loan Closing	APP-HOME Loan Closing	Owner CC	Actuals Mar - Aug 2016			
POTENTIAL GROSS RENT				$618,408	$551,508	$551,340	$618,408	$592,412			
Secondary Income		Per Unit/Month	$5.00	$3,660	$10,980	$10,980	$528	$2,474	$0.72	Per Unit Per Month	
Other Income:	Application Fees						$684		$0.93	Per Unit Per Month	$1.92
Other Income:	Late fees/lease terminations						$192		$0.26	Per Unit Per Month	
POTENTIAL GROSS INCOME				$622,068	$562,488	$562,320	$619,812	$594,886			
Vacancy & Collection Loss		% of PGI	-5.0%	($31,103)	(42,187)	(42,174)	(46,486)	($13,579)	-7.5%	% of PGI	
EO/Non-Rental Units/Concessions				$0	-	-	-	($20,064)			
EFFECTIVE GROSS INCOME				$590,965	$520,301	$520,146	$573,326	$561,243			

EXPENSES		% of EGI	Per Unit	Per SF					Per SF	Per Unit	% of EGI
General & Administrative		4.75%	$460	$0.52	$28,086	$18,926	$24,630	$19,804	$28,086	$0.37	$325	3.45%
Management		5.00%	$484	$0.55	$29,548	$26,015	$25,275	$27,750	$27,967	$0.51	$455	4.84%
Payroll & Payroll Tax		11.73%	$1,136	$1.28	$69,316	$53,100	$53,100	$84,316	$69,316	$1.56	$1,382	14.71%
Repairs & Maintenance		5.76%	$558	$0.63	$34,057	$33,550	$29,552	$30,899	$34,057	$0.57	$507	5.39%
Electric/Gas		1.57%	$152	$0.17	$9,259	$13,538	$12,000	$12,300	$9,259	$0.23	$202	2.15%
Water, Sewer, & Trash		3.28%	$318	$0.36	$19,392	$27,638	$21,250	$21,073	$19,392	$0.39	$345	3.68%
Property Insurance		2.82%	$273	$0.31	$16,659	$19,331	$22,350	$16,159	$20,476	$0.30	$265	2.82%
Property Tax	2.83	14.81%	$1,435	$1.62	$87,517	$60,024	$60,000	$88,000	$104,648	$1.63	$1,443	15.35%
Reserve for Replacements		2.58%	$250	$0.28	$15,250	$15,250	$15,250	$15,250	$15,250	$0.28	$250	2.66%
Cable TV		1.06%	$103	$0.12	$6,267	$98	$1	6,039.00	$6,267	$0.11	$99	1.05%
Supportive service contract fees		0.00%	$0	$0.00	$0	$2,400	$2	$2,400	$0	$0.04	$39	0.42%
TDHCA Compliance fees		0.40%	$38	$0.04	$2,346	$2,000	$2,000	$2,328	$2,224	$0.04	$38	0.41%
Security		0.04%	$4	$0.00	$238	$127	$2	$223	$238	$0.00	$4	0.04%
Other		0.00%	$0	$0.00	$0	$127	$2	$0		$0.00	$0	0.00%
Other		0.00%	$0	$0.00	$0	$0	$0	$0		$0.00	$0	0.00%
TOTAL EXPENSES		53.80%	$5,212	$5.89	$317,934	$272,124	$265,414	$326,541	$337,179	$6.05	$5,353	56.96%
NET OPERATING INCOME		46.20%	$4,475.91	$5.05	$273,030	$248,177	$254,732	$246,785	$224,064	$4.57	$4,046	43.04%

COMPARABLES USED

TDHCA DB	DB Per Unit	Other
$24,240	$397	
$30,294	$497	
$60,676	$995	
$42,326	$694	
$13,309	$218	
$42,872	$703	
$23,859	$391	
$40,953	$671	
$29,233	$479	

DEBT

	TDHCA CC	TDHCA-HOME Loan Closing	APP-HOME Loan Closing	Owner CC	Actuals Mar - Aug 2016
First Lien: HUD 223F	$178,618	$187,370	$187,370	$178,618	$211,689
Other: TDHCA	$33,333	$33,333	$33,333	$33,333	$33,333
Other: MIP	$13,343				
Other: 0					
TOTAL DEBT SERVICE	$225,294	$220,703	$220,703	$211,951	$211,951
NET CASH FLOW	$47,736	$27,474	$34,029	$34,834	$12,112
AGGREGATE DEBT COVERAGE RATIO	1.21	1.12	1.15	1.16	1.06
RECOMMENDED DEBT COVERAGE RATIO	1.21				

CONSTRUCTION COST		% of TOTAL	Per Unit	Per SF	TDHCA CC	TDHCA-HOME Loan Closing	APP-HOME Loan Closing	Owner CC	G702/703	Per SF	Per Unit	% of TOTAL
Land Acquisition		6.32%	$10,265	$11.59	$626,175	$626,175	$626,175	$626,175		$12	$10,265	6.24%
Building Acquisition		0.00%	$0	$0.00	$0	$0	$0	$0		$0	$0	0.00%
Closing costs & acq. legal fees		0.23%	$367	$0.41	$22,390	$32,805	$32,805	$22,390		$0	$367	0.22%
Off-Sites		0.00%	$0	$0.00	$0	$0	$0	$0		$0	$0	0.00%
Sitework		11.06%	$17,954	$20.28	$1,095,186	$847,787	$847,787	$1,095,186	$1,012,453	$20	$17,954	10.92%
Site Amenities		0.00%	$0	$0.00		$86,665	$86,665			$0	$0	0.00%
Other Construction Cost		0.00%	$0	$0.00		$0	$0			$0	$0	0.00%
Building Costs		51.21%	$83,157	$93.91	$5,072,558	$4,532,441	$4,723,858	$5,072,558	$5,229,783	$94	$83,157	50.56%
Contingency			$0	$0.00		$382,683	$525,000			$0	$0	0.00%
Contractor's Fees		8.72%	$14,155	$15.99	$863,484	$646,900	$646,900	$868,098	$768,606	$16	$14,231	8.65%
Indirect Construction		7.32%	$11,882	$13.42	$724,828	$775,391	$775,391	$724,828	$25,000	$13	$11,882	7.23%
Developer's Fees	11.3%	9.09%	$14,754	$16.66	$900,000	$900,000	$900,000	$900,000		$17	$14,754	8.97%
Financing		4.83%	$7,835.30	$8.85	$477,953	$616,703	$616,703	$477,953		$9	$7,835	4.76%
Reserves					$122,000	$277,686	$280,259	$244,759				
TOTAL COST		100.00%	$162,370	$183	$9,904,574	$9,725,236	$10,061,543	$10,031,947		$186	$164,458	100%
Construction Cost Recap		62.27%	**$101,111**	**$114.19**	**$6,167,744**			**$6,167,744**		**$114.19**	**$101,111**	**61.48%**

SOURCES OF FUNDS									RECOMMENDED		
HUD 223f	38%	$62,495	$71	$3,812,200	$2,826,000	$2,829,000	$3,812,200		$3,812,200	Developer Fee Available	($983,200)
TDHCA	0.100963452	$16,393	$19	$1,000,000	$1,000,000	$1,000,000	$1,000,000		1,000,000	$900,000	
Owner Note	0%	$0	$0	$0	$600,000	$600,000	$0		0		
HTC Equity: RBC	0.489623776	$79,500	$90	$4,849,515	$4,849,515	$4,849,030	$4,849,515		4,849,515	% of Dev. Fee Deferred	
Grant: 0	0	$0	$0	$0	$50,000	$50,000	$0		0		
City of Hutto Fee Waivers	1%	$1,885	$2	$115,000	$115,000	$115,000	$115,000		115,000		
Deferred Developer Fee: DMA Development	0.025769104	$4,184	$5	$255,232	$621,028	$697,513	$255,232		127,859	14%	
Additional (Excess) Funds Req'd	-1%	($2,088)	($2)	($127,373)	($501,307)	($244,000)	($0)		0	15-Yr Cumulative Cash Flow	
TOTAL SOURCES				$9,904,574	$9,725,236	$10,061,543	$10,031,947		$9,904,574	$725,007	

MULTIFAMILY COMPARATIVE ANALYSIS (continued)

The Trails at Carmel Creek, Hutto, # 13201

DIRECT CONSTRUCTION COST ESTIMATE

CATEGORY	FACTOR	UNITS/ SF	PER SF	AMOUNT
Base Cost:				0
Adjustments				
Exterior Wall Finish	0.00%		0	$0
	0.00%		0	0
	0.00%		0	0
Roofing			0.00	0
Subfloor			#DIV/0!	#DIV/0!
Floor Cover			2.54	137,198
Breezeways	$0.00	0	0.00	0
Balconies	$0.00	0	0.00	0
Plumbing Fixtures	$890	0	0.00	0
Rough-ins	$440	0	0.00	0
Built-In Appliances	$1,625	61	1.84	99,125
Exterior Stairs	$2,025	0	0.00	0
Heating/Cooling			1.95	105,329
Enclosed Corridors	($12.87)		0.00	0
Carports	$10.75	0	0.00	0
Garages	$30.00	0	0.00	0
Comm &/or Aux Bldgs	$0.00	0	0.00	0
Other:			0.00	0
Other:			0.00	0
Other: fire sprinkler	$2.20	54,015	2.20	118,833
SUBTOTAL			**#DIV/0!**	**#DIV/0!**
Current Cost Multiplier	0.99		#DIV/0!	#DIV/0!
Local Multiplier			#DIV/0!	#DIV/0!
NET DIRECT CONSTRUCTION COSTS			#DIV/0!	#DIV/0!

PROPOSED PAYMENT COMPUTATION

HUD 223f	$3,812,200	Amort	420
Int Rate	3.10%	DCR	1.53
TDHCA	$1,000,000	Amort	360
Int Rate	0.00%	DCR	1.29
Owner Note	$0	Amort	0
Int Rate	0.00%	DCR	1.21
Other: 0	$0	Amort	0
Int Rate	0.00%	DCR	1.21
Other: 0	$0	Amort	0
Int Rate	0.00%	DCR	1.21

RECOMMENDED FINANCING STRUCTURE: TDHCA NOI

HUD 223f	$178,618
TDHCA	33,333
MIP	13,343
Other: 0	0
TOTAL DEBT SERVICE	**$225,294**

HUD 223f	$3,812,200	Amort	420
Int Rate	3.10%	DCR	1.53
TDHCA	$1,000,000	Amort	360
Int Rate	0.00%	Aggregate DCR	1.29
Owner Note	$0	Amort	0
Int Rate	0.00%	Aggregate DCR	1.21

LONG TERM OPERATING PROFORMA

	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15	YEAR 20	YEAR 25	YEAR 30	YEAR 35	YEAR 40
EFFECTIVE GROSS INCOME	$590,965	$586,921	$598,660	$610,633	$622,845	$687,672	$759,245	$838,268	$925,516	$1,021,844	$1,128,198	$1,245,622
LESS: TOTAL EXPENSES	317,934	326,384	335,882	345,659	$355,723	410,662	$474,172	547,600	632,505	730,693	844,253	975,608
NET OPERATING INCOME	**$273,030**	**$260,537**	**$262,778**	**$264,974**	**$267,122**	**$277,010**	**$285,073**	**$290,668**	**$293,010**	**$291,151**	**$283,945**	**$270,014**
LESS: DEBT SERVICE	225,294	225,294	225,294	225,294	225,294	225,294	225,294	225,294	225,294	225,294	225,294	225,294
NET CASH FLOW	**$47,736**	**$35,243**	**$37,484**	**$39,680**	**$41,828**	**$51,716**	**$59,779**	**$65,374**	**$67,716**	**$65,857**	**$58,651**	**$44,720**
CUMULATIVE NET CASH FLOW	$47,736	$82,980	$120,463	$160,143	$201,971	$441,390	$725,007	$1,041,819	$1,377,193	$1,712,090	$2,022,152	$2,276,613
DEFERRED DEVELOPER FEE BALANCE	$80,123	$44,879	$7,396	$0	$0	$0	$0	$0	$0	$0	$0	$0
DCR ON UNDERWRITTEN DEBT (Must-Pay)	1.21	1.16	1.17	1.18	1.19	1.23	1.27	1.29	1.30	1.29	1.26	1.20
EXPENSE/EGI RATIO	53.80%	55.61%	56.11%	56.61%	57.11%	59.72%	62.45%	65.33%	68.34%	71.51%	74.83%	78.32%

October 17, 2016

VIA EMAIL: laura.debellas@tdhca.state.tx.us

Ms. Laura Debellas
Asset Manager
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

Re: Request for HOME loan modification and LURA Amendment for Trails at Carmel Creek (TDHCA# 13201)
300 Carl Stern Drive, Hutto, TX 78634 Williamson County

Dear Ms. Debellas:

Please accept this letter as a formal request to modify the HOME loan terms and the HOME LURA for the above named housing tax credit development. We request that modifications be executed to reflect the same amortization and term as a HUD loan, which is 35 years, and to state that the HOME loan will be repaid out of available cash flow as HUD requires. We have previously provided you with the 223(f) firm commitment and the amendment to the firm commitment which reflect a loan amount of $3,812,200, a 35-year amortization and an interest rate of approximately 3.10%.

As background for this request, DMA applied for a HUD223(f) permanent loan and take advantage of the current low interest rates and a longer amortization period in order to cover significant construction costs overruns. As stated above, we already have a firm commitment from HUD, and approval of this request directly impacts our ability to rate lock and close on our financing. We believe that the permanent loan term reduces the risk to the TDHCA HOME loan, and improves the long-term financial stability of the Trails at Carmel Creek.

If you have any questions or require additional information, please do not hesitate to contact me at (512) 328-3232 x 4514 or valentind@dmacompanies.com.

Sincerely,

DMA Development Company, LLC

Valentin DeLeon
Project Manager

FHA Section 223(f) Proposal - All Terms Subject to HUD Approval

Date	October 4, 2016
Originator	Ray Miller
Underwriter	Marsha Goff
Analyst	

Valuation NOI (as-market)	$358,914	Cap Rate	5.50%
Value Estimate (as-market)	$5,860,000	P/U:	$96,066
LTV	65.05%		
Underwritten NOI	$225,838	DSCR (with MIP)	1.18

Property Information	
Property Name	Trails at Carmel Creek
Street Address	300 Carl Stern Blvd.
City, State, Zip	Hutto, TX
ZIP	78634
Units	61
Year Built	2015
Property Type	Elevator

Loan Sizing Constraints		
85.00%	of Value	4,981,000
1.18	UW DSCR	3,812,200
217%	of Statutory Unit Limits	9,596,800
100%	Cost (excl. subordinated debt)	6,490,800
80%	of Value (Cash Out)	Not Permitted
	Loan Request	max
	Maximum Loan Amount	3,812,200

Loan Structure & Payment	
Loan Amount	**3,812,200**
Loan Term (years)	35
Amortization (years)	35
Mortgage Rate	**3.10%**
MIP	0.35%
DS Constant excluding MIP	4.69%
Monthly P&I Payment	$14,885
Annual P&I Payment	$178,618
DS Constant including MIP	5.04%
Monthly Payment w/MIP	$15,997
Annual Payment w/MIP	$191,961

Sources & Uses			
First Mortgage	$	3,812,200	
Pre-paid Items	$	-	
HOME Loan Subordinated	$	-	Requires HUD Form Surplus Cash Note
Equity (to) / from Borrower	$	2,678,682	Assumes TC Eq pay down of 1st mrtg
Total Sources	**$**	**6,490,882**	
Construction Loan	$	5,614,649	
HOME Loan	$	-	Will require subordination or payoff
Sponsor Loan	$	600,000	Amount per equity package
Critical Repairs	$	-	$0 per unit
Non-Critical Repairs	$	-	$0 per unit
HUD Mtg Insurance	$	38,122	1.00% of mtg
HUD Exam Fee	$	11,437	0.30% of mtg
Financing Fee	$	76,244	2.00% of mtg
GNMA Fee	$	1,100	0.03% of mtg
HUD Inspection Fee	$	1,830	1% of Repairs or $30/unit or $1,500
Survey	$	5,000	Estimated
Title & Recording	$	15,000	Estimated
Borrower Legal	$	20,000	Estimated
Organizational (Reports)	$	19,000	Estimated
Processing Fee	$	7,500	
Initial Deposit to Reserves	$	61,000	$1,000 per unit
Lender Legal	$	20,000	Estimated; actual TBD at closing
Other	$	-	
Total Mortgageable Uses	**$**	**6,490,882**	
20% Repair Escrow	$	-	
Total Uses	**$**	**6,490,882**	

Notes & Conditions

Initial Deposit to Reserves is a factor of the on-going deposit to the reserve account and can be altered depending on all reserves needed for life of loan.

Repairs are not permitted from loan procees for three-year-rule waiver transactions. Any repairs identified by the PCNA analyst must be completed prior to closing at the owner's expense.

Value estimate is based on preliminary information from construction loan underwriting and ignores rent restrictions (per HUD guidelines). Subject to final Appraisal and due diligence.

Loan sizing assumes the HOME Loan is subordinated to the 223(f) first mortgage in the required HUD form of surplus cash note.

Three-Year-Rule waiver requires debt service reserve of 4-months debt service or 6 months of 85% occupancy. Sizing assumes a debt service is already funded.

1m

THIS ITEM HAS BEEN PULLED FROM THE AGENDA

BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

NOVEMBER 10, 2016

Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with another Issuer (#16439 People's El Shaddai Village, Dallas)

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for the People's El Shaddai Village, sponsored by Steele Properties Holdings, LLC, was submitted to the Department on August 26, 2016;

WHEREAS, the Certification of Reservation from the Texas Bond Review Board was issued on August 25, 2016, and will expire on January 22, 2017;

WHEREAS, the proposed issuer of the bonds is the Texas State Affordable Housing Corporation;

WHEREAS, in accordance with 10 TAC §**1**.301(d)(1), the compliance history is designated as a Medium Category 3 Portfolio and deemed acceptable by the Executive Award and Review Advisory Committee ("EARAC") after review and discussion;

WHEREAS, pursuant to 10 TAC §10.101(a)(4) of the Uniform Multifamily Rules related to Undesirable Neighborhood Characteristics, applicants are required to disclose to the Department the existence of certain undesirable characteristics of a proposed development site;

WHEREAS, the applicant has disclosed the presence of such undesirable neighborhood characteristics, specifically relating to the poverty rate, school performance, the development site is within 1,000 feet of blight and the development site is within the American Society for Testing and Materials ("ASTM") Standard search distance of five facilities within a quarter-mile that were on the Facility Index System and one Resource Conservation and Recovery Act ("RCRA") facility;

WHEREAS, the applicant did not disclose the undesirable neighborhood characteristic relating to crime; however, staff did find the site to be within 1,000 feet of a census tract where the rate of Part I violent crimes exceed the threshold allowed under the rule; and

WHEREAS, staff has conducted a further review of the proposed development site and surrounding neighborhood and based on the mitigation provided and site visit recommends the proposed site be found eligible under 10 TAC §10.101(a)(4) of the Uniform Multifamily Rules;

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of $443,147 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for the People's El Shaddai Village is hereby approved as presented to this meeting.

BACKGROUND

General Information: The People's El Shaddai Village is located at 2836 E. Overton Road, Dallas, Dallas County, and consists of the acquisition and rehabilitation of 100 units, 10 of the units will be rent and income restricted at 30% of the Area Median Family Income ("AMFI") and the remaining 90 units will be rent and income restricted at 60% AMFI. The development is currently 100% occupied and operating under the Project Based Section 8 Housing Assistance Program, will serve the general population and conforms to current zoning. The structures were originally constructed in 1970 and are in need of modernization. The census tract (0088.02) has a median household income of $19,742, is in the fourth quartile, and has a poverty rate of 45%.

Site Analysis: The presence of undesirable neighborhood characteristics under §10.101(a)(4) requires additional site analysis and considering the nature and extent of the undesirable characteristics disclosed prompted a site visit by staff which occurred on October 12, 2016. Those characteristics attributable to the People's El Shaddai Village include the following: poverty rate above 40%, presence of blight within 1,000 feet of the proposed site, schools within the attendance zone that have not achieved Met Standard, within 1,000 feet of a census tract with a crime rate that exceeds 18 per 1,000 persons annually, and environmental findings.

Poverty

The development is located in a census tract that has a poverty rate of 45% which exceeds the threshold of 40% allowed under 10 TAC §10.101(a)(4). Staff found the neighborhood to be primarily older single family residential structures. According to Neighborhoodscout, the majority of the homes (82%) were built between 1940 and 1969 and the median home value is $62,874. In the last 12 months there was an average annual appreciation rate of 9.36%. Information provided by the applicant indicated that over the past 10 years there has been a steady increase in property values for several properties in the neighborhood, suggesting positive momentum in the area. Additional information provided by the applicant discussed the proximity of this development to new investment in the area around the Lancaster Corridor that includes a market rate multifamily development and an ongoing expansion of the Dallas VA Medical Center. This new development is spurred by the City of Dallas Lancaster Corridor Community Revitalization Plan, the boundaries of which are within ½ mile of the proposed development. It is worth noting that this census tract contains another multifamily development, St. James Place, considered a sister property to People's El Shaddai, and also on the agenda today for consideration of a Determination Notice of 4% credits. It is possible that the combination of these two properties, the only two multifamily properties in the census tract, both of which are operating under a Project Based Section 8 contract from HUD, are affecting the overall poverty rate in the tract.

Blight

The applicant disclosed the presence of two properties, a former gas station and a single family residence, in proximity to People's El Shaddai that do not appear to be occupied. The property taxes are current on the former gas station and partial payments have been made on the single family residence. While a specific plan for these properties has not been identified staff does not believe their presence is severe such that the

neighborhood is affected considering they do not appear to be vandalized and staff observed work being done at the former gas station. A letter provided by Councilwoman Arnold, who represents the district for People's El Shaddai, indicated that this neighborhood is experiencing positive growth and the rehabilitation of this development will allow the positive momentum to continue.

School

The schools in the attendance of the proposed development include W.W. Bushman Elementary, Sarah Zumwalt Middle School and South Oak Cliff High School. Based on the 2015 Texas Education Agency Accountability Ratings, the middle and high school failed to achieve Met Standard. In reviewing the 2016 Accountability Ratings released by TEA in August 2016, both of these schools, along with W.W. Bushman Elementary, achieved the Met Standard rating. Staff believes that considering the more recent rating, this undesirable neighborhood characteristic is considered mitigated and no further information was necessary.

Environmental

The Environmental Site Assessment ("ESA") noted the presence of five facilities within a quarter-mile that were on the Facility Index System and one RCRA facility within the same distance. In the professional opinion of the ESA provider, these facilities were located beyond the subject and adjoining property and not considered a recognized environmental concern. Moreover, no additional assessments were required or recommended.

Crime

The development is located in a census tract where the rate of Part I violent crime is 15.18 per 1,000 persons annually which conform to the threshold allowed under the rule. Although not initially disclosed by the applicant, but which they later confirmed, the site is within 1,000 feet of a census tract (86.04) where the rate of Part I violent crimes is 34 per 1,000 persons annually. Information provided by the applicant relative to this undesirable neighborhood characteristic, indicated that the majority of crime in the neighboring census tract occurs on or to the east of Bonnie View Boulevard, a four-lane road. The applicant indicated, and staff believes it is entirely plausible, that Bonnie View Boulevard acts as a natural neighborhood divider that separates the crime from this particular development. A letter from Officer Shelton of First Defense Protection and Investigation, who patrols this property, was submitted that indicated most of the crime in the area surrounding this development is experienced along Bonnie View Boulevard, east of the proposed development. Moreover, Officer Shelton indicated that crime over the recent years has been trending down and further believed that the rehabilitation of People's El Shaddai will continue this trend.

As it relates to crime and worth highlighting is the security and safety measures the applicant has proposed for this development. These include a budget of over $200,000 to be spent on security improvements that include the following: security camera surveillance, LED exterior lighting, and new smart key energy star-exterior doors. This budget is nearly double what the existing owner currently spends even when factoring in the budget of the sister property, St. James Place. While the current owner uses a third party security vendor, the applicant has indicated they will likely replace the existing company with the City of Dallas Police Department to employ off-duty police to patrol the properties on a regular basis. The applicant has indicated that it has been their experience that the presence of off-duty police has been a great deterrent to criminal activity.

The Board may, pursuant to 10 TAC §10.101(a)(4), find a development site eligible despite the existence of undesirable neighborhood characteristics provided the development site is consistent with achieving at least one of the following goals. While only one of these goals is required to be met, the rule allows the Board to consider all of them.

- "Preservation of existing occupied affordable housing units that are subject to existing federal rent or income restrictions;

- Factual determination that the undesirable characteristic that has been disclosed are not of such a nature or severity that they should render the Development Site ineligible based on mitigation efforts as established under subparagraph (D) of this paragraph; or

- The Development is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order, as such documentation is provided by the Applicant as part of the disclosure."

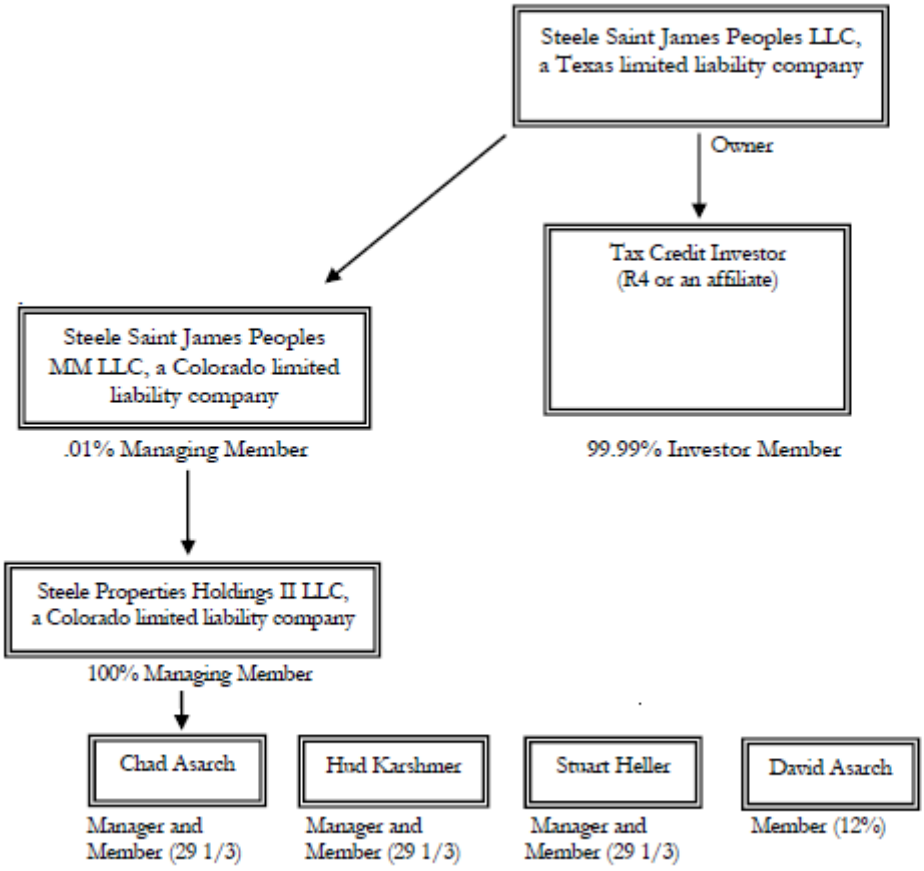
After reviewing all of the information provided, staff believes the concern relative to the poverty rate is mitigated based on the increase in property values and new investment in the area. The Improvement Required status of the middle and high school is mitigated based on the updated 2016 Accountability Ratings. Moreover, staff believes that the presence of the two blighted properties that were disclosed are not of a severity that they are affecting the overall condition of the neighborhood. The ESA concern is mitigated based on the professional opinion expressed by the ESA provider and the crime in the area is mitigated based on the location of where the criminal activity seems to be occurring, along with the statements by Officer Shelton. Moreover, the safety and security plan proposed by the applicant which they've represented to have an effect on deterring criminal activity at their other developments are all acceptable mitigation allowed under the rule. Staff believes that considering the aforementioned characteristics and mitigation provided that, while they meet the first criterion of being preservation with existing rent and income restrictions, of additional importance is the second criterion in that the undesirable characteristics are not of a nature and severity that should render the site ineligible under 10 TAC §10.101(a)(4) of the Uniform Multifamily Rules.

Organizational Structure: The Borrower is Steele Saint James Peoples, LLC, and includes the entities and principals as illustrated in Exhibit A. The applicant is considered a medium Category 3 portfolio and the previous participation was deemed acceptable by EARAC on October 31, 2016, after review and discussion. EARAC also reviewed the proposed financing and the underwriting report, and recommends issuance of a Determination Notice.

Public Comment: The Department has received letters of support from State Senator Royce West, State Representative Toni Rose, City of Dallas Councilwoman Carolyn King Arnold, and John Shelton with First Defense Protection and Investigation.

In response to action taken by the City of Dallas in adopting a Resolution of No Objection, a threshold requirement for 4% HTC applications, the Department received, in August 2016, a complaint that was filed by Craig MacKenzie and Curtis Lockey with the U.S. Department of Housing and Urban Development asserting a violation of the Fair Housing Act. Moreover, staff became aware of a letter of opposition that was filed with the City of Dallas by Daniel & Beshara, P.C., who was representing Inclusive Communities Project ("ICP") opposing the developments and requesting that the resolution be denied. Subsequent to the City of Dallas adopting the Resolution of No Objection ICP submitted a follow-up letter to the City of Dallas. Staff has included all three letters herein and notes that neither the Daniel & Beshara letter nor the ICP letter were submitted to the Department directly in response to the housing tax credit application.

EXHIBIT A


Steele Saint James Peoples LLC, a Texas limited liability company
Owner
Tax Credit Investor (R4 or an affiliate)
Steele Saint James Peoples MM LLC, a Colorado limited liability company
.01% Managing Member
99.99% Investor Member
Steele Properties Holdings II LLC, a Colorado limited liability company
100% Managing Member
Chad Asarch
Manager and Member (29 1/3)
Hnd Karshmer
Manager and Member (29 1/3)
Stuart Heller
Manager and Member (29 1/3)
David Asarch
Member (12%)

APPLICATION SUMMARY

REAL ESTATE ANALYSIS DIVISION
November 2, 2016

PROPERTY IDENTIFICATION	
Application #	16439
Development	People's El Shaddai
City / County	Dallas / Dallas
Region/Area	3 / Urban
Population	General
Set-Aside	General
Activity	Acquisition/Rehab (Built in 1969)

RECOMMENDATION					
TDHCA Program	Request	Approved			
LIHTC (4% Credit)	$443,147	$443,147	$4,431/Unit	$1.13	
	Amount	Rate	Amort	Term	Lien
Private Activity Bonds					
MDLP (Repayable)					
MDLP (Non-Repayable)					
CHDO Expenses	$0				

KEY PRINCIPAL / SPONSOR		
Chad Asarch		
Hud Karshmer		
Stuart Heller		
David Asarch		
R4 Capital Funding (Equity and Lender)		
TSAHC (Bond Issuer)		
Related-Parties	Contractor - No	Seller - No

TYPICAL BUILDING ELEVATION/PHOTO

SITE PLAN

UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	10	10%
1	20	20%	40%	-	0%
2	20	20%	50%	-	0%
3	30	30%	60%	90	90%
4	30	30%	MR	-	
TOTAL	100	100%	TOTAL	100	100%

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		TDHCA's Pro Forma	
Debt Coverage	1.35	Expense Ratio	52.1%
Breakeven Occ.	83.3%	Breakeven Rent	$896
Average Rent	$1,023	B/E Rent Margin	$127
Property Taxes	$1,118/unit	Exemption/PILOT	0%
Total Expense	$6,115/unit	Controllable	$3,381/unit

MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)			0.9%
Highest Unit Capture Rate	4%	4 BR/60%	#N/A
Dominant Unit Cap. Rate	1%	3 BR/60%	30
Premiums (↑60% Rents)	N/A		N/A
Rent Assisted Units	100	100% Total Units	

DEVELOPMENT COST SUMMARY			
Costs Underwritten	TDHCA's Costs - Based on PCA		
Avg. Unit Size	864 SF	Density	15.8/acre
Acquisition		$68K/unit	$6,750K
Building Cost	$32.78/SF	$28K/unit	$2,834K
Hard Cost		$34K/unit	$3,352K
Total Cost		$140K/unit	$14,044K
Developer Fee	$1,610K	(20% Deferred)	Paid Year: 3
Contractor Fee	$431K	30% Boost	Yes

REHABILITATION COSTS / UNIT					
Site Work	$1K	2%	Finishes/Fixtures	$17K	51%
Building Shell	$9K	28%	Amenities	$2K	5%
HVAC	$K	1%	Total Exterior	$11K	34%
Appliances	$2K	5%	Total Interior	$19K	57%

DEBT (Must Pay)				
Source	Term	Rate	Amount	DCR
R4 Capital Funding	17/40	4.10%	$8,200,000	1.35
TOTAL DEBT (Must Pay)			$8,200,000	

CASH FLOW DEBT / GRANT FUNDS				
Source	Term	Rate	Amount	DCR
NOI During Development	0/0	0.00%	$531,580	1.35
CASH FLOW DEBT / GRANTS			$531,580	

EQUITY / DEFERRED FEES	
Source	Amount
R4 Equity Investor	$4,995,979
Steele Properties II LLC	$316,557
TOTAL EQUITY SOURCES	$5,312,536
TOTAL DEBT SOURCES	$8,731,580
TOTAL CAPITALIZATION	$14,044,116

CONDITIONS

1 Receipt and acceptance by Cost Certification:

a: HUD approval of the HAP Contract with underwritten rents.

b: Documentation clearing environmental issues contained in the ESA report, specifically:

i: that the identified asbestos-containing materials are being managed in accordance with the updated Asbestos Operations and Maintenance (O&M) program.

ii: that any mold identified is alleviated consistent with USEPA, Texas Mold Assessment and Remediation Rules and National Multi Housing Council (NMHC) guidelines.

iii: that any leaks and subsequent water damage were repaired with the rehabilitation.

iv: that a noise study be conducted and that the development be rehabilitated in accordance withHUD noise guidelines.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

BOND RESERVATION / ISSUER

Issuer	Texas State Affordable Housing Corp
Expiration Date	1/21/2017
Bond Amount	$10,650,000
BRB Priority	Priority 3
Expected Close	N/A
Bond Structure	Private Placement

RISK PROFILE

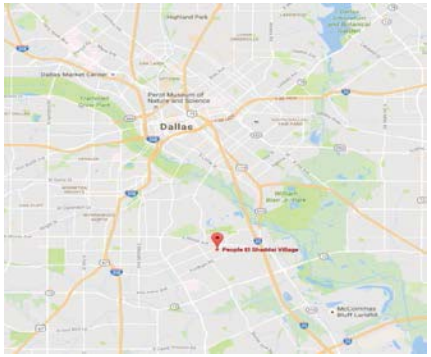
STRENGTHS/MITIGATING FACTORS

- Development has been in operation since 1970
- Section 8 project based HAP Contract on all units

WEAKNESSES/RISKS

- General area has dilapidated housing
- All units have just 1 bathroom each.

AREA MAP



AERIAL PHOTOGRAPH(s)

The Senate of The State of Texas

SENATE COMMITTEES:

VICE CHAIR
Higher Education

MEMBER
Administration
Education
Finance

Senator Royce West
District 23

President Pro Tempore
2006

DISTRICT OFFICE:
5787 South Hampton Road
Suite 385
Dallas, Texas 75232
214/467-0123
Fax: 214/467-0050

DISTRICT OFFICE:
2612 Main Street, Suite 100
Dallas, Texas 75226
214/741-0123
Fax: 214/749-7830

CAPITOL OFFICE:
P.O. Box 12068
Austin, Texas 78711
512/463-0123
Fax: 512/463-0299
Dial 711 for Relay Calls

August 16, 2016

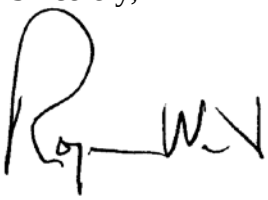
Mr. Paul Moore.
Acquisitions Manager
Steele Properties LLC
6875 E. Evans Ave.
Denver, CO 80224

Dear Mr. Moore,

I received the Public Notification for Steele Properties, LLC located in Denver, Colorado and in District 23, which I represent. I respectfully offer my support for Texas Department of Housing and Community Affairs Credit application for Peoples El Shaddai Village and St. James Manor located in Dallas, in District 23, which I represent.

There is a need for housing that is affordable to citizens of modest means and I believe this development will help fulfill that need. Because of that, I am pleased to lend my support to this Development which will serve the constituents in my District.

Sincerely,



Royce West
State Senator
District 23

TONI ROSE

STATE REPRESENTATIVE • DISTRICT 110

July 19, 2016

Mr. Paul Moore
Acquisitions Manager
Steele Properties LLC
6875 E. Evans Ave.
Denver, CO 80224

Dear Mr. Moore:

As the State Representative to Texas House District 110, I am pleased that your organization is pursuing the rehabilitation of Peoples El Shaddai Village and Saint James Manor Apartments. The project provides our local citizens with a safe and comfortable rental environment to raise families, reside and retire. I would like to express my full support of your application to the agencies outlined below for tax credits and bond allocation to support the development.

I am glad to know that the transaction will result in over $7.0 Million in rehabilitation – a needed investment that will revitalize this community.

I understand that Steele Properties, LLC will leverage different resources to make this needed preservation and rehabilitation possible, including:

- An application to the Texas Department of Housing & Community Affairs (TDHCA) for an allocation of Federal Low Housing Income Housing Tax Credits
- An application to the Texas State Affordable Housing Corporation (TSAHC) for an allocation of bonds to support the project

Again, I am very supportive of your application and proposed development plans. Please keep me apprised of your development progress.

Sincerely,

Toni Rose

Toni Rose
State Representative
District 110

CAPITOL OFFICE: P.O. BOX 2910 • AUSTIN, TEXAS 78768-2910 • PHONE (512) 463-0664 • FAX (512) 463-0476
DISTRICT OFFICE: 3730 SOUTH LANCASTER ROAD, SUITE 140 • DALLAS, TEXAS 75216 • PHONE (214) 371-3300 • FAX (214) 371-3304
DISTRICT OFFICE: 12450 ELAM ROAD • BALCH SPRINGS, TEXAS 75180 • (972) 286-5756 • FAX (214) 371-3304

TONI.ROSE@HOUSE.STATE.TX.US

Carolyn King Arnold
Councilwoman - District 4

Veterans Task Force - Chair
Housing Committee - Vice Chair
Economic Development Committee
Arts, Culture, and Libraries Committees

DALLAS CITY HALL
1500 MARILLA ST 5ES
DALLAS, TEXAS 75201
Carolyn.kingarnold@dallascityhall.com
214 670 0781

October 19, 2016

Texas Department of Housing Community Affairs
221 E. 11th Street
Austin, Texas 78701

Subject: Peoples El Shaddai Village & Saint James Manor (200 Units) 4% Federal Low Income Tax Credits
2836 E. Overton Rd & 3119 Easter Ave Dallas, TX 75216

To Whom It May Concern:

I am happy to provide a letter of support for the Steele / Monroe teams in connection with the rehabilitation of Peoples El Shaddai Village and Saint James Manor. As evidenced by several recent actions, such as the *Growth South* Initiative, the neighborhood surrounding Peoples El Shaddai Village and Saint James Manor is in the process of resurgence. The proposed rehabilitation of these properties will enable this process to continue to take effect. It is my fervent commitment to District 4 that, as the gentrification evolves in the southern sector, there will be executed plans and resources dedicated to the neighborhoods allowing for existing families to flourish in their communities. This commitment was evidenced by the City of Dallas in the recent City of Dallas Resolution supporting these properties.

The residents who live at these two properties are in dire need of help to improve their homes. Without this rehabilitation these properties will continue to deteriorate and the residents will be the ones who suffer. It is not only in the interest of the residents but of the surrounding community to have these properties rehabilitated, affordable properties preserved, and keep progress moving in the right direction. The residents have repeatedly expressed their support for this project and even traveled to City Hall to voice their opinion at the City Council Meeting.

This rehabilitation will serve as a catalyst for future growth in the area and in effect result in a better quality of life for the community for years to come. I am very pleased that Monroe is proposing to take over management of these properties and believe that their proactive style of property management and in depth resident involvement will ensure these properties continue to thrive long after the rehabilitation is complete. I urge your support of the preservation of these properties.

Sincerely,

Carolyn King Arnold

BUS 469-570-2814 • 9550 Forest Ln Ste 603• Dallas, Texas 75243

October 19, 2016
John Shelton (CEO)
First Defense Protection and Investigation

Re: Peoples El Shaddai Village & Saint James Manor: (200 Units) 4% Federal Low Income Tax Credits
2836 E. Overton Rd & 3119 Easter Ave
Dallas, TX 75216

To Whom It May Concern:
I am happy to provide a letter of support for the Steele / Monroe teams in connection with the rehabilitation of Peoples El Shaddai Village and Saint James Manor. As a security officer that is onsite at the properties regularly, I am pleased to report that crime in the neighborhood surrounding these properties has been trending down in recent years. I am confident the proposed rehabilitation will help continue this trend.

The presence of third-party contracted security officers has helped reduce crime by detracting unwanted visitors, who are responsible for the majority of the crime, from accessing the site. Steele's proposed plan to increase the annual security budget by approximately 20% will go a long way towards improving the current security measures at the property and would enable security officers to more thoroughly patrol and monitor the properties in order to minimize criminal activity.

It is important to note that most of the crime in the area surrounding Peoples El Shaddai Village is centered along Bonne View Blvd, which serves as a natural neighborhood divider. Thus, it is very infrequent that criminal activity on the east side of Bonne View Blvd crosses this border affecting the subject property.

The combination of an increased annual security budget and physical security improvements through the rehab will help continue our efforts to mitigate crime at the properties. As such, I am very supportive of the Steele / Monroe teams proposed rehabilitation of Peoples El Shaddai and Saint James Manor.

Sincerely,

John Shelton
Chief Executive Officer
First Defense Protection and Investigation

Housing Discrimination Complaint

Filed With:

Mr. Garry L. Sweeney, Director

Fort Worth Regional Office of Fair Housing and Equal Opportunity, Region VI

U.S. Department of Housing and Urban Development

801 Cherry Street, Unit #45, Suite 2500

Fort Worth, Texas 76102

Filed On: August 9, 2016

Pursuant to The Fair Housing Act (42 U.S.C. §3610(a)(1)(A)) and the implementing regulations (24 C.F.R. §103.30), the undersigned file this Housing Discrimination Complaint against the City of Dallas, Texas for violations of the non-discrimination provisions of the Fair Housing Act (42 U.S.C. §§ 3604, 3605, 3606, 3607).

1. On August 3, 2016, the Dallas City Council authorized by "no objection" and approved (hereafter "August 3rd actions") Agenda Items 3 (Peoples El Shaddai Village, 2836 East Overton Road, Dallas, Texas, and St. James Manor Apartments, 3119 Easter Avenue, Dallas, Texas), 4 (Silver Gardens Apartments, 2620 Ruidosa Avenue, Dallas, Texas), and 5 (Skyline Place Apartments, 4700 Wimbleton Way, Dallas, Texas) (See 8-3-16 City Council Agenda, available at: http://dallascityhall.com) all concerning applications to the Texas Department of Housing and Community Affairs for 4% Tax Credits and other forms of financing for the rehabilitation of low-income multifamily housing projects.

2. HUD's new AFFH regulation emphasizes that a participant's AFFH obligation is not bounded by what it can do with the HUD funds it has received: The duty to affirmatively further fair housing extends to all of a program participant's activities and programs relating to housing and urban development," including those supported with non-Federal funds. (80 Fed. Reg. 42272, 42353, July 16, 2015).

3. The City's August 3rd actions violate the non-discrimination provisions of the Fair Housing Act because the City is using methods of administration which have the effect of subjecting persons to discrimination based on race, national origin, and disability, perpetuating segregation within the City.

4. The geographic locations of the low income multifamily projects described in the City Council Agenda items all lie within the City's Southern Sector, an area well-known to exhibit poverty, low opportunity, high crime rates, high minority populations, poor services, and a high concentration of the City's existing low income housing stock. The City's August 3rd actions encouraging, incentivizing, and approving the rehabilitation of low income housing in these segregated neighborhoods, while ignoring locations of higher opportunity within the City of Dallas, violates the spatial de-concentration goals and objectives at Title 42, Chapter 69, Section 5301, and promote further segregation in the City of Dallas by depriving the occupants of the low income multifamily projects of higher opportunities, and subjecting the low income occupants to another 30 years of living in poverty.

5. The City's August 3rd actions do not comport with the November 5, 2014 Voluntary Compliance Agreement settlement action V.1.a):

   "A strategy, and a plan for implementation of such strategy, to encourage: (i) the development of affordable housing throughout the City, including housing for low and very low income residents; and (ii) the creation of greater economic opportunity in sectors of the City that are concentrated by poverty, through local tax abatements, economic investment and/or other incentives, and use of HUD or other federal resources. The strategy shall include actions that affirmatively further fair housing and encourage developers to partner with organizations that counsel low and very-low income persons."

   Clearly, the agreement by HUD and the City of Dallas "to encourage the development of affordable housing *throughout the City,* including housing for low and very low income residents" is not met by the City's August 3rd actions. Nor does the City's rehabilitation of these low income multifamily units satisfy "*the creation of greater economic opportunity in sectors of the City that are*

concentrated by poverty'. Finally, the City's August 3rd actions do not satisfy the City's federally mandated obligation to *"affirmatively further fair housing"* and are contrary to the goals of increasing housing choice within the City of Dallas.

6. The Secretary of HUD should conduct, as part of the investigation of this complaint, a review of the City of Dallas' current Analysis of Impediments to determine if the City's August 3rd actions are consistent with eliminating impediments to fair housing.

7. The Secretary of HUD should conduct, as part of the investigation of this complaint, a review of the City of Dallas' Civil Rights Obligations (hereafter "CRO") certifications to determine if the City's August 3rd actions render their certifications as inaccurate or void.

8. The Secretary of HUD should conduct, as part of the investigation of this complaint, a review of the City of Dallas' current Annual Action Plan to determine if the City's August 3rd actions are consistent with the HUD-approved Annual Action Plan.

9. The Secretary of HUD should conduct, as part of the investigation of this complaint, a review of the City of Dallas' current 5-year Consolidated Plan to determine if the City's August 3rd actions are consistent with the HUD-approved Consolidated Plan.

10. Inasmuch as the City of Dallas is an entitlement community and, as such, a recipient of Federal Funds, the Secretary of HUD, pursuant to 24 C.F.R. §103.5, should conduct, as part of the investigation of this complaint, the City of Dallas' compliance with "Other Civil Rights Authorities" including, but not limited to: the Fair Housing Act (42 U.S.C. § 3601-3619) including the implementing regulations (24 C.F.R Part 103), the Civil Rights Act of 1964 (42 U.S.C. § 2000d) including the implementing regulations (24 C.F.R. Part 1), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) including the implementing regulations (24 C.F.R. Part 6), Section 109 of Title I of the Housing and Community Act of 1974 (42 U.S.C. § 5309) including the implementing regulations (24 C.F.R. Part 8), and Executive Order 11063 (24 C.F.R. Part 107).

11. See Exhibit A (attached hereto) Letter from Michael Daniel supporting same.

(Complainants: contact information on file with HUD)

/s/ Craig S. MacKenzie *8-9-16*
(Contact information on file with HUD)

/s/ Curtis Lockey *8-9-16*
(Contact information on file with HUD)

DANIEL & BESHARA, P.C.
ATTORNEYS AT LAW
3301 Elm Street
Dallas, Texas 75226
(214) 939-9230
FAX (214) 741-3596
danbesh@danielbesharalawfirm.com

Michael M. Daniel

August 2, 2016
email delivery

Councilman Scott Griggs
Chair, City of Dallas City Council Housing Committee
City of Dallas
1500 Marilla Street, Room 5FN
Dallas, Texas 75201
Via U.S. Postal Mail and Email to:scott.griggs@dallascityhall.com

Re: ICP opposition to proposed no objection resolutions on 8/3/2016 City Council Briefing Agenda

Dear Councilman Griggs:

We represent The Inclusive Communities Project, Inc. (ICP). ICP opposes approval of no objection letters for the four applications on the 8/3/2016 Briefing Session Agenda. The no objection letter will have the same effect as an express approval. Either the no objection or an approval will satisfy the legal requirement that the applications not be opposed by the City. Tex. Local Gov't Code § 2306.67071(c). The basis for the opposition is set out below.

Each of the family projects and the elderly project will perpetuate racial segregation by continuing to concentrate low income housing tax credit projects in low income, minority concentrated areas marked by conditions of slum and blight. There is nothing the public record to show that the City staff took into account whether or not approving these applications would violate the Fair Housing Act or comply with the City's obligation to affirmatively further fair housing.

Each of the applications on the Council agenda are for the use of low income housing tax credits and tax exempt bonds in neighborhoods that require substantial City investment and revitalization. These conditions are likely to require justification in order to meet the Texas Department of Housing and Urban Affairs Multifamily approval rules. 10 TAC 10.101. The most current U.S. Census report states that the poverty rate for the St. James Manor and People's El Shaddai projects is 44%. People's El Shaddai is located in a City of Dallas Police Department Crime Hot Spot. The City has twice before, 2008 and 2011, refused to clear these projects for low income housing tax credits.

The Skyline Place Apartments is located between two Crime Hot Spots. It is in census

tract 122.07 which has the maximum score (4 of 4) on two of the Habitat for Humanity Blight to Light index categories (SocioEconomic, and Composite) and a 3 on the Physical conditions index. There are 102 vouchers and 119 project based vouchers in this census tract according to the HUD 2015 data.

The Silver Gardens Apartments is in census tract 127.01 which has the maximum score (4 of 4) on one of the Habitat for Humanity Blight to Light index categories (SocioEconomic) and a 3 on both the Physical conditions and Composite indexes.

Three of the sites include at least one school that does not have the TEA "Met Standard" rating for 2015.

2015 DISD School Accountability Rating

St James Manor Apts

John Neely Bryan El Improvement Required
Oliver Wendell Holmes Middle Improvement Required

People's El Shaddai

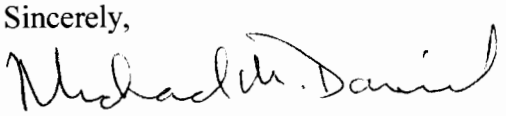
Sarah Zumwalt Middle Improvement Required
South Oak Cliff High Improvement Required

Skyline Village

Harold W. Lang Sr. Middle Improvement Required

ICP requests that the City deny the requested resolutions.

Sincerely,



Michael M. Daniel
Laura B. Beshara

cc: Bernadette Mitchell, Director Housing/Community Services Department
Demetria McCain, President ICP
Elizabeth K. Julian, Founder/Senior Counsel ICP

I·C·P inclusive communities project

August 10, 2016

Councilman Scott Griggs
Chair, City of Dallas City Council Housing Committee
City of Dallas
1500 Marilla Street, Room 5FN
Dallas, Texas 75201
Via U.S. Postal Mail and Email to: scott.griggs@dallascityhall.com

Re: City of Dallas' Support for 4% Tax Credits for 518 Units in Distressed Areas

Dear Councilman Griggs:

I am writing to follow up in light of the Dallas City Council's decision last week to support the three developers' applications for 4% tax credits to rehabilitate 518 units of low income housing in three census tracts that are appropriately characterized as high poverty tracts. On August 2, 2016, the Inclusive Communities Project (ICP) directed the Daniel & Beshara law firm to send a letter to the City regarding the developers' requests. Contrary to the City Attorney's verbal assertion during the August 3rd council briefing that Mike Daniel's letter did not include a request, it in fact did. The letter, as indicated in the subject line and opening and closing paragraphs, stated that ICP opposed the Council's approval of "no objection" letters for all four projects under consideration.

In years past, previous tax credits for two of the subject complexes have been approved by the City and used by developers in the interest of neighborhood revitalization. St. James, built in 1969, received tax credits in 1988 after having accessed other public resources under a HUD subsidy program. Peoples El Shaddai, built in 1970 has also used HUD subsidy and received tax credits in 1987. Despite the use of multiple layers of public resources towards housing, these complexes remain in distressed segregated areas that, after more than forty years, show no evidence of revitalization and have received no significant attention from the City.[1]

Of the three rehabilitation proposals that received the City's "no objection" letters last week, ICP is pleased to see the added language requiring the City to make a significant investment of non-housing resources in the neighborhoods in which these units are located. The commitment to true "revitalization" offers the City a unique opportunity to demonstrate that it is prepared to do what it takes to give the families who live in these developments (today and in the future), access to the safe, healthy, opportunity-filled communities that are available in other parts of the City and the greater metro area.

---

[1] Given the poor conditions at St. James and El Shaddai, the City's avowed desire to clamp down on slum landlords appears at odds with its failure to go after HUD for the conditions to which tenants have been subjected at these apartments for years. Unfortunately, these conditions and these developments are not isolated situations.

While ICP's mission is to expand housing opportunities for low income families outside of neighborhoods of distress, blight and high poverty, we believe that people who either choose to remain in or are confined to those neighborhoods due to lack of opportunities elsewhere. should have the same quality of life that is found in better resourced parts of our community. The City's decision regarding these three developments and the neighborhoods in which they are located give us all a chance to see what can be done in this regard. The families who will be living in these communities now and the future deserve no less.

However, ICP continues to be concerned about the lack of low income housing investment outside of high-poverty, blighted, segregated areas. We hope the City will as vigorously support qualified developers who propose the use of tax credits and other public resources for units outside of the distressed segregated areas of the City as they did those on August 3rd. Einstein is often quoted has having said that "madness is doing the same thing over and over and expecting a different outcome". ICP yearns to see the day when the use of public resources no longer perpetuate segregation and result in actual improvements for Dallas area residents.

Sincerely,

Demetria L. McCain
President
dmccain@inclusivecommunities.net

CC: Bernadette Mitchell, Director, Housing/Community Services, City of Dallas
Elizabeth K. Julian, Founder & Senior Counsel, ICP
Daniel & Beshara, P.C.

BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

NOVEMBER 10, 2016

Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with another Issuer (#16440 St. James Manor, Dallas)

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for the St. James Manor, sponsored by Steele Properties Holdings, LLC, was submitted to the Department on August 26, 2016;

WHEREAS, the Certification of Reservation from the Texas Bond Review Board was issued on August 25, 2016, and will expire on January 22, 2017;

WHEREAS, the proposed issuer of the bonds is the Texas State Affordable Housing Corporation;

WHEREAS, pursuant to 10 TAC §10.101(a)(4) of the Uniform Multifamily Rules related to Undesirable Neighborhood Characteristics, applicants are required to disclose to the Department the existence of certain undesirable characteristics of a proposed development site;

WHEREAS, the applicant has disclosed the presence of such undesirable neighborhood characteristics, specifically relating to the poverty rate, school performance, and the development site is within the American Society for Testing and Materials ("ASTM") Standard search distance of a property listed on the State's Voluntary Cleanup Program list;

WHEREAS, the applicant did not disclose the undesirable neighborhood characteristic relating to crime; however, staff did find the site to be within 1,000 feet of a census tract where the rate of Part I violent crimes exceed the threshold allowed under the rule; and

WHEREAS, staff has conducted a further review of the proposed development site and surrounding neighborhood and based on the mitigation provided and site visit recommends the proposed site be found eligible under 10 TAC §10.101(a)(4) of the Uniform Multifamily Rules;

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of $440,601 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for the St. James Manor is hereby approved as presented to this meeting.

BACKGROUND

General Information: St. James Manor is located at 3119 Easter Avenue, Dallas, Dallas County, and consists of the acquisition and rehabilitation of 100 units, 10 of the units will be rent and income restricted at 30% of the Area Median Family Income ("AMFI") and the remaining 90 units will be rent and income restricted at 60% AMFI. The development is currently 99% occupied and operating under the Project Based Section 8 Housing Assistance Program, will serve the general population and conforms to current zoning. The structures were originally constructed in 1969 and are in need of modernization. The census tract (0088.02) has a median household income of $19,742, is in the fourth quartile, and has a poverty rate of 45%.

Site Analysis: The presence of undesirable neighborhood characteristics under §10.101(a)(4) of the Uniform Multifamily Rules requires additional site analysis and considering the nature and extent of the undesirable characteristics disclosed prompted a site visit by staff which occurred on October 12, 2016. Those characteristics attributable to St. James Manor include the following: poverty rate above 40%, schools within the attendance zone that have not achieved Met Standard, within 1,000 feet of a census tract with a crime rate that exceeds 18 per 1,000 persons annually, and environmental findings.

Poverty

The development is located in a census tract that has a poverty rate of 45% which exceeds the threshold of 40% allowed under 10 TAC §10.101(a)(4). Staff found the neighborhood to be primarily older single family residential structures. According to Neighborhoodscout, the majority of the homes (82%) were built between 1940 and 1969 and the median home value is $62,874. In the last 12 months there was an average annual appreciation rate of 9.36%. Information provided by the applicant indicated that over the past 10 years there has been a steady increase in property values in the neighborhood, suggesting positive momentum in the area. Additional information provided by the applicant discussed the proximity of this development to new investment in the area around the Lancaster Corridor that includes a market rate multifamily development and an ongoing expansion of the Dallas VA Medical Center. This new development is spurred by the City of Dallas Lancaster Corridor Community Revitalization Plan, which includes the boundaries of the proposed development. It is worth noting that this census tract contains another multifamily development, People's El Shaddai Apartments, considered a sister property to St. James Place, and also on the agenda today for consideration of a Determination Notice of 4% credits. It is entirely possible that the combination of these two properties, the only two multifamily properties in the census tract, both of which are operating under a Project Based Section 8 contract, are affecting the overall poverty rate in the tract.

Crime

The development is located in a census tract where the rate of Part I violent crime is 15.18 per 1,000 persons annually which conform to the threshold allowed under the rule. Although not initially disclosed by the applicant, but which they later confirmed, the site is within 1,000 feet of a census tract (88.01) where the rate of Part I violent crimes is 20.22 per 1,000 persons annually. Information provided by the applicant relative to this undesirable neighborhood characteristic, indicated that there was minimal crime and no violent crime within 1,000 foot radius of the proposed development in the last year. A letter from Officer Shelton of First Defense Protection and Investigation, who patrols this property, was submitted that indicated crime over the recent years has been trending down and further believed that the rehabilitation of St. James Place will continue this trend.

As it relates to crime and worth highlighting is the security and safety measures the applicant has proposed for this development. These include a budget of over $200,000 to be spent on security improvements that

include the following: security camera surveillance, LED exterior lighting, and new smart key energy star-exterior doors. This budget is nearly double what the existing owner currently spends even when factoring in the budget of the sister property, People's El Shaddai. While the current owner uses a third party security vendor, the applicant has indicated they will likely replace the existing company with the City of Dallas Police Department to employ off-duty police to patrol the properties on a regular basis. The applicant has indicated that it has been their experience that the presence of off-duty police has been a great deterrent of criminal activity.

School

The schools in the attendance of the proposed development include John Neely Bryan Elementary, Oliver Wendell Holmes Middle School and Franklin D. Roosevelt High School. The 2015 Texas Education Agency ("TEA") Accountability Ratings indicated that the elementary and middle school did not achieve the Met Standard rating. When assessing the 2016 Accountability Ratings, released by TEA in August 2016, the elementary school did achieve Met Standard; therefore, staff believes this is sufficient mitigation and nothing further is required as it relates to this school. For Oliver Wendell Holmes Middle School, which was deemed Improvement Required in 2014, 2015 and 2016 a letter was submitted from Dr. Cynthia Wilson, Chief of Staff with Dallas ISD and member of the school board, which affirmed that the steps they've implemented to reform the school curriculum, along with the appointment of qualified staff members, point to the school being on track to achieve Met Standard in 2017. Specifically, Dr. Wilson mentioned that she has direct knowledge of Oliver Wendell Holmes Middle School and believes it is reasonable to expect the campus to achieve such rating, as both teachers and staff are focusing on the performance index indicators that have prevented the school from achieving Met Standard, which include Index 3 (relating to Closing Performance Gaps) and Index 4 (Post Secondary Readiness).

Environmental

The ESA identified one property in proximity to the proposed development that was on the State's Voluntary Cleanup Program list. The property in question was a former gas station turned into a Wendy's fast food restaurant. According to the ESA provider, based on the distance and gradient position to the development site, the property does not present an environmental concern and no further assessments were required or recommended.

The Board may, pursuant to 10 TAC §10.101(a)(4), find a development site eligible despite the existence of undesirable neighborhood characteristics provided the development site is consistent with achieving at least one of the following goals. While only one of these goals is required to be met, the rule allows the Board to consider all of them.

- "Preservation of existing occupied affordable housing units that are subject to existing federal rent or income restrictions;

- Factual determination that the undesirable characteristic that has been disclosed are not of such a nature or severity that they should render the Development Site ineligible based on mitigation efforts as established under subparagraph (D) of this paragraph; or

- The Development is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order, as such documentation is provided by the Applicant as part of the disclosure."

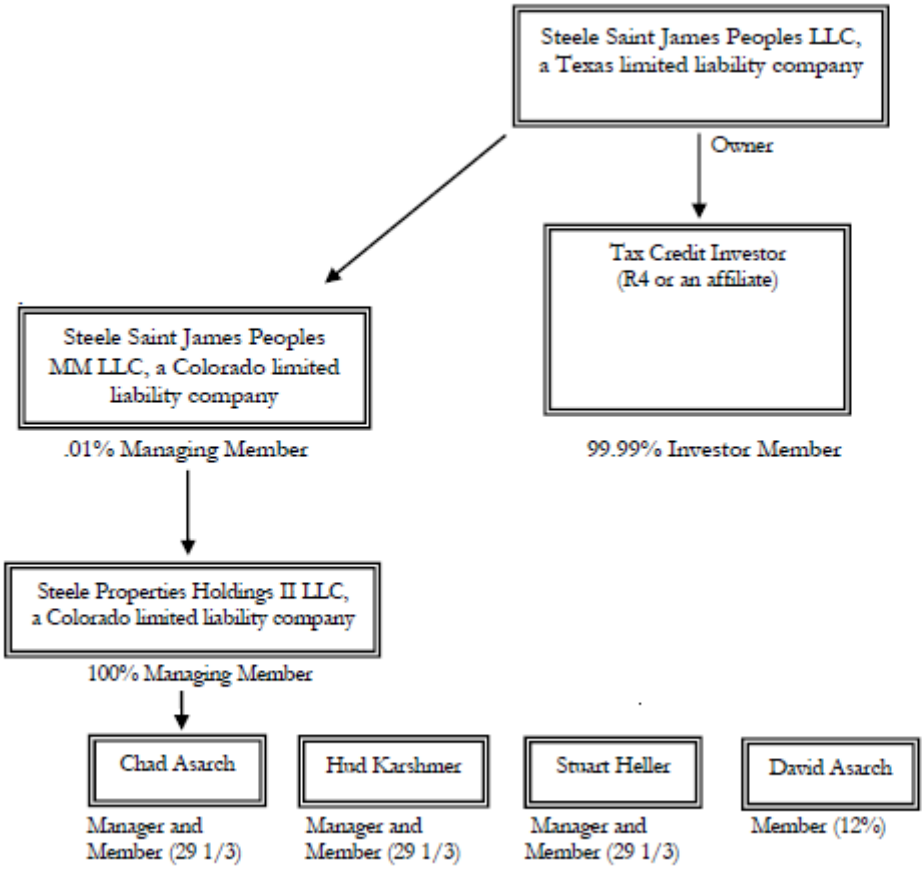
After reviewing all of the information provided, staff believes the concern relative to the Improvement Required status of Oliver Wendell Holmes Middle School is mitigated based on the professional opinion of Dr. Cynthia Wilson. The poverty rate is mitigated based on the increase in property values, new investment in the area spurred by the community revitalization plan that includes the boundaries of this development. The ESA concern is mitigated based on the professional opinion expressed by the ESA provider and the crime in the area is mitigated based on the location of where the criminal activity seems to be occurring, along with the statements by Officer Shelton. Moreover, the safety and security plan proposed by the applicant which they've represented to have an effect on deterring criminal activity at their other developments are all acceptable mitigation allowed under the rule. Staff believes that considering the aforementioned characteristics and mitigation provided that, while they meet the first criterion of being preservation with existing rent and income restrictions, of additional importance is the second criterion in that the undesirable characteristics are not of a nature and severity that should render the site ineligible under §10.101(a)(4) of the Uniform Multifamily Rules.

Organizational Structure: The Borrower is Steele Saint James Peoples, LLC, and includes the entities and principals as illustrated in Exhibit A. The applicant is considered a medium Category 3 portfolio and the previous participation was deemed acceptable by EARAC on October 31, 2016, after review and discussion. EARAC also reviewed the proposed financing and the underwriting report, and recommends issuance of a Determination Notice.

Public Comment: The Department has received letters of support from State Senator Royce West, State Representative Toni Rose, City of Dallas Councilwoman Carolyn King Arnold, and John Shelton with First Defense Protection and Investigation.

In response to action taken by the City of Dallas in adopting a Resolution of No Objection, a threshold requirement for 4% HTC applications, the Department received, in August 2016, a complaint that was filed by Craig MacKenzie and Curtis Lockey with the U.S. Department of Housing and Urban Development asserting a violation of the Fair Housing Act. Moreover, staff became aware of a letter of opposition that was filed with the City of Dallas by Daniel & Beshara, P.C., who was representing Inclusive Communities Project ("ICP") opposing the developments and requesting that the resolution be denied. Subsequent to the City of Dallas adopting the Resolution of No Objection ICP submitted a follow-up letter to the City of Dallas. Staff has included all three letters herein and notes that neither the Daniel & Beshara letter nor the ICP letter were submitted to the Department directly in response to the housing tax credit application.

EXHIBIT A


Steele Saint James Peoples LLC, a Texas limited liability company
Owner
Tax Credit Investor (R4 or an affiliate)
Steele Saint James Peoples MM LLC, a Colorado limited liability company
.01% Managing Member
99.99% Investor Member
Steele Properties Holdings II LLC, a Colorado limited liability company
100% Managing Member
Chad Asarch
Manager and Member (29 1/3)
Hnd Karshmer
Manager and Member (29 1/3)
Stuart Heller
Manager and Member (29 1/3)
David Asarch
Member (12%)

APPLICATION SUMMARY

REAL ESTATE ANALYSIS DIVISION
November 2, 2016

PROPERTY IDENTIFICATION	
Application #	16440
Development	St. James Manor
City / County	Dallas / Dallas
Region/Area	3 / Urban
Population	General
Set-Aside	General
Activity	Acquisition/Rehab (Built in 1969)

RECOMMENDATION					
TDHCA Program	Request	Approved			
LIHTC (4% Credit)	$440,601	$440,601	$4,406/Unit	$1.13	
	Amount	Rate	Amort	Term	Lien
Private Activity Bonds					
MDLP (Repayable)					
MDLP (Non-Repayable)					
CHDO Expenses					

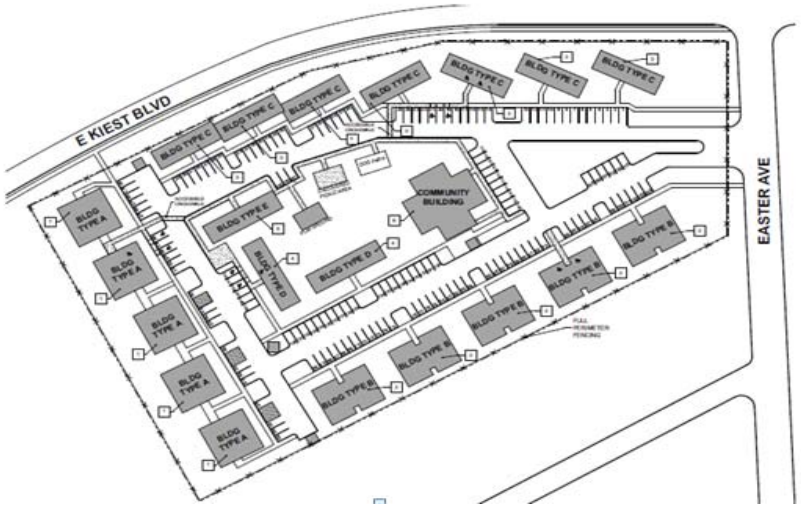
KEY PRINCIPAL / SPONSOR		
Chad Asarch		
Hud Karshmer		
Stuart Heller		
David Asarch		
Paul Moore (Developer)		
TSAHC (Bond Issuer)		
Related-Parties	Contractor - No	Seller - No

TYPICAL BUILDING ELEVATION/PHOTO

UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	10	10%
1	10	10%	40%	-	0%
2	50	50%	50%	-	0%
3	30	30%	60%	90	90%
4	10	10%	MR	-	
TOTAL	100	100%	TOTAL	100	100%

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten	Applicant's Pro Forma		
Debt Coverage	1.16	Expense Ratio	56.9%
Breakeven Occ.	89.3%	Breakeven Rent	$876
Average Rent	$932	B/E Rent Margin	$56
Property Taxes	$1,246/unit	Exemption/PILOT	0%
Total Expense	$6,073/unit	Controllable	$3,359/unit

SITE PLAN



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)	0.9%		
Highest Unit Capture Rate	2%	2 BR/60%	50
Dominant Unit Cap. Rate	2%	2 BR/60%	50
Premiums (↑60% Rents)	N/A		N/A
Rent Assisted Units	100	100% Total Units	

DEVELOPMENT COST SUMMARY			
Costs Underwritten	TDHCA's Costs - Based on PCA		
Avg. Unit Size	697 SF	Density	15.4/acre
Acquisition		$68K/unit	$6,750K
Building Cost	$40.14/SF	$28K/unit	$2,797K
Hard Cost		$34K/unit	$3,352K
Total Cost		$140K/unit	$14,033K
Developer Fee	$1,600K	(48% Deferred)	Paid Year: 10
Contractor Fee	$431K	30% Boost	Yes

REHABILITATION COSTS / UNIT					
Site Work	$1K	3%	Finishes/Fixtures	$17K	50%
Building Shell	$6K	19%	Amenities	$1K	4%
HVAC	$K	1%	Total Exterior	$9K	26%
Appliances	$2K	5%	Total Interior	$19K	56%

DEBT (Must Pay)				
Source	Term	Rate	Amount	DCR
R4 Capital Funding	17/40	4.10%	$7,800,000	1.16
TOTAL DEBT (Must Pay)			$7,800,000	

CASH FLOW DEBT / GRANT FUNDS				
Source	Term	Rate	Amount	DCR
NOI During Development	0/0	0.00%	$506,257	1.16
CASH FLOW DEBT / GRANTS			$506,257	

EQUITY / DEFERRED FEES	
Source	Amount
R4 Equity Investor	$4,967,284
Steele Properties II LLC	$759,842
TOTAL EQUITY SOURCES	$5,727,126
TOTAL DEBT SOURCES	$8,306,257
TOTAL CAPITALIZATION	$14,033,383

CONDITIONS

1 Receipt and acceptance by Cost Certification:

a: HUD approval of the HAP Contract with underwritten rents.

b: Documentation clearing environmental issues contained in the ESA report, specifically:

i: that the ongoing issues with water leaks were identified and remedied during the rehabilitation of the project.

ii: that the identified asbestos-containing materials are being managed in accordance with the updated Asbestos Operations and Maintenance (O&M) program.

iii: that a noise study be conducted and that the development be rehabilitated in accordance withHUD noise guidelines.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

BOND RESERVATION / ISSUER

Issuer	Texas State Affordable Housing Corp
Expiration Date	1/21/2017
Bond Amount	$10,650,000
BRB Priority	Priority 3
Expected Close	N/A
Bond Structure	Private Placement

RISK PROFILE

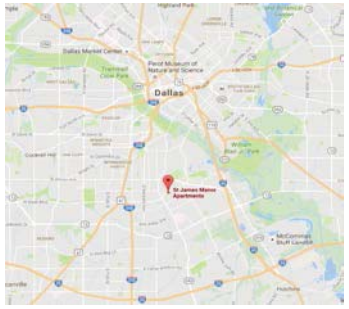
STRENGTHS/MITIGATING FACTORS

- Section 8 Project-based HAP Contract covering
- Currently 99% occupied

WEAKNESSES/RISKS

- Asbestos and mold remediation could exceed budgeted costs
- All of the units have just 1 bathroom each

AREA MAP



AERIAL PHOTOGRAPH(s)

The Senate of The State of Texas

SENATE COMMITTEES:

VICE CHAIR
Higher Education

MEMBER
Administration
Education
Finance

Senator Royce West
District 23

President Pro Tempore
2006

DISTRICT OFFICE:
5787 South Hampton Road
Suite 385
Dallas, Texas 75232
214/467-0123
Fax: 214/467-0050

DISTRICT OFFICE:
2612 Main Street, Suite 100
Dallas, Texas 75226
214/741-0123
Fax: 214/749-7830

CAPITOL OFFICE:
P.O. Box 12068
Austin, Texas 78711
512/463-0123
Fax: 512/463-0299
Dial 711 for Relay Calls

August 16, 2016

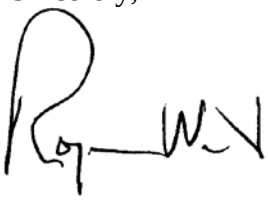
Mr. Paul Moore.
Acquisitions Manager
Steele Properties LLC
6875 E. Evans Ave.
Denver, CO 80224

Dear Mr. Moore,

I received the Public Notification for Steele Properties, LLC located in Denver, Colorado and in District 23, which I represent. I respectfully offer my support for Texas Department of Housing and Community Affairs Credit application for Peoples El Shaddai Village and St. James Manor located in Dallas, in District 23, which I represent.

There is a need for housing that is affordable to citizens of modest means and I believe this development will help fulfill that need. Because of that, I am pleased to lend my support to this Development which will serve the constituents in my District.

Sincerely,



Royce West
State Senator
District 23

TONI ROSE

STATE REPRESENTATIVE • DISTRICT 110

July 19, 2016

Mr. Paul Moore
Acquisitions Manager
Steele Properties LLC
6875 E. Evans Ave.
Denver, CO 80224

Dear Mr. Moore:

As the State Representative to Texas House District 110, I am pleased that your organization is pursuing the rehabilitation of Peoples El Shaddai Village and Saint James Manor Apartments. The project provides our local citizens with a safe and comfortable rental environment to raise families, reside and retire. I would like to express my full support of your application to the agencies outlined below for tax credits and bond allocation to support the development.

I am glad to know that the transaction will result in over $7.0 Million in rehabilitation – a needed investment that will revitalize this community.

I understand that Steele Properties, LLC will leverage different resources to make this needed preservation and rehabilitation possible, including:

- An application to the Texas Department of Housing & Community Affairs (TDHCA) for an allocation of Federal Low Housing Income Housing Tax Credits
- An application to the Texas State Affordable Housing Corporation (TSAHC) for an allocation of bonds to support the project

Again, I am very supportive of your application and proposed development plans. Please keep me apprised of your development progress.

Sincerely,

Toni Rose

Toni Rose
State Representative
District 110

CAPITOL OFFICE: P.O. BOX 2910 • AUSTIN, TEXAS 78768-2910 • PHONE (512) 463-0664 • FAX (512) 463-0476
DISTRICT OFFICE: 3730 SOUTH LANCASTER ROAD, SUITE 140 • DALLAS, TEXAS 75216 • PHONE (214) 371-3300 • FAX (214) 371-3304
DISTRICT OFFICE: 12450 ELAM ROAD • BALCH SPRINGS, TEXAS 75180 • (972) 286-5756 • FAX (214) 371-3304

TONI.ROSE@HOUSE.STATE.TX.US

Carolyn King Arnold
Councilwoman - District 4

Veterans Task Force - Chair
Housing Committee - Vice Chair
Economic Development Committee
Arts, Culture, and Libraries Committees

DALLAS CITY HALL
1500 MARILLA ST 5ES
DALLAS, TEXAS 75201
Carolyn.kingarnold@dallascityhall.com
214 670 0781

October 19, 2016

Texas Department of Housing Community Affairs
221 E. 11th Street
Austin, Texas 78701

Subject: Peoples El Shaddai Village & Saint James Manor (200 Units) 4% Federal Low Income Tax Credits
2836 E. Overton Rd & 3119 Easter Ave Dallas, TX 75216

To Whom It May Concern:

I am happy to provide a letter of support for the Steele / Monroe teams in connection with the rehabilitation of Peoples El Shaddai Village and Saint James Manor. As evidenced by several recent actions, such as the *Growth South* Initiative, the neighborhood surrounding Peoples El Shaddai Village and Saint James Manor is in the process of resurgence. The proposed rehabilitation of these properties will enable this process to continue to take effect. It is my fervent commitment to District 4 that, as the gentrification evolves in the southern sector, there will be executed plans and resources dedicated to the neighborhoods allowing for existing families to flourish in their communities. This commitment was evidenced by the City of Dallas in the recent City of Dallas Resolution supporting these properties.

The residents who live at these two properties are in dire need of help to improve their homes. Without this rehabilitation these properties will continue to deteriorate and the residents will be the ones who suffer. It is not only in the interest of the residents but of the surrounding community to have these properties rehabilitated, affordable properties preserved, and keep progress moving in the right direction. The residents have repeatedly expressed their support for this project and even traveled to City Hall to voice their opinion at the City Council Meeting.

This rehabilitation will serve as a catalyst for future growth in the area and in effect result in a better quality of life for the community for years to come. I am very pleased that Monroe is proposing to take over management of these properties and believe that their proactive style of property management and in depth resident involvement will ensure these properties continue to thrive long after the rehabilitation is complete. I urge your support of the preservation of these properties.

Sincerely,

Carolyn King Arnold

BUS 469-570-2814 • 9550 Forest Ln Ste 603• Dallas, Texas 75243

October 19, 2016
John Shelton (CEO)
First Defense Protection and Investigation

Re: Peoples El Shaddai Village & Saint James Manor: (200 Units) 4% Federal Low Income Tax Credits
2836 E. Overton Rd & 3119 Easter Ave
Dallas, TX 75216

To Whom It May Concern:
I am happy to provide a letter of support for the Steele / Monroe teams in connection with the rehabilitation of Peoples El Shaddai Village and Saint James Manor. As a security officer that is onsite at the properties regularly, I am pleased to report that crime in the neighborhood surrounding these properties has been trending down in recent years. I am confident the proposed rehabilitation will help continue this trend.

The presence of third-party contracted security officers has helped reduce crime by detracting unwanted visitors, who are responsible for the majority of the crime, from accessing the site. Steele's proposed plan to increase the annual security budget by approximately 20% will go a long way towards improving the current security measures at the property and would enable security officers to more thoroughly patrol and monitor the properties in order to minimize criminal activity.

It is important to note that most of the crime in the area surrounding Peoples El Shaddai Village is centered along Bonne View Blvd, which serves as a natural neighborhood divider. Thus, it is very infrequent that criminal activity on the east side of Bonne View Blvd crosses this border affecting the subject property.

The combination of an increased annual security budget and physical security improvements through the rehab will help continue our efforts to mitigate crime at the properties. As such, I am very supportive of the Steele / Monroe teams proposed rehabilitation of Peoples El Shaddai and Saint James Manor.

Sincerely,

John Shelton
Chief Executive Officer
First Defense Protection and Investigation

Michael Hinojosa, Ed.D.
Superintendent of Schools

Dallas Independent School District

Educating All Students For Success

October 28, 2016

Steele Properties, LLC
6875 E. Evans Ave.
Denver, CO 80224
Attention: Paul Moore

Re: Oliver Wendell Holmes Campus Turnaround Plan

To Whom It May Concern,

This letter is being provided in conjunction with an application for low-income housing tax credits for the development of Peoples El Shaddai Village and Saint James Manor. As the member of the Board of Trustees for the Dallas Independent School district, I have oversight of the Campus Turnaround Plan at Oliver Wendell Holmes Humanities/Communications Academy. As such, I believe there is a reasonable expectation that the school is on track to achieve Met Standard by 2017. The newly appointed principal, Ms. Sharon Jackson, will help assure the campus implements the turnaround appropriately and the district will be providing oversight to ensure progress is being made toward the goals outlined in the campus turnaround plan.

As an educator with long term experience in the Dallas Independent School District and with direct knowledge of Oliver Wendell Holmes, I believe it is reasonable to expect that the campus will achieve Met Standard shortly. The campus will continue to work to ensure that its educators are committed to focusing on the aspects of the curriculum mentioned in the campus turnaround plan. Specifically, teachers and staff at the school are focusing on Index 3, Closing Performance Gaps, and Index 4, Postsecondary Readiness, of the Met Performance Standards. This devotion along with the oversight of the district will allow Oliver Wendell Holmes to realize better achievement and opportunity for our students and families.

I feel that the steps we've implemented to reform the school curriculum, along with the appointment of qualified staff members, will allow Oliver Wendell Holmes to achieve the goals outlined in the campus turnaround plan. A turnaround implementation plan is also being submitted to the Dallas ISD board in November which will help facilitate the Campus Turnaround plan already in place. It is my belief that the campus will improve as a whole by the start of the 2017 school year and that the campus will continue to improve in years to come.

Sincerely,

Cynthia Wilson, Ed.D
Chief of Staff
Dallas Independent School District

3700 Ross Ave.
Dallas, TX 75204
(972) 925-3700
www.dallasisd.org

Housing Discrimination Complaint

Filed With:

Mr. Garry L. Sweeney, Director

Fort Worth Regional Office of Fair Housing and Equal Opportunity, Region VI

U.S. Department of Housing and Urban Development

801 Cherry Street, Unit #45, Suite 2500

Fort Worth, Texas 76102

Filed On: August 9, 2016

Pursuant to The Fair Housing Act (42 U.S.C. §3610(a)(1)(A)) and the implementing regulations (24 C.F.R. §103.30), the undersigned file this Housing Discrimination Complaint against the City of Dallas, Texas for violations of the non-discrimination provisions of the Fair Housing Act (42 U.S.C. §§ 3604, 3605, 3606, 3607).

1. On August 3, 2016, the Dallas City Council authorized by "no objection" and approved (hereafter "August 3rd actions") Agenda Items 3 (Peoples El Shaddai Village, 2836 East Overton Road, Dallas, Texas, and St. James Manor Apartments, 3119 Easter Avenue, Dallas, Texas), 4 (Silver Gardens Apartments, 2620 Ruidosa Avenue, Dallas, Texas), and 5 (Skyline Place Apartments, 4700 Wimbleton Way, Dallas, Texas) (See 8-3-16 City Council Agenda, available at: http://dallascityhall.com) all concerning applications to the Texas Department of Housing and Community Affairs for 4% Tax Credits and other forms of financing for the rehabilitation of low-income multifamily housing projects.

2. HUD's new AFFH regulation emphasizes that a participant's AFFH obligation is not bounded by what it can do with the HUD funds it has received: The duty to affirmatively further fair housing extends to all of a program participant's activities and programs relating to housing and urban development," including those supported with non-Federal funds. (80 Fed. Reg. 42272, 42353, July 16, 2015).

3. The City's August 3rd actions violate the non-discrimination provisions of the Fair Housing Act because the City is using methods of administration which have the effect of subjecting persons to discrimination based on race, national origin, and disability, perpetuating segregation within the City.

4. The geographic locations of the low income multifamily projects described in the City Council Agenda items all lie within the City's Southern Sector, an area well-known to exhibit poverty, low opportunity, high crime rates, high minority populations, poor services, and a high concentration of the City's existing low income housing stock. The City's August 3rd actions encouraging, incentivizing, and approving the rehabilitation of low income housing in these segregated neighborhoods, while ignoring locations of higher opportunity within the City of Dallas, violates the spatial de-concentration goals and objectives at Title 42, Chapter 69, Section 5301, and promote further segregation in the City of Dallas by depriving the occupants of the low income multifamily projects of higher opportunities, and subjecting the low income occupants to another 30 years of living in poverty.

5. The City's August 3rd actions do not comport with the November 5, 2014 Voluntary Compliance Agreement settlement action V.1.a):

   "A strategy, and a plan for implementation of such strategy, to encourage: (i) the development of affordable housing throughout the City, including housing for low and very low income residents; and (ii) the creation of greater economic opportunity in sectors of the City that are concentrated by poverty, through local tax abatements, economic investment and/or other incentives, and use of HUD or other federal resources. The strategy shall include actions that affirmatively further fair housing and encourage developers to partner with organizations that counsel low and very-low income persons."

   Clearly, the agreement by HUD and the City of Dallas "to encourage the development of affordable housing *throughout the City,* including housing for low and very low income residents" is not met by the City's August 3rd actions. Nor does the City's rehabilitation of these low income multifamily units satisfy "*the creation of greater economic opportunity in sectors of the City that are*

concentrated by poverty'. Finally, the City's August 3rd actions do not satisfy the City's federally mandated obligation to *"affirmatively further fair housing"* and are contrary to the goals of increasing housing choice within the City of Dallas.

6. The Secretary of HUD should conduct, as part of the investigation of this complaint, a review of the City of Dallas' current Analysis of Impediments to determine if the City's August 3rd actions are consistent with eliminating impediments to fair housing.

7. The Secretary of HUD should conduct, as part of the investigation of this complaint, a review of the City of Dallas' Civil Rights Obligations (hereafter "CRO") certifications to determine if the City's August 3rd actions render their certifications as inaccurate or void.

8. The Secretary of HUD should conduct, as part of the investigation of this complaint, a review of the City of Dallas' current Annual Action Plan to determine if the City's August 3rd actions are consistent with the HUD-approved Annual Action Plan.

9. The Secretary of HUD should conduct, as part of the investigation of this complaint, a review of the City of Dallas' current 5-year Consolidated Plan to determine if the City's August 3rd actions are consistent with the HUD-approved Consolidated Plan.

10. Inasmuch as the City of Dallas is an entitlement community and, as such, a recipient of Federal Funds, the Secretary of HUD, pursuant to 24 C.F.R. §103.5, should conduct, as part of the investigation of this complaint, the City of Dallas' compliance with "Other Civil Rights Authorities" including, but not limited to: the Fair Housing Act (42 U.S.C. § 3601-3619) including the implementing regulations (24 C.F.R Part 103), the Civil Rights Act of 1964 (42 U.S.C. § 2000d) including the implementing regulations (24 C.F.R. Part 1), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) including the implementing regulations (24 C.F.R. Part 6), Section 109 of Title I of the Housing and Community Act of 1974 (42 U.S.C. § 5309) including the implementing regulations (24 C.F.R. Part 8), and Executive Order 11063 (24 C.F.R. Part 107).

11. See Exhibit A (attached hereto) Letter from Michael Daniel supporting same.

(Complainants: contact information on file with HUD)

/s/ Craig S. MacKenzie *8-9-16*
(Contact information on file with HUD)

/s/ Curtis Lockey *8-9-16*
(Contact information on file with HUD)

DANIEL & BESHARA, P.C.
ATTORNEYS AT LAW
3301 Elm Street
Dallas, Texas 75226
(214) 939-9230
FAX (214) 741-3596
danbesh@danielbesharalawfirm.com

Michael M. Daniel

August 2, 2016
email delivery

Councilman Scott Griggs
Chair, City of Dallas City Council Housing Committee
City of Dallas
1500 Marilla Street, Room 5FN
Dallas, Texas 75201
Via U.S. Postal Mail and Email to:scott.griggs@dallascityhall.com

Re: ICP opposition to proposed no objection resolutions on 8/3/2016 City Council Briefing Agenda

Dear Councilman Griggs:

We represent The Inclusive Communities Project, Inc. (ICP). ICP opposes approval of no objection letters for the four applications on the 8/3/2016 Briefing Session Agenda. The no objection letter will have the same effect as an express approval. Either the no objection or an approval will satisfy the legal requirement that the applications not be opposed by the City. Tex. Local Gov't Code § 2306.67071(c). The basis for the opposition is set out below.

Each of the family projects and the elderly project will perpetuate racial segregation by continuing to concentrate low income housing tax credit projects in low income, minority concentrated areas marked by conditions of slum and blight. There is nothing the public record to show that the City staff took into account whether or not approving these applications would violate the Fair Housing Act or comply with the City's obligation to affirmatively further fair housing.

Each of the applications on the Council agenda are for the use of low income housing tax credits and tax exempt bonds in neighborhoods that require substantial City investment and revitalization. These conditions are likely to require justification in order to meet the Texas Department of Housing and Urban Affairs Multifamily approval rules. 10 TAC 10.101. The most current U.S. Census report states that the poverty rate for the St. James Manor and People's El Shaddai projects is 44%. People's El Shaddai is located in a City of Dallas Police Department Crime Hot Spot. The City has twice before, 2008 and 2011, refused to clear these projects for low income housing tax credits.

The Skyline Place Apartments is located between two Crime Hot Spots. It is in census

tract 122.07 which has the maximum score (4 of 4) on two of the Habitat for Humanity Blight to Light index categories (SocioEconomic, and Composite) and a 3 on the Physical conditions index. There are 102 vouchers and 119 project based vouchers in this census tract according to the HUD 2015 data.

The Silver Gardens Apartments is in census tract 127.01 which has the maximum score (4 of 4) on one of the Habitat for Humanity Blight to Light index categories (SocioEconomic) and a 3 on both the Physical conditions and Composite indexes.

Three of the sites include at least one school that does not have the TEA "Met Standard" rating for 2015.

2015 DISD School Accountability Rating

St James Manor Apts

John Neely Bryan El Improvement Required
Oliver Wendell Holmes Middle Improvement Required

People's El Shaddai

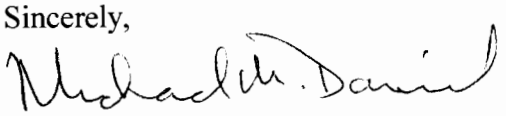
Sarah Zumwalt Middle Improvement Required
South Oak Cliff High Improvement Required

Skyline Village

Harold W. Lang Sr. Middle Improvement Required

ICP requests that the City deny the requested resolutions.

Sincerely,



Michael M. Daniel
Laura B. Beshara

cc: Bernadette Mitchell, Director Housing/Community Services Department
Demetria McCain, President ICP
Elizabeth K. Julian, Founder/Senior Counsel ICP

I·C·P inclusive communities project

August 10, 2016

Councilman Scott Griggs
Chair, City of Dallas City Council Housing Committee
City of Dallas
1500 Marilla Street, Room 5FN
Dallas, Texas 75201
Via U.S. Postal Mail and Email to: scott.griggs@dallascityhall.com

Re: City of Dallas' Support for 4% Tax Credits for 518 Units in Distressed Areas

Dear Councilman Griggs:

I am writing to follow up in light of the Dallas City Council's decision last week to support the three developers' applications for 4% tax credits to rehabilitate 518 units of low income housing in three census tracts that are appropriately characterized as high poverty tracts. On August 2, 2016, the Inclusive Communities Project (ICP) directed the Daniel & Beshara law firm to send a letter to the City regarding the developers' requests. Contrary to the City Attorney's verbal assertion during the August 3rd council briefing that Mike Daniel's letter did not include a request, it in fact did. The letter, as indicated in the subject line and opening and closing paragraphs, stated that ICP opposed the Council's approval of "no objection" letters for all four projects under consideration.

In years past, previous tax credits for two of the subject complexes have been approved by the City and used by developers in the interest of neighborhood revitalization. St. James, built in 1969, received tax credits in 1988 after having accessed other public resources under a HUD subsidy program. Peoples El Shaddai, built in 1970 has also used HUD subsidy and received tax credits in 1987. Despite the use of multiple layers of public resources towards housing, these complexes remain in distressed segregated areas that, after more than forty years, show no evidence of revitalization and have received no significant attention from the City.[1]

Of the three rehabilitation proposals that received the City's "no objection" letters last week, ICP is pleased to see the added language requiring the City to make a significant investment of non-housing resources in the neighborhoods in which these units are located. The commitment to true "revitalization" offers the City a unique opportunity to demonstrate that it is prepared to do what it takes to give the families who live in these developments (today and in the future), access to the safe, healthy, opportunity-filled communities that are available in other parts of the City and the greater metro area.

---

[1] Given the poor conditions at St. James and El Shaddai, the City's avowed desire to clamp down on slum landlords appears at odds with its failure to go after HUD for the conditions to which tenants have been subjected at these apartments for years. Unfortunately, these conditions and these developments are not isolated situations.

While ICP's mission is to expand housing opportunities for low income families outside of neighborhoods of distress, blight and high poverty, we believe that people who either choose to remain in or are confined to those neighborhoods due to lack of opportunities elsewhere. should have the same quality of life that is found in better resourced parts of our community. The City's decision regarding these three developments and the neighborhoods in which they are located give us all a chance to see what can be done in this regard. The families who will be living in these communities now and the future deserve no less.

However, ICP continues to be concerned about the lack of low income housing investment outside of high-poverty, blighted, segregated areas. We hope the City will as vigorously support qualified developers who propose the use of tax credits and other public resources for units outside of the distressed segregated areas of the City as they did those on August 3rd. Einstein is often quoted has having said that "madness is doing the same thing over and over and expecting a different outcome". ICP yearns to see the day when the use of public resources no longer perpetuate segregation and result in actual improvements for Dallas area residents.

Sincerely,

Demetria L. McCain
President
dmccain@inclusivecommunities.net

CC: Bernadette Mitchell, Director, Housing/Community Services, City of Dallas
Elizabeth K. Julian, Founder & Senior Counsel, ICP
Daniel & Beshara, P.C.

BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

NOVEMBER 10, 2016

Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with another Issuer (#16443 Villages at Fiskville, Austin)

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Villages at Fiskville, sponsored by the Austin Housing Finance Corporation, was submitted to the Department on September 2, 2016;

WHEREAS, the Certification of Reservation from the Texas Bond Review Board was issued on September 22, 2016, and will expire on February 19, 2017;

WHEREAS, the proposed issuer of the bonds is the Austin Housing Finance Corporation;

WHEREAS, pursuant to 10 TAC §10.101(a)(4) of the Uniform Multifamily Rules related to Undesirable Neighborhood Characteristics, applicants are required to disclose to the Department the existence of certain undesirable characteristics of a proposed development site;

WHEREAS, the applicant has disclosed the presence of an undesirable neighborhood characteristic, specifically that the development site is within the American Society for Testing and Materials ("ASTM") Standard search distance of one Resource Conservation and Recovery Act ("RCRA") Generator of Hazardous Waste as further noted in the Environmental Site Assessment ("ESA"); and

WHEREAS, staff has conducted a further review of the proposed development site and surrounding neighborhood and based on the professional opinion of the ESA provider staff recommends the proposed site be found eligible under 10 TAC §10.101(a)(4) of the Uniform Multifamily Rules;

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of $985,326 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for Villages at Fiskville Apartments is hereby approved as presented to this meeting:

BACKGROUND

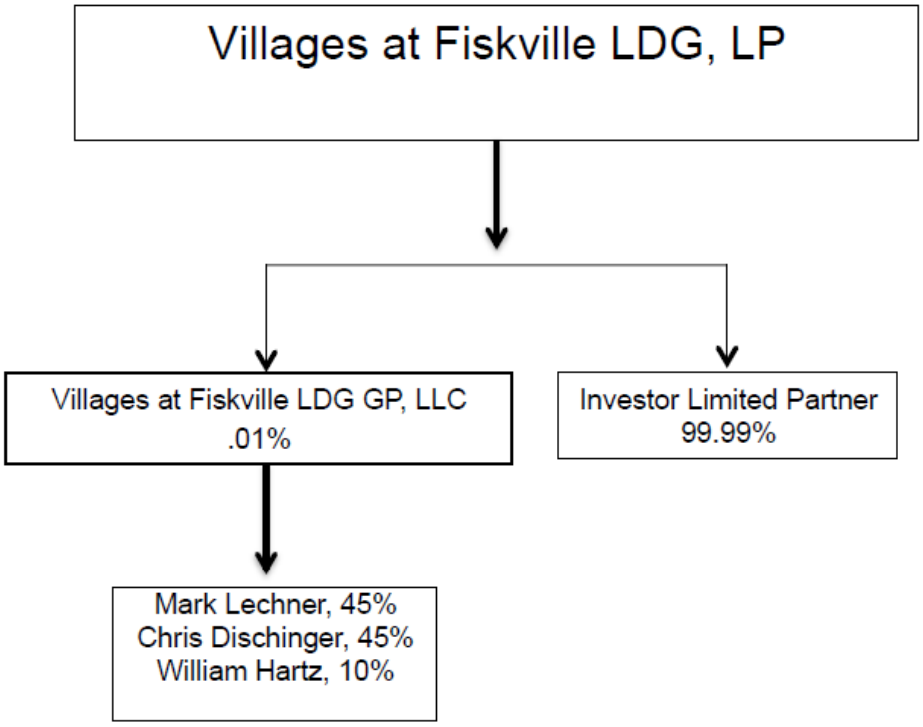
General Information: Villages at Fiskville is located at 10017 Middle Fiskville Road, Austin, Travis County, and consists of 172 units, all of which will be rent and income restricted at 60% of Area Median Family Income. The development will serve an Elderly Limitation population and conforms to current zoning. The census tract (0018.33) has a median household income of $47,418, is in the third quartile and has a poverty rate of 23.5%.

Site Analysis: The applicant disclosed the presence of an undesirable site characteristic under §10.101(a)(4)(B)(v) of the Uniform Multifamily Rules which requires additional site analysis; specifically, the ESA for the development site indicates one RCRA Generator of Hazardous Waste facility within the ASTM-required search distances from the approximate boundaries the site. The RCRA site in question is Yellow Transportation, located .03 miles from the development site and because the facility is down-gradient from the development site, in the ESA provider's opinion a potential release at this facility to migrate to the development site is unlikely. The ESA provider did not recommend additional assessments or diligence that would need to be performed. Therefore, staff does not believe the undesirable characteristic should render the proposed site ineligible under §10.101(a)(4) of the Uniform Multifamily Rules.

Organizational Structure: The Borrower is Villages at Fiskville LDG, L.P. and includes the entities and principals as indicated in the organization chart on Exhibit A. The applicant is considered a large Category 2 portfolio and the previous participation was deemed acceptable by the EARAC on October 31, 2016, without further review or discussion. EARAC also reviewed the proposed financing and the underwriting report, and recommends issuance of a Determination Notice.

Public Comment: There have been no letters of support or opposition received by the Department.

EXHBIT A


Villages at Fiskville LDG, LP
Villages at Fiskville LDG GP, LLC
.01%
Investor Limited Partner
99.99%
Mark Lechner, 45%
Chris Dischinger, 45%
William Hartz, 10%

APPLICATION SUMMARY

REAL ESTATE ANALYSIS DIVISION
November 3, 2016

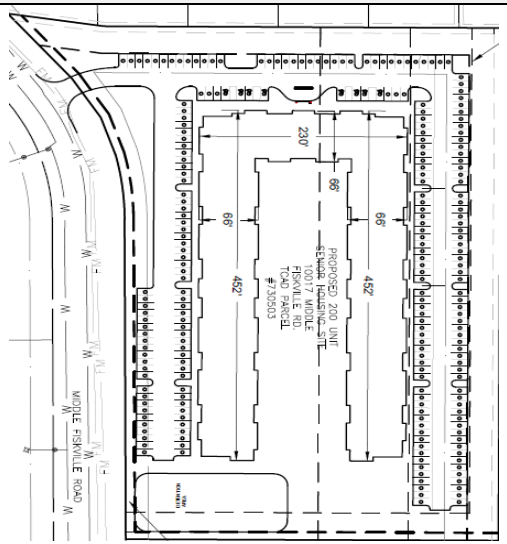
PROPERTY IDENTIFICATION	
Application #	16443
Development	Villages at Fiskville
City / County	Austin / Travis
Region/Area	7 / Urban
Population	Elderly Limitation
Set-Aside	General
Activity	New Construction

RECOMMENDATION					
TDHCA Program	**Request**	**Approved**			
LIHTC (4% Credit)	$985,326	$985,326	$5,729/Unit		$1.04
	Amount	**Rate**	**Amort**	**Term**	**Lien**
Private Activity Bonds					
MDLP (Repayable)					
MDLP (Non-Repayable)					
CHDO Expenses					

KEY PRINCIPAL / SPONSOR
General Partner(s)
Villages at Fiskville LDG, LP
Chris Dischinger, Mark Lechner, Justin Hartz
Developer(s)
Villages at Fiskville LDG, LP
Chris Dischinger, Mark Lechner
Related-Parties — Contractor - Yes — Seller - No

TYPICAL BUILDING ELEVATION/PHOTO

SITE PLAN



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	**# Units**	**% Total**	**Income**	**# Units**	**% Total**
Eff	-	0%	**30%**	-	0%
1	58	34%	**40%**	-	0%
2	114	66%	**50%**	-	0%
3	-	0%	**60%**	172	100%
4	-	0%	**MR**	-	
TOTAL	172	100%	**TOTAL**	172	100%

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		TDHCA's Pro Forma	
Debt Coverage	1.15	**Expense Ratio**	46.0%
Breakeven Occ.	86.0%	**Breakeven Rent**	$850
Average Rent	$917	**B/E Rent Margin**	$66
Property Taxes	$570/unit	**Exemption/PILOT**	0%
Total Expense	$4,785/unit	**Controllable**	$3,156/unit

MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)			7.4%
Highest Unit Capture Rate	19%	2 BR/60%	114
Dominant Unit Cap. Rate	19%	2 BR/60%	114
Premiums (↑60% Rents)	#DIV/0!		#DIV/0!
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY			
Costs Underwritten	Applicant's Costs		
Avg. Unit Size	883 SF	**Density**	26.3/acre
Acquisition		$07K/unit	$1,139K
Building Cost	$88.13/SF	$78K/unit	$13,386K
Hard Cost		$96K/unit	$16,438K
Total Cost		$157K/unit	$27,027K
Developer Fee	$3,138K	(50% Deferred)	Paid Year: 10
Contractor Fee	$2,281K	**30% Boost**	Yes

DEBT (Must Pay)				
Source	Term	Rate	Amount	DCR
Red Stone Tax-Exempt Funding, LL	15/40	4.65%	$15,220,000	1.15
TOTAL DEBT (Must Pay)			$15,220,000	

CASH FLOW DEBT / GRANT FUNDS				
Source	Term	Rate	Amount	DCR
CASH FLOW DEBT / GRANTS			$0	

EQUITY / DEFERRED FEES	
Source	Amount
Aegon USA Realty Advisors, LLC	$10,245,331
LDG Multifamily, LLC	$1,561,929
Additional (Excess) Funds Req'd	($0)
TOTAL EQUITY SOURCES	$11,807,259
TOTAL DEBT SOURCES	$15,220,000
TOTAL CAPITALIZATION	$27,027,259

CONDITIONS

- Receipt and acceptance by Cost Certification:
  - documentation that appropriate noise mitigation has been incorporated into the development to bring the calculated noise value within an acceptable level of HUD guidelines.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

BOND RESERVATION / ISSUER	
Issuer	Austin HFC
Expiration Date	2/19/2017
Bond Amount	$20,000,000
BRB Priority	Priority 3
Expected Close	2/19/2017
Bond Structure	Private Placement

RISK PROFILE

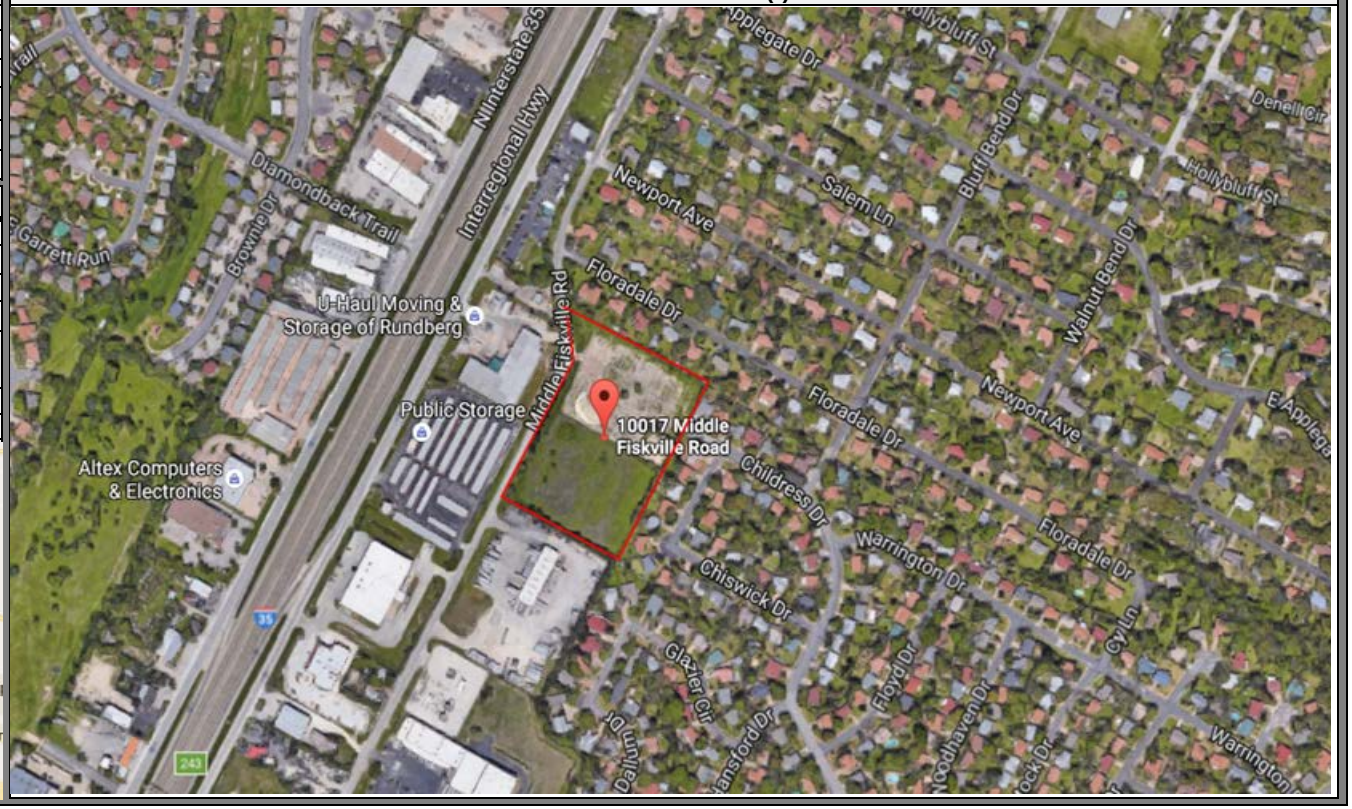
STRENGTHS/MITIGATING FACTORS

- Experienced developer
- High HTC occupancies in PMA
- Low unit capture rates

WEAKNESSES/RISKS

- Limited access/egress

AERIAL PHOTOGRAPH(s)



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BOARD ACTION REQUEST

COMPLIANCE DIVISION

NOVEMBER 10, 2016

Presentation, Discussion, and Possible Actions on: first, an order adopting the repeal of 10TAC §10.614 (concerning Utility Allowances); and, second, an order adopting new 10TAC §10.614 (concerning Utility Allowances) and directing that these be published in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, at the Board meeting of August 25, 2016, the Board approved the proposed repeal of, and adoption of new, 10TAC §10.614 (concerning Utility Allowances); and

WHEREAS, the public comment period has ended and staff has considered and responded to all comment;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the repeal of 10TAC §10.614 (concerning Utility Allowances) and adoption of new 10TAC §10.614 (concerning Utility Allowances) in the form presented at this meeting, to be published in the *Texas Register* and in connection therewith make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The Board approved the proposed repeal, with concurrent proposed new, 10TAC §10.614 (concerning Utility Allowances). The rulemaking was available for public comment from September 9, 2016, through October 10, 2016. In keeping with the requirements of the Administrative Procedures Act, staff has reviewed all comments received and provided a reasoned response to these comments.

Attachment 1: Preamble and order adopting the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.614 concerning Utility Allowances

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.614, concerning Utility Allowances. The rule is adopted for repeal in connection with the adoption of new §10.614, concerning Utility Allowances, which was published concurrently in the September 9, 2016, issue of the *Texas Register* (41 Tex.Reg. 6902).

REASONED JUSTIFICATION. The repeal of §10.614 concerning Utility Allowance will allow for the concurrent adoption of new §10.614 concerning Utility Allowance.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

The public comment period was from September 9, 2016, through October 10, 2016. No comment was received during this period.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The repeal affects no other code, article, or statute.

§10.614. Utility Allowances

Attachment 2: Preamble and adoption of new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.614 concerning Utility Allowances

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.614, concerning Utility Allowances. This new section is being proposed concurrently with the repeal of existing §10.614, concerning Utility Allowances with the changes made, in response to public comment, to the proposed text comment as published in the September 9, 2016, issue of the *Texas Register* (41 Tex.Reg. 6902).

REASONED JUSTIFICATION. The purpose of the new rule is to align requirements related to Utility Allowances with changes made to Federal Regulations for both the HOME and Housing Tax Credit Program. The new rule also prescribes a process through which Utility Allowances will be reviewed for an Application of funding. Please note that a non-substantive technical correction is included herein changing the term "Direct Loan" to "Multifamily Direct Loan" or "MFDL".

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

The public comment period was from September 9, 2016, through October 10, 2016. Comments were received from (1) Bobby Bowling, (2) Jen Joyce Brewerton on behalf of the Texas Affiliation of Affordable Housing Providers ("TAAHP"), and (3) Robert Somers on behalf of 2rw Consultants, Inc.

The comment received from Mr. Bowling was to express support of the proposed rule as presented in the Board meeting of August 25, 2016. Specifically, the commenter supports §10.614(k) relating to the formalized process of utility allowances in Applications of funding. In general, all three commenter's commended the Department's efforts in drafting a rule that is compliant but practical.

COMMENT SUMMARY: §10.614(c)(d) related to the Energy Consumption Model- Commenter (3) stated that the term "available historical data" should be better defined because "available" could be interpreted in several different ways. The commenter "… suggest that "available" be defined as data that has already been collected and is in a property manager/owner possession" and the "…'available' data includes only data collected at the building site in question." The commenter references cost associated with obtaining such data and "…suggests that having to pay for the information means it is no longer 'available'."

The Commenter also questions how such data would be incorporated into the Energy Consumption Model and "…suggests that available historical data be used solely as a point for comparison, rather than attempting to incorporate that data into the Energy Consumption Model itself. When comparing the model to available historical data, we suggest that obvious discrepancies be noted and explained, but the historical data should not outweigh the modeled consumption data because actual consumption data can incorporate improper and inefficient utility usage, as well as weather abnormalities, meaning that data can misrepresent what an appropriate allowance would be."

STAFF RESPONSE: Staff does not recommend any changes to this section of the rule based on these comments. The Treasury Department updated Treasury Regulation §1.42-10 on March 3, 2016. With that update, the Energy Consumption Model was amended by removing the requirement to incorporate the building's consumption data and instead requiring the use of "available historical data". During the comment period for Treasury regulation §1.42-10 comment was provided to Treasury that data may be inaccessible, and an additional paperwork burden. Treasury did not to make any amendments to the regulation based on these comments, and the Department will not recommend changes, either. The

Owner has four (4) other available methods for calculating the utility allowance, with this being the only method that requires the hiring of a professional.

The Department disagrees that data not in the possession of the building owner is unavailable. Further, incurring a fee to obtain historical data does not warrant such data be considered "unavailable" and, if there is a cost to obtain such data, the Owner would be expected to incur this expense as it is a cost associated with calculating the utility allowance under this method. The Department also disagrees that the only available data that should be considered is data collected at the building site in question. The final regulation did not enact further parameters related to "available historical data"; as such, the Department did not see a benefit to further restricting any of the factors required to be considered. There may be other ample historical data that would be appropriate to include and, that the determination of relevant historical data should be a decision best made by the Mechanical Engineer performing the model, as what would be considered appropriate historical factors could vary from site to site.

Treasury Regulation§1.42-10(b)(ii)(E) *The energy consumption model must, at a minimum, take into account specific factors including, but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances, characteristics of the building location, and available historical data.* Because the final regulation includes a requirement to include "available historical data," restricting the use of the data only as point for comparison is in conflict with the federal regulation.

COMMENT SUMMARY: §10.614(d)(a) relates to HTC Buildings with units under a Multifamily Direct Loan ("MFDL") when the Department is not the awarding jurisdiction of the Multifamily Direct Loan ("MFDL") funds. Commenter (2) suggested the following language be added to the end of the subsection: In the event that the awarding jurisdiction has not established a utility allowance for the program, and is unresponsive to an owner request to establish a utility allowance for the Direct Loan program, or requests the Department to calculate the allowance, the Department will establish the initial Utility Allowance in accordance with paragraph (3) subsection (d) of this section.

STAFF RESPONSE: This section of the rule currently reads: *If the Department is not the awarding jurisdiction, Owners are required to obtain the Utility Allowance established by the awarding jurisdiction, and to document all efforts to obtain such allowance to evidence due diligence in the event that the jurisdiction is nonresponsive.* It is a federal requirement of any awarding jurisdiction to comply with §92.252 of the HOME Final Rule and establish a utility allowance for their properties; the Department is unaware of any jurisdiction that has failed to do so or is unwilling to work with the Owner in establishing an allowance. Further, the language in the rule is broad enough to address what the owner of the building is to do if they have HTCs and MFDL funds from another jurisdiction and are not able to obtain an allowance. However, the Department recognizes a benefit to addressing what utility allowance should be used in the unlikely event that the owner is unable to obtain a utility allowance from a jurisdiction that provided MFDL funds. Therefore, the following has been added: In such an event, provided that sufficient evidence of due diligence is demonstrated, the Department, in its sole discretion, may allow for the use of the methods described in (3)(A), (B), (C), or (D) of subsection (c) related to Methods to calculate and establish its utility allowance.

STATUTORY AUTHORITY. The amendments are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The new section affects no other code, article, or statute.

§10.614 Utility Allowances

(a) Purpose. The purpose of this section is to provide the guidelines for calculating a Utility Allowance under the Department's multifamily programs. The Department will cite noncompliance and/or not approve a Utility Allowance if it is not calculated in accordance with this section. Owners are required to comply with the provisions of this section, as well as, any existing federal or state program guidance.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. Other capitalized terms used in this section herein have the meaning assigned in Chapters 1, 2 and 10 of this part.
(1) Building Type. The HUD Office of Public and Indian Housing ("PIH") characterizes building and unit configurations for HUD programs. The Department will defer to the guidance provided by HUD found at: http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11608.pdf (or successor Uniform Resource Locator ("URL")) when making determinations regarding the appropriate building type(s) at a Development.
(2) Power to Choose. The Public Utility Commission of Texas database of retail electric providers in the areas of the state where the sale of electricity is open to retail competition http://www.powertochoose.org/ (or successor URL). In areas of the state where electric service is deregulated, the Department will verify the availability of residential service directly with the Utility Provider. If the Utility Provider is not listed as a provider of residential service in the Development's ZIP code for an area that is deregulated, the request will not be approved
(3) Component Charges. The actual cost associated with the billing of a residential utility. Each Utility Provider may publish specific utility service information in varying formats depending on the service area. Such costs include, but are not limited to:
(A) Rate(s). The cost for the actual unit of measure for the utility (*e.g.* cost per kilowatt hour for electricity);
(B) Fees. The cost associated with a residential utility that is incurred regardless of the amount of the utility the household consumes (*e.g.* Customer Charge); and,
(C) Taxes. Taxes for electricity and gas are regulated by the Texas Comptroller of Public Accounts and can be found http://comptroller.texas.gov/ (or successor URL). Local Utility Providers have control of the tax structure related to water, sewer and trash. To identify if taxes are imposed for these utilities, obtain documentation directly from the Utility Provider.
(4) Multifamily Direct Loan ("MFDL")- Funds provided through the HOME Program ("HOME"), Neighborhood Stabilization Program ("NSP"), National Housing Trust Fund ("NHTF"), Repayments from the Tax Credit Assistance Program ("TCAP RF"), or other program available through the Department, ~~or~~ local political subdivision, or administrating agency for multifamily development that require a Utility Allowance. ~~Direct Loan~~MFDLs may also include deferred forgivable loans or other similar direct funding, regardless if it is required to be repaid. Housing Tax Credits, Tax Exempt Bonds and Project Based Vouchers are not ~~Direct Loan~~MFDLs.
(5) Renewable Source. Energy produced from energy property described in IRC §48 or IRC §45(d)(1) through (4), (6), (9), or (11). The manner in which a resident is billed is limited to the rate at which the local Utility Provider would have charged the residents for the utility if that entity had provided it to them, and as may be further limited by the Texas Utilities Code or by regulation.
(6) Submetered Utility. A utility purchased from or through a local Utility Provider by the building Owner where the resident is billed directly by Owner of the building or to a third party billing company and the utility is:
(A) Based on the residents' actual consumption of that utility and not an allocation method or Ratio Utility Billing System ("RUBS"); and,
(B) The rate at which the utility is billed does not exceed the rate incurred by the building owner for that utility.
(7) Utility Allowance. An estimate of the expected monthly cost of any utility for which a resident is financially responsible, other than telephone, cable television, or internet.
(A) For HTC, TCAP, Exchange buildings, and SHTF include:

(i) Utilities paid by the resident directly to the Utility Provider;
(ii) Submetered Utilities; and,
(iii) Renewable Source Utilities.
(B) For a Development with a ~~Direct Loan~~MFDL, unless otherwise prescribed in the program's Regulatory Agreement, include all utilities regardless of how they are paid.
(8) Utility Provider. The company that provides residential utility service (*e.g.* electric, gas, water, wastewater, and/or trash) to the buildings.

(c) Methods. The following options are available to establish a Utility Allowance for all programs except Developments funded with ~~Direct Loan~~MFDL funds, which are addressed in subsection (d) of this section.
(1) Rural Housing Services ("RHS") buildings or buildings with RHS assisted residents. The applicable Utility Allowance for the Development will be determined under the method prescribed by the RHS (or successor agency). No other utility method described in this section can be used by RHS buildings or buildings with RHS assisted residents.
(2) HUD-Regulated buildings layered with any Department program. If neither the building nor any resident in the building receives RHS rental assistance payments, and the rents and the Utility Allowances of the building are regulated by HUD (HUD-regulated building), the applicable Utility Allowance for all rent restricted Units in the building is the applicable HUD Utility Allowance. No other utility method described in this section can be used by HUD-regulated buildings. Unless further guidance is received from the U.S. Department of Treasury or the Internal Revenue Service ("IRS"), the Department considers Developments awarded a ~~Direct Loan~~MFDL (*e.g.* HOME) to be HUD-Regulated buildings.
(3) Other Buildings. For all other rent-restricted Units, Development Owners must use one of the methods described in subparagraphs (A) - (E) of this paragraph:
(A) Public Housing Authority ("PHA"). The Utility Allowance established by the applicable PHA for the Housing Choice Voucher Program. The Department will utilize the Texas Local Government Code, Chapter 392 to determine which PHA is the most applicable to the Development.
(i) If the PHA publishes different schedules based on Building Type, the Owner is responsible for implementing the correct schedule based on the Development's Building Type(s). Example 614(1): The applicable PHA publishes a separate Utility Allowance schedule for Apartments (5+ units), one for Duplex/Townhomes and another for Single Family Homes. The Development consists of 20 buildings, ten of which are Apartments (5+ units) and the other ten buildings are Duplexes. The Owner must use the correct schedule for each Building Type.
(ii) In the event the PHA publishes a Utility Allowance schedule specifically for energy efficient units, and the Owner desires to use such a schedule, the Owner must demonstrate that the building(s) meet the housing authority's specifications for energy efficiency once every five years.
(iii) If the applicable PHA allowance lists flat fees for any utility, those flat fees must be included in the calculation of the Utility Allowance if the resident is responsible for that utility.
(iv) If the individual components of a Utility Allowance are not in whole number format, the correct way to calculate the total allowance is to add each amount and then round the total up to the next whole dollar. Example 614(2): Electric cooking is $8.63, Electric Heating is $5.27, Other Electric is $24.39, Water and Sewer is $15. The Utility Allowance in this example is $54.00.
(v) If an Owner chooses to implement a methodology as described in subparagraph (B), (C), (D), or (E) of this paragraph, for Units occupied by Section 8 voucher holders, the Utility Allowance remains the applicable PHA Utility Allowance established by the PHA from which the household's voucher is received.
(vi) If the Development is located in an area that does not have a municipal, county, or regional housing authority that publishes a Utility Allowance schedule for the Housing Choice Voucher Program, Owners must select an alternative methodology, unless the building(s) is located in the published Housing Choice Voucher service area of:

(I) A Council of Government created under Texas Local Government Code, Chapter 303, that operates a Housing Choice Voucher Program; or,
(II) The Department's Housing Choice Voucher Program.
(B) Written Local Estimate. The estimate must come from the local Utility Provider, be signed by the Utility Provider representative, and specifically include all Component Charges for providing the utility service.
(C) HUD Utility Schedule Model. The HUD Utility Schedule Model and related resources can be found at http://www.huduser.gov/portal/resources/utilallowance.html (or successor URL). Each item on the schedule must be displayed out two decimal places. The total allowance must be rounded up to the next whole dollar amount. The Component Charges used can be no older than those in effect 60 days prior to the beginning of the 90 day period described in described in paragraph (f)(3) of this section related to Effective Dates.
(i) The allowance must be calculated using the MS Excel version available at http://www.huduser.org/portal/resources/utilmodel.html (or successor URL), as updated from time to time, with no changes or adjustments made other than entry of the required information needed to complete the model.
(ii) In the event that the PHA code for the local PHA to the Development is not listed in "Location" tab of the workbook, the Department will use the PHA code for the PHA that is closest in distance to the Development using online mapping tools (*e.g.* MapQuest).
(iii) Green Discount. If the Owner elects any of the Green Discount options for a Development, documentation to evidence that the units and the buildings meet the Green Discount standard as prescribed in the model is required for the initial approval and every subsequent annual review. In the event the allowance is being calculated for an application of Department funding (e.g. 9% Housing Tax Credits), upon request, the Department will provide both the Green Discount and the non-Green Discount results for application purposes; however, to utilize the Green Discount allowance for leasing activities, the Owner must evidence that the units and buildings have met the Green Discount elected when the request is submitted as required in subsection (l) of this section.
(iv) Do not take into consideration any costs (*e.g.* penalty) or credits that a consumer would incur because of their actual usage. Example 614(3) The Electric Fact Label for ABC Electric Utility Provider provides a Credit Line of $40 per billing cycle that is applied to the bill when the usage is greater than 999 kWh and less that 2000 kWh. Example 614(4) A monthly minimum usage fee of $9.95 is applied when the usage is less than 1000 kWh in the billing cycle. When calculating the allowance, disregard these types costs or credits.
(D) Energy Consumption Model. The model must be calculated by a properly licensed mechanical engineer. The individual must not be related to the Owner within the meaning of §267(b) or §707(b) of the Code. The utility consumption estimate must, at minimum, take into consideration specific factors that include, but are not limited to, Unit size, building type and orientation, design and materials, mechanical systems, appliances, characteristics of building location, and available historical data. Component Charges used must be no older than in effect 60 days prior to the beginning of the 90 day period described in paragraph (f)(3) of this section related to Effective Dates; and,
(E) An allowance based upon an average of the actual use of similarly constructed and sized Units in the building using actual utility usage data and Component Charges, provided that the Development Owner has the written permission of the Department. This methodology is referred to as the "Actual Use Method." For a Development Owner to use the Actual Use Method they must:
(i) Provide a minimum sample size of usage data for at least five Continuously Occupied Units of each Unit Type or 20 percent of each Unit Type whichever is greater. If there are less than five Units of any Unit Type, data for 100 percent of the Unit Type must be provided;
(ii) Upload the information in subclause (I) - (IV) of this clause to the Development's CMTS account no later than the beginning of the 90 day period after which the Owner intends to implement the allowance,

reflecting data no older than 60 days prior to the 90 day implementation period described in described in paragraph (f)(3) of this section related to Effective Dates.
(I) An Excel spreadsheet listing each Unit for which data was obtained to meet the minimum sample size requirement of a Unit Type, the number of bedrooms, bathrooms and square footage for each Unit, the household's move-in date, the utility usage (*e.g.* actual kilowatt usage for electricity) for each month of the 12 month period for each Unit for which data was obtained, and the Component Charges in place at the time of the submission;
(II) All documentation obtained from the Utility Provider (or billing entity for the utility provider) and/or copies of actual utility bills gathered from the residents, including all usage data not needed to meet the minimum sample size requirement and any written correspondence from the utility provider;
(III) The rent roll showing occupancy as of the end of the month for the month in which the data was requested from the utility provider; and
(IV) Documentation of the current Utility Allowance used by the Development.
(iii) Upon receipt of the required information, the Department will determine if the Development Owner has provided the minimum information necessary to calculate an allowance using the Actual Use Method. If so, the Department shall calculate the Utility Allowance for each bedroom size using the guidelines described in subclause (I) - (V) of this clause;
(I) If data is obtained for more than the sample requirement for the Unit Type, all data will be used to calculate the allowance;
(II) If more than 12 months of data is provided for any Unit, only the data for the most current twelve 12 will be averaged;
(III) The allowance will be calculated by multiplying the average units of measure for the applicable utility (i.e., kilowatts over the last 12 months by the current rate) for all Unit Types within that bedroom size. For example, if sufficient data is supplied for 18 two bedroom/one bath Units, and 12 two bedroom/two bath Units, the data for all 30 Units will be averaged to calculate the allowance for all two bedroom Units;
(IV) The allowance will be rounded up to the next whole dollar amount. If allowances are calculated for different utilities, each utility's allowance will be rounded up to the next whole dollar amount and then added together for the total allowance; and
(V) If the data submitted indicates zero usage for any month, the data for that Unit will not be used to calculate the Utility Allowance.
(iv) The Department will complete its evaluation and calculation within forty-five (45) days of receipt of all the information requested in clause (ii) of this subparagraph;

(d) In accordance with 24 CFR §92.252, for a ~~Direct Loan~~MFDL in which the Department is the funding source, the Utility Allowance will be established in the following manner:
(1) For Developments that, as a result of funding, must calculate the Utility Allowance under HUD Multifamily Notice H-2014-4, as revised from time to time, the applicable Utility Allowance for all rent restricted Units in the building is the applicable Utility Allowance calculated under that Notice. No other utility method described in this section can be used.
(2) Other Buildings. The Utility Allowance may be initiated by the Owner using the methodologies described in subparagraphs (3)(B),(C), (D), or (E) of subsection (c) related to Methods.
(3) If a request is not received by October 1st , the Department will calculate the Utility Allowance using the HUD Utility Schedule Model. For property specific data, the Department will use:
(A) The information submitted in the Annual Owner's Compliance Report;
(B) Entrance Interview Questionnaires submitted with prior onsite reviews; or,
(C) The owner may be contacted and required to complete the Utility Allowance Questionnaire. In such case, a five day period will be provided to return the completed questionnaire.
(D) Utilities will be evaluated in the following manner:
(i) For regulated utilities, the Department will contact the Utility Provider directly and apply the Component Charges in effect no later than 60 days before the allowance will be effective.

(ii) For deregulated utilities:
(I) The Department will use the Power to Choose website and search available Utility Providers by ZIP code;
(II) The plan chosen will be the median cost per kWh based on average price per kWh for the average monthly use of 1000 kWh of all available plans; and,
(III) The actual Component Charges from the plan chosen in effect no later than 60 days before the allowance will be effective will be entered into the Model.
(E) The Department will notify the Owner contact in CMTS of the new allowance and provide the backup for how the allowance was calculated. The owner will be provided a five day period to review the Department's calculation and note any errors. Only errors related to the physical characteristics of the building(s) and utilities paid by the residents will be reconsidered; the utility plan and Utility Provider selected by the Department and Component Charges used in calculating the allowance will not be changed. During this five day period, the owner also has the opportunity to submit documentation and request use of any of the available Green Discounts.
(F) The allowance must be implemented for rent due in all program units thirty days after the Department notifies the Owner of the allowance.
(4) HTC Buildings, in which there are units under a ~~Direct Loan~~MFDL program, are considered HUD-Regulated buildings and the applicable Utility Allowance for all rent restricted Units in the building is the Utility Allowance calculated under the ~~Direct Loan~~MFDL program. No other utility method described in this section can be used by HUD-regulated buildings. If the Department is not the awarding jurisdiction, Owners are required to obtain the Utility Allowance established by the awarding jurisdiction, and to document all efforts to obtain such allowance to evidence due diligence in the event that the jurisdiction is nonresponsive. In such an event, provided that sufficient evidence of due diligence is demonstrated, the Department, in its sole discretion, may allow for the use of the methods described in (3)(A), (B), (C), or (D) of subsection (c) related to Methods to calculate and establish its utility allowance.

(e) Acceptable Documentation. For the Methods where utility specific information is required to calculate the allowance (*e.g.* base charges, cost per unit of measure, taxes) Owners should obtain documentation directly from the Utility Provider and/or Regulating State Agency. Any Component Charges related to the utility that are published by the Utility Provider and/or Regulating State Agency must be included. In the case where a utility is billed to the Owner of the building(s) and the Owner is billing residents through a third party billing company, the Component Charges published by the Utility Provider and not the third party billing company will be used.

(f) Changes in the Utility Allowance. An Owner may not change Utility Allowance methods, start or stop charging residents for a utility without prior written approval from the Department. Example 614(5): A Housing Tax Credit Development has been paying for water and sewer since the beginning of the Compliance Period. In year 8, the Owner decides to require residents to pay for water and sewer. Prior written approval from the Department is required. Any such request must include the Utility Allowance Questionnaire found on the Department's website and supporting documentation.
(1) The Department will review all requests, with the exception of the methodology prescribed in subparagraphs (3)(E) of subsection (c) related to Methods, within 90 days of the receipt of the request.
(2) If the Owner fails to post the notice to the residents and simultaneously submit the request to the Department by the beginning of the 90 day period, the Department's approval or denial will be delayed for up to 90 days after Department notification. Example 614(6): The Owner has chosen to calculate the electric portion of the Utility Allowance using the written local estimate. The annual letter is dated July 5, 2014, and the notice to the residents was posted in the leasing office on July 5, 2014. However, the Owner failed to submit the request to the Department for review until September 15, 2014. Although the Notice to the Residents was dated the date of the letter from the utility provider, the Department was not

provided the full 90 days for review. As a result, the allowance cannot be implemented by the owner until approved by the Department.
(3) Effective dates. If the Owner uses the methodologies as described in subparagraphs (3)(A) of subsection (c) related to Methods of this section, any changes to the allowance can be implemented immediately, but must be implemented for rent due at least 90 days after the change. For methodologies as described in subparagraphs (3)(B), (C), (D) and (E) of subsection (c) related to Methods, the allowance cannot be implemented until the estimate is submitted to the Department and is made available to the residents by posting in a common area of the leasing office at the Development. This action must be taken by the beginning of the 90 day period in which the Owner intends to implement the Utility Allowance. Nothing in this section prohibits an Owner from reducing a resident's rent prior to the end of the 90 day period when the proposed allowance would result in a gross rent issue.

Figure: 10 TAC §10.614

Method	Beginning of 90 Day Notification Period
Written Local Estimate	Date of letter from the Utility Provider
HUD Utility Schedule Model	Date entered as "Form Date"
Energy Consumption Model	60 days after the end of the last month of the 12 month period for which data was used to compute the estimate
Actual Use Method	Date the allowance is approved by the Department

(g) Requirements for Annual Review.
(1) RHS and HUD-Regulated Buildings. Owners must demonstrate that the utility allowance has been reviewed annually and in accordance with the RHS or HUD regulations.
(2) Buildings using the PHA Allowance. Owners are responsible for periodically determining if the applicable PHA released an updated schedule to ensure timely implementation. When the allowance changes or a new allowance is made available by the PHA, it can be implemented immediately, but must be implemented for rent due 90 days after the PHA releases an updated scheduled.
(3) Written Local Estimate, HUD Utility Model Schedule and Energy Consumption Model. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than October 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review. At the same time the request is submitted to the Department, the Owner must post, at the Development, the Utility Allowance estimate in a common area of the leasing office where such notice is unobstructed and visible in plain sight. The Department will review the request for compliance with all applicable requirements and reasonableness. If, in comparison to other approved Utility Allowances for properties of similar size, construction and population in the same geographic area, the allowance does not appear reasonable or appears understated, the Department may require additional support and/or deny the request.
(4) Actual Use Method. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than August 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review.

(h) For Owners participating in the Department's Section 811 Project Rental Assistance ("PRA") Program, the Utility Allowance is the allowance established in accordance with this section related to the other multifamily program(s) at the Development. Example 614(7) ABC Apartments is an existing HTC

Development now participating in the PRA Program. The residents pay for electricity and the Owner is using the PHA method to calculate the Utility Allowance for the HTC Program. The appropriate Utility Allowance for the PRA Program is the PHA method.

(i) Combining Methods. In general, Owners may combine any methodology described in this section for each utility service type paid directly by the resident and not by or through the Owner of the building (e.g. electric, gas). For example, if residents are responsible for electricity and gas, an Owner may use the appropriate PHA allowance to determine the gas portion of the allowance and use the Actual Use Method to determine the electric portion of the allowance. RHS and certain HUD-Regulated buildings are not allowed to combine methodologies.

(j) The Owner shall maintain and make available for inspection by the resident all documentation, including, but not limited to, the data, underlying assumptions and methodology that was used to calculate the allowance. Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling Unit of the resident at the convenience of both the Owner and resident.

(k) Utility Allowances for Applications.
(1) If the application includes RHS assisted buildings or tenants, the utility allowance is prescribed by the RHS program. No other method is allowed.
(2) If the application includes HUD-Regulated buildings for HUD programs other than a ~~Direct Loan~~MFDL program the applicable Utility Allowance for all rent restricted Units in the building is the applicable HUD Utility Allowance. No other utility method is allowed.
(3) If the application includes a ~~Direct Loan~~MFDL where the Department is the Participating Jurisdiction, the Department will establish the initial Utility Allowance in accordance with paragraph (3) subsection (d) of this section. In the event that the application has a ~~Direct Loan~~MFDL from the Department and another Participating Jurisdiction, the Department will require the use of the allowance calculated by the Department.
(4) If the application includes a ~~Direct Loan~~MFDL where the Department is the not the Participating Jurisdiction, Applicants are required to request in writing the Utility Allowance from the awarding jurisdiction. If the awarding jurisdiction does not respond or requests the Department to calculate the allowance, the Department will establish the initial Utility Allowance in accordance with paragraph (3) subsection (d) of this section.
(5) For all other applications, Applicants may calculate the utility allowance in accordance with (3)(A)(B),(C), (D), or (E) of subsection (c) related to Methods.
(A) Upon request, the Compliance Division will calculate or review an allowance within 21 days but no earlier than 90 days from when the application is due.
(B) Example 614(8) An application for a 9% HTC is due March 1, 2017. The applicant would like Department approval to use an alternative method by February 15, 2017. The request must be submitted to the Compliance Division no later than January 25, 2017, three weeks before February 15, 2017.
(C) Example 614(9) An Applicant intends to submit an applicant for a 4% HTC with Tax Exempt Bonds on August 11, 2017, and would like to use an alternative method. Because approval is needed prior to application submission, the request can be submitted no earlier than May 13, 2017, (90 days prior to August 11, 2017) and no later than July 21, 2017, (21 days prior to August 11, 2017).
(6) All Utility Allowance requests related to applications of funding must:
(A) Be submitted directly to ua_application@tdhca.state.tx.us. Requests not submitted to this email address will not be recognized.
(B) Include the "Utility Allowance Questionnaire for Applications" along with all required back up based on the method.

(7) If the Applicant is successful in obtaining an award, the Utility Allowance may be calculated in accordance with subsection (d) of this section.

(l) If Owners want to utilize the HUD Utility Schedule Model, the Written Local Estimate or the Energy Consumption Model to establish the initial Utility Allowance for the Development, the Owner must submit Utility Allowance documentation for Department approval, at minimum, 90 days prior to the commencement of leasing activities. This subsection does not preclude an Owner from changing to one of these methods after commencement of leasing.

(m) The Department reserves the right to outsource to a third party the review and approval of all or any Utility Allowance requests to use the Energy Consumption Model or when review requires the use of expertise outside the resources of the Department. In accordance with Treasury Regulation §1.42-10(c) any costs associated with the review and approval shall be paid by the Owner.

(n) All requests described in this subsection must be complete and uploaded directly to the Development's CMTS account using the "Utility Allowance Documents" in the type field and "Utility Allowance" as the TDHCA Contact. The Department will not be able to approve requests that are incomplete and/or are not submitted correctly.

Public Comment

(1) Bobby Bowling

From:	Bob Bowling IV
To:	Stephanie Naquin
Cc:	Demetrio Jimenez; eva Davalos
Subject:	Public Comment on Proposed Draft of TAC, Title 10, Part 1, Chapter 10, Subchapter F, 10.614 Utility Allowances
Date:	Friday, September 09, 2016 12:10:07 PM

Stephanie,

Please accept the following comment on the Draft of the Utility Allowances rule referenced in the above subject line.

We appreciate staff's efforts in drafting a rule that is more practical and user-friendly in the changing world of Utility Allowance calculations. We especially support the changes in 10.614(k) that will allow developers to use the Actual Use method for applications on developments submitted going forward. This change will allow the Department to better evaluate our budget projections with more accurate and realistic information regarding utility costs, as the PHA survey is not comparable with the highly energy-efficient units we build.

******Please note our new address below in exciting downtown El Paso!!!***

R. L. "Bobby" Bowling IV
President
Tropicana Building
300 E. Main, Suite 740
El Paso, TX 79901
(915) 821-3550 Office
(915) 821-7002 Fax

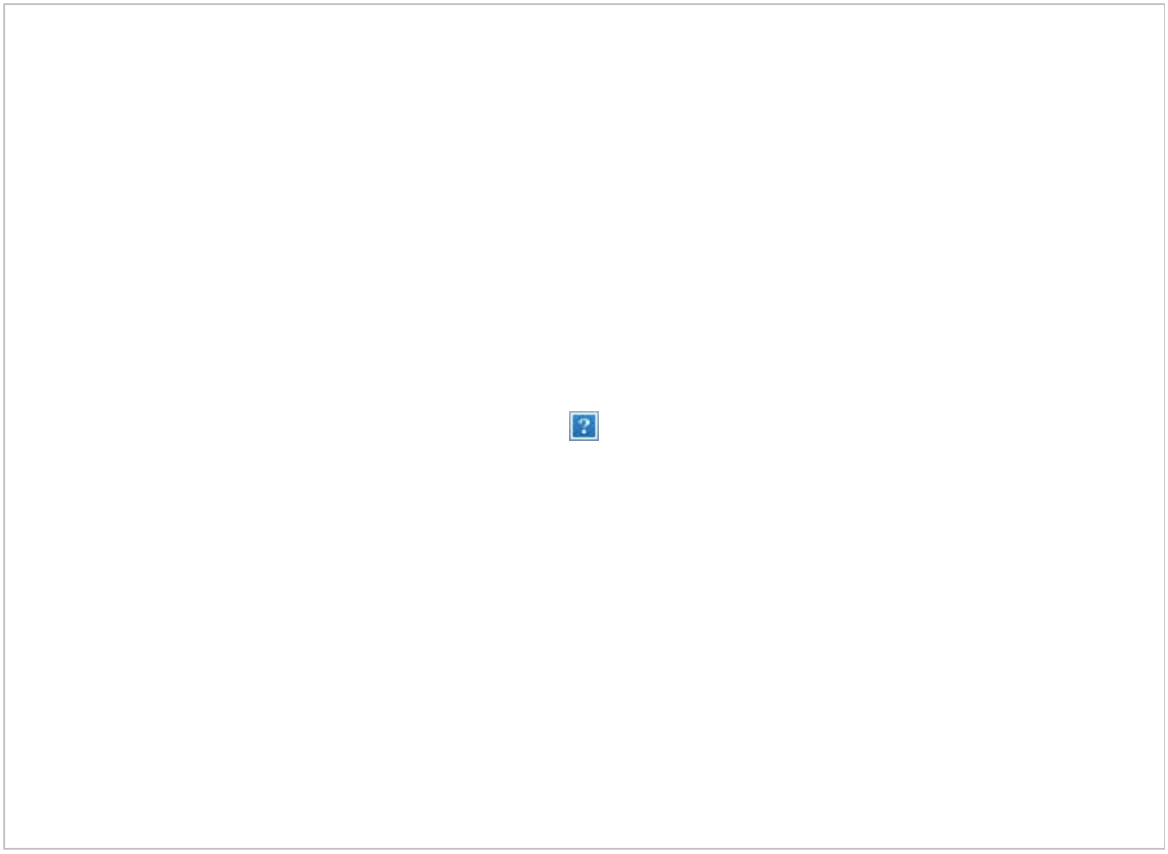
Public Comment

(2) Jen Joyce Brewerton on behalf og the Texas Affiliation of Affordable Housing Providers ("TAAHP")

From: Brewerton, Jen Joyce
To: Stephanie Naquin
Subject: Fwd: TDHCA Compliance Committee Comment
Date: Sunday, October 09, 2016 2:11:45 PM
Attachments: image001.png

Stephanie,

The following comment is consensus from TAAHP. We truly appreciate your time taken to discuss Friday while you were on vacation.



Jen Joyce Brewerton
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From: Brewerton, Jen Joyce
Sent: Thursday, October 06, 2016 8:37 PM
To: 'Nicole Flores' <NFlores@r4cap.com>; George Littlejohn <George.Littlejohn@novoco.com>; Bob Bowling IV <Bbowling4@tropicanahomes.com>; chris.akbari@itexgrp.com; jcouch@ti-f.org;

Thank you for the opportunity to comment on the New Proposed Rule at 10 Texas Administrative Code ("TAC"), Chapter 10, Subchapter F, §10.614, Utility Allowances.

TAAHP would like to commend the Department for the flexibility allowed under the current proposed rule. In general, it is clear that staff has been receptive to the previous comment offered during roundtables prior to publishing the draft. We appreciate staff's effort in that regard.

In regards to §10.614(d)(4), TAAHP consensus would like staff to consider a process for an event where an awarding jurisdiction for a non-TDHCA Direct Loan program has not established a utility allowance for the program, and is unresponsive to an owner request to establish the Utility Allowance for the Direct Loan program. TAAHP proposes that the Department handle such an occurrence in the same way proposed in the draft rule at application under (k)(4).

TAAHP proposes the following language:

(4) HTC Buildings in which there are units under a Direct Loan program are considered HUD- Regulated buildings and the applicable Utility Allowance for all rent restricted Units in the building is the Utility Allowance calculated under the Direct Loan program. No other utility method described in this section can be used by HUD-regulated buildings. If the Department is not the awarding jurisdiction, Owners are required to obtain the Utility Allowance established by the awarding jurisdiction, and to document all efforts to obtain such allowance to evidence due diligence in the event that the jurisdiction is nonresponsive. In the event that the awarding jurisdiction has not established a utility allowance for the program, and is unresponsive to an owner request to establish the Utility Allowance for the Direct Loan program, or requests the Department to calculate the allowance, the Department will establish the initial Utility Allowance in accordance with paragraph (3) subsection (d) of this section.

tdixon@bostoncapital.com; ggerst@bokf.com; leslie.houston@wellsfargo.com; tjackson@joneswalker.com; bkahn@hettig-kahn.com; daniel.kierce@rbc.com; mmayfield@txhf.org; Donna@MarqueConsultants.com; chris.thomas@thefctgroup.com; Phong Tran <Phong.Tran@novoco.com>; lvecchietti@lancasterpollard.com; pvillarreal@macdonald-companies.com; sandi@swilliamshcdc.com
Subject: RE: TDHCA Compliance Committee Comment

Hi all,

Thanks to everyone for their support on the comment. As an update, I would have the proposed comment to you by EOB today; however, TDHCA had to move our discussion on the comment to tomorrow. Therefore, I plan to send it out to the group after my meeting with TDHCA in case it changes based on our conversation. This is so uncontroversial that we won't need to vote, but I'll be happy to tweak if anyone has an interest to comment then.

Thanks all,

Jen Joyce Brewerton
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From: Nicole Flores [mailto:NFlores@r4cap.com]
Sent: Tuesday, October 04, 2016 10:53 PM
To: George Littlejohn <George.Littlejohn@novoco.com>
Cc: Bob Bowling IV <Bbowling4@tropicanahomes.com>; Brewerton, Jen Joyce <jen.brewerton@Dominiuminc.com>; chris.akbari@itexgrp.com; jcouch@ti-f.org; tdixon@bostoncapital.com; ggerst@bokf.com; leslie.houston@wellsfargo.com; tjackson@joneswalker.com; bkahn@hettig-kahn.com; daniel.kierce@rbc.com; mmayfield@txhf.org; Donna@MarqueConsultants.com; chris.thomas@thefctgroup.com; Phong Tran <Phong.Tran@novoco.com>; lvecchietti@lancasterpollard.com; pvillarreal@macdonald-companies.com; sandi@swilliamshcdc.com
Subject: Re: TDHCA Compliance Committee Comment

I also agree with this position. Thank you Jen!

KNF

On Oct 4, 2016, at 9:06 PM, George Littlejohn <George.Littlejohn@novoco.com> wrote:

I agree as well. TDHCA has made some very good changes and the direction they are taking is positive. I also agree that the HOME/CDBG utility allowance issue needs comment and we will need TDHCA to be flexible on this issue. This puts those projects in a no-win situation.

From: Bob Bowling IV [mailto:Bbowling4@tropicanahomes.com]
Sent: Tuesday, October 04, 2016 9:13 PM
To: Brewerton, Jen Joyce

Cc: chris.akbari@itexgrp.com; jcouch@ti-f.org; tdixon@bostoncapital.com; nflores@r4cap.com; ggerst@bokf.com; leslie.houston@wellsfargo.com; tjackson@joneswalker.com; bkahn@hettig-kahn.com; daniel.kierce@rbc.com; George Littlejohn; mmayfield@txhf.org; Donna@MarqueConsultants.com; chris.thomas@thefctgroup.com; Phong Tran; lvecchietti@lancasterpollard.com; pvillarreal@macdonald-companies.com; sandi@swilliamshcdc.com
Subject: Re: TDHCA Compliance Committee Comment

Jen,

First, thanks so much for volunteering to do this for our industry! I agree with you that the rules on UAs are better and more flexible than they've ever been. However, I am fine if you want to object the part about the HOME/cdbg layering rule being too burdensome and unfair. I think you can both commend them for a job well done AND offer input and object to the HOME/CDBG part. My two cents anyway.

Bobby

Sent from my iPhone

On Oct 4, 2016, at 4:29 PM, Brewerton, Jen Joyce <jen.brewerton@Dominiuminc.com> wrote:

> Good afternoon,
>
> I'm writing because each of you is on the TAAHP Compliance Committee, and I am hoping to get your input on the TDHCA Compliance Utility Allowance Rules that are out for public comment through October 10th. I was recently appointed chair of the committee, so I am happy to coordinate the TAAHP comment. If you haven't had a chance to review the draft rules, they are located here: http://www.tdhca.state.tx.us/pmcdocs/10TAC10-UtilityAllowance.pdf
>
> In short, I believe the proposed rules are very non-controversial and offer as much flexibility as possible for developers and properties. Unless anyone disagrees, I recommend TAAHP commend TDHCA for this change in direction, as well as for adding a process for review of UAs at application. Otherwise, my only recommendation for a proposed change would be to add in a process recommendation for TDHCA on how to handle local HOME/CDBG funds layered on TDHCA existing deals and applications. Right now, TDHCA will not approve a UA request for a TDHCA property that is layered with local HOME/CDBG funds without getting the local PJ to approve. This is problematic where local PJs are reluctant to provide approval.
>
> I am happy to draft up my suggested TAAHP comment for committee approval, but I want to be sure and include any other comment anyone on the committee thinks we should additionally provide. I know it is short timing (SORRY!), but If you have any suggestions, please email it or give me a call by Thursday (Oct 6th), and I'll add it to the proposed comment. I'll integrate it into my proposed language and have it for committee review and approval Thursday EOB.
>
> Again, I apologize for the short timeline, I'll make sure this doesn't happen again moving forward where possible.

Jen Joyce Brewerton
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Public Comment

(2) Robert Somers on behalf of 2rw Consultants

September 27, 2016

Texas Department of Housing and Community Affairs
Attn: Stephanie Naquin, Rule Comments
P.O. Box 13941
Austin, TX 78711-3941

RE: Public comments on proposed changes to 10 TAC §10.614

Ms. Naquin,

2rw Consultants, Inc. (2rw) is writing to express its support for the update to 10 TAC §10.614 regarding utility allowance calculation methodologies. The removal of the absolute requirement to use actual building consumption data from the previous 12 months when using the Energy Consumption Model is laudable, as actual consumption data is not appropriate when calculating a theoretical model. However, we see that "available historical data" is still listed as a factor to be considered when calculating an Energy Consumption Model, and we hope to offer input on how to provide additional guidance on this requirement:

1. **The interpretation of "available."** This issue has several considerations:
    a. ***How much effort should need to be expended to obtain historical data?*** Accumulating actual consumption data has often been a large administrative burden, requiring many man-hours of time and effort (e.g. weeks or months of following up with tenants to obtain bills and/or waivers, following up with utility companies, etc.). Often, these labors turn up unsuccessful results (e.g. inadequate sample sizes). We suggest that "available" be defined as data that has already been collected and is in a property manager/owner's possession.
    b. ***Should a property have to pay to obtain historical data?*** In most cases, utility companies charge a fee for obtaining historical utility usage information. This fee is often nominal (under $100), but we suggest that having to pay for the information means it is no longer considered "available."
    c. ***Is data from another similar building still considered "available"?*** Under the previous regulation, building data for a "similar" building was required if data for the building being studied was not available. 2rw is pleased to see that this language has been removed from the regulation and would like to confirm that a "similar" building's data is not considered "available" data. Even if a building is located in the same climate zone and shares many similar characteristics, different insulation values, windows, installed appliances, etc. could lead to tremendous differences in expected and actual energy consumption. We suggest "available" data includes only data collected at the building site in question.

2. **Incorporating available data, if obtained, into the Energy Consumption Model.** Previously, when submitting an Energy Consumption Model for approval, engineers were forced to improvise a way to incorporate actual consumption data into a building simulation – a task for which there is no technical guidance. Historically, there has not been guidance from the IRS or TDHCA on this subject either. We suggest that available historical data be used solely as a point for comparison, rather than attempting to incorporate that data into the Energy Consumption Model itself. When comparison the model to available historical data, we suggest that obvious discrepancies be noted and explained, but the historical data should not outweigh the modeled consumption data because actual consumption data can incorporate improper and inefficient utility usage, as well as weather abnormalities, meaning that data can misrepresent what an appropriate allowance would be.

2rw would like to re-iterate its support for the proposed changes to 10 TAC §10.614. Gathering tenant waivers and/or convincing utility companies to provide the relevant consumption data often proved an insurmountable hurdle, meaning many energy-efficient properties were unable to claim the financial benefit of their investment (in the form of lower utility allowances appropriate to a property's installed fixtures, systems, and appliances).

2rw is an energy and engineering design firm that has over 29 years of experience providing utility allowance calculations in the affordable housing industry. As a technical expert in the field of engineered utility allowances, we are very pleased with this proposed regulatory change.

If you have any questions regarding our comments, please feel free to call 434-296-2116 and ask for Anna Henry, the compliance manager for utility allowances at 2rw.

Best Regards,

Robert R. Somers, II, PhD, PE, LEED AP
President, 2rw Consultants, Inc.

5a

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November 7, 2016

By Email to terri.roeber@tdhca.state.tx.us

Mr. J. Paul Oxer, Chair
TDHCA Board Members
c/o Terri Roeber, Legal
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: #16429; The Pointe at Crestmont Apartments; Houston, Harris County, Texas (the"Project"); Appeal of Staff Recommendation of Disapproval Due to Crime.

Dear Chair Oxer and Board Members:

This appeals the TDHCA Staff's recommendation that the Board not approve the Application for 4% Housing Tax Credits filed on behalf of The Pointe at Crestmont, LP, the Project Owner ("Owner"), due to crime in the neighborhood which allegedly rises to the level of ineligibility under 11.101(a)(4)(B)((ii) of the 2016 Uniform Multifamily Rules (the "Rules"). Although the neighborhoodscout.com website shows a rate of violent crime equal to 36.16 crimes per 1,000 residents annually, neighborhoodscout.com has been shown to be incorrect in the past, and we assert that the rate of violent crime as shown by a Police Beat analysis is well within the stated limits for an eligible application.

City Provides $5 Million and Other Stimuli Toward Neighborhood Redevelopment.

The Project will be located at 5602 Selinsky Road, which is currently the site of an apartment complex that has been abandoned due to damage from Hurricane Ike in 2008. The City of Houston deems the abandoned housing to be so detrimental to the neighborhood that it has agreed to provide $5 Million to assist in the demolition and redevelopment. Additionally, Crestmont Village (the "Adjacent Apartments"), an adjacent apartment complex that had continuing code enforcement issues with the City of Houston, was closed down by the City in October 2015, its tenants relocated, and the property was sold to a new owner who intends to redevelop as market rate senior housing. With the anticipated resolution of problems with these two apartment complexes, it is anticipated that a substantial portion of the violent criminal activity in the neighborhood will be eliminated, as discussed below.

Police Beat 14D40.

Where it is suspected that neighborhoodscout.com is not providing accurate information concerning violent crime in the neighborhood, 11.101(a)(4)(D) provides that applicants may provide crime statistics based upon the police beat within which the development site is located. The Project is located in Police Beat 14D40 (the "Beat"). Population for the Beat is not published, so the Owner calculated the population by using the population of each census tract or census block group that is located completely within the Beat. Because the Beat also includes some partial census tracts, this means that the population estimate is conservatively low, and this low estimate would serve to create a higher rate of violent crime per 1,000 persons. Using this methodology, the Beat has a population of approximately 17,051, based upon 2009-2013 ACS census data and 18,261 according to 2010-2014 ACS census data. This shows an increase in population of slightly more than 7% over the two periods.

According to the Beat records, in calendar year 2014 there were 262 incidents of reported Part 1 violent crimes. During calendar year 2015, there were 260 incidents of reported Part 1 violent crimes within the Beat. Using the low population estimates derived above, the Part 1 violent crime rate would be:

262/17,051 = 15.37 violent crimes per 1,000 persons in 2014.

260/18,261 = 14.24 violent crimes per 1,000 persons in 2015.

With population trending up slowly and Part 1 incidents remaining fairly constant, a violent crime rate of less than 14.24 could be anticipated for 2016.

Police Beat 14D50.

The Rules contemplate that the police beat in which a project is located would include the entirety of the census tract in which that project is located. This is not the case with the Beat, which only includes one block group from Census Tract 3316.02. In order to present a complete picture of the crime situation, the Owner also presented information concerning the adjacent Police Beat 14D50 (the "Adjacent Beat"), which includes block group 1 of Census Tract 3316.02. Using the same methodology as described above, the Owner determined that the Adjacent Beat has a population of approximately 6,739 based upon 2009-2013 ACS census data and 6,299 according to 2010-2014 ACS census data. According to the records of the Adjacent Beat, in calendar year 2014 there were 62 incidents of reported Part 1 violent crimes and the same number in calendar year 2015. Accordingly, the conservative estimate of the Part 1 violent crime rate would be:

62/6,739 = 9.20 violent crimes per 1,000 persons in 2014.

62/6,299 = 9.84 violent crimes per 1,000 persons in 2015.

Combined Part 1 Crime Rate for Two Adjacent Police Beats.

If you take the conservative population estimates for the two police beats and combine them, and then add the number of reported incidents of Part 1 crime within the calendar year, you have the following information for the combined police beats:

324/23,790 = 13.62 violent crimes per 1,000 persons in 2014.

322/24,560 = 13.11 violent crimes per 1,000 persons in 2015.

Again, the Part 1 violent crime rate is well below the 36.36 crimes per 1,000 persons shown by Neighborhoodscout.com, and is substantially below the rate of 18 violent crimes per 1,000 persons which is the QAP's benchmark for ineligibility.

We point out that Neighborhoodscout.com has repeatedly been demonstrated to show rates of violent crime that are substantially higher than the rates derived from actual police beat records of reported instances. This Board has shown its understanding of this issue on a number of occasions in the past where Staff initially found ineligibility due to the violent crime rate shown in Neighborhoodscout.com, but subsequent review of the police beat information caused the Board to approve the applications. Here is a partial listing of such projects in the Houston area:

#16406 - New Hope at Reed, Houston, Texas;
15409 - Pleasant Hill, Houston, Texas; and
#14108 – Cleme Manor, Houston, Texas.

5600 Block of Selinsky.
We also point out that an analysis of where violent crime was reported within the Beat shows that the 5600 Block of Selinsky Road (which is where both the problematic apartment complexes are located) was the source of 9.9% of all violent crime incidents in 2014, and 11.2% of all violent crime incidents in 2015. This data indicates that the presence of the two apartment complexes, both of which are now abandoned, is an instigating factor that is encouraging violent crime in the area. Demolition of these apartment complexes and redevelopment in the manner proposed is likely to go a long way toward reducing the overall violent crime rate in the Beat.

Project's Anti-Crime Design.
The Owner takes tenant security seriously, and has caused this Project to be designed to foster a safe environment. The measures taken to reduce the opportunity for criminal activity include:

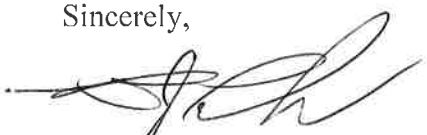
- **Police Substation on Site.** The Project has been designed to include a police substation within the community building. Past experience indicates that a substation encourages a continuing police presence within the neighborhood, as patrol cars stop by at indeterminate times for police business, or for coffee or restroom facilities. The unpredictable police presence serves to deter crime.
- **Full Perimeter Fencing/Controlled Access.** The Project will feature full perimeter fencing with controlled gate access.
- **24-Hour Video Surveillance.** The Owner will contract with Stealth Monitoring, Inc. which provides remote video surveillance of the exterior of the Project. When monitors see suspicious activity, Stealth Monitoring can play speakers and call police.

Summary.
In conclusion, we ask that the Board take into consideration the actual data collected by the Houston Police Department concerning violent crime in the neighborhood of the Project in lieu of the Neighborhoodscout.com violent crime rate, which has been shown repeatedly to be materially higher than the actual occurrence of Part 1 crime in various neighborhoods. The 2016 Rules state that a showing of more than 18 Part 1 violent crimes per 1,000 persons annually constitutes an undesirable neighborhood characteristic. The information presented here goes not

to mitigation of a rate of violent crime that is higher than 18 per 1,000, but instead contests the accuracy of the data presented by Neighborhoodscout.com. The Owner has shown that the true incidence of violent crime in the neighborhood is substantially less than 18 reported events per 1,000 persons, and has also provided evidence that historically, approximately 10% of all of the violent crime in the Beat has occurred in the 5600 block of Selinsky, which is where both of the troubled and now abandoned apartment complexes are located. Approval of the requested Determination Notice for the Project will serve to mitigate crime in the neighborhood by eliminating abandoned hurricane-damaged buildings that otherwise provide an environment that encourages criminal activity. Additionally, having a police substation on the premises and the use of Project amenities designed to enhance security, as well as 24-hour remote video monitoring with response capability will all serve to discourage the presence of non-residents with criminal intent.

We ask that you approve The Pointe at Crestmont's application for 4% Housing Tax Credits as being eligible for a Determination Notice.

Sincerely,



Barry J. Palmer

5c

BOARD ACTION ITEM

MULTIFAMILY FINANCE DIVISION

NOVEMBER 10, 2016

Presentation, Discussion, and Possible Action on Timely Filed Appeals under the Department's Multifamily Program Rules

RECOMMENDED ACTION

WHEREAS, a previously awarded 9% Housing Tax Credit Application (application 13167) for the development of 49 total units called Freedom's Path at Kerrville was submitted under the Deferred Forgivable Loan Set-Aside within the 2016-1 Multifamily Direct Loan Notice of Funding Availability ("2016-1 NOFA") as application 16502 to the Department on January 4, 2016;

WHEREAS, the Application was received on the same day as four other applications within the same set-aside during the Regional Allocation Formula ("RAF") period, which began on January 4, 2016, and expired on January 29, 2016;

WHEREAS, the Application requested $980,000, which was more than the amount available for rural Sub-region 9 in which the development site is located;

WHEREAS, the other four applications, with development sites located in urban sub-regions 6 and 7, requested less than the amounts available in those sub-regions and were awarded funds under the Deferred Forgivable Loan ("DFL") Set-Aside earlier this year;

WHEREAS, insufficient funding remains available under the DFL Set-Aside to meet the Application's requested amount; and

WHEREAS, the Applicant timely filed an appeal and the Executive Director denied the appeal;

NOW, therefore, it is hereby

RESOLVED, that the appeal for Application 16502, Freedom's Path at Kerrville, is denied.

BACKGROUND

Section 11d of the 2016-1 NOFA states, "The Board may on a case by case basis, or in whole, waive provisions of this NOFA where such waiver or exception to the provision(s) are warranted and documented and where such exception is not in violation with any state or federal requirement(s)." It is under this provision that the Applicant is appealing to the Board to seek the reallocation of

unused funds under the General Set-Aside in the 2016-1 NOFA to the Deferred Forgivable Loan Set-Aside in order to award this Application.

The Applicant asserts in their appeal that the 2016-1 NOFA was not explicit in describing the RAF for them to understand that they were limited to the amount available in rural Sub-region 9 as opposed to the total of the urban and rural Sub-regions for Region 9. As such, they believed that over $1.7 million was available during the RAF period for applications submitted throughout Region 9 after adding the published amounts for the Urban and Rural Subregions. The RAF amounts were published with the NOFA, and applied the same RAF formula over the past several years that has consistently included subregions.

If the RAF limitations were removed, the Application still would not have been competitive due to scoring under Section 5 of the 2016-1 NOFA. Had competitive scoring been applied, the five applications submitted under the DFL Set-Aside on January 4, 2016, would have scored:

App. #	Development Name	Scores
16405	New Hope at Harrisburg	9
16406	New Hope at Reed Road	8
16500	Bluebonnet Studios	15
16501	Garden Terrace Phase III	9
16502	Freedom's Path at Kerrville	7

Staff had a conference call with Applicant on February 5, 2016, after the RAF period had ended, to discuss the unlikely scenario in which this Application could receive an award under the DFL Set-Aside. The basis for this conclusion was that four other application (16405, 16406, 16500, and 16501), which were received on the same day as the Application, had all requested less than the amount available in urban sub-regions 6 and 7, in sufficient amounts that there was less than $150,000.00 remaining in the setaside. All four were under review and nothing in staff's review at the time led us to believe they were unlikely to be funded.

App. #	Development Name	Application Amount Requested
16405	New Hope at Harrisburg	$607,698
16406	New Hope at Reed Road	$660,000
16500	Bluebonnet Studios	$590,000
16501	Garden Terrace Phase III	$1,000,000
16502	Freedom's Path at Kerrville	$980,000

While staff conveyed that funding the Application under the DFL Set-Aside was unlikely, a final decision had not been made at that point since no applications had been awarded. Regardless, the Applicant sent a letter on February 17, 2016, appealing staff's belief that the Application was unlikely

to be funded under the DFL Set-Aside. On February 23, 2016, staff responded in a letter reiterating the reasons why the Application was unlikely to be funded and informing the applicant of the opportunity to explore options outside of the DFL Set-Aside.

On March 3, 2016, the Applicant sent a letter to the Department asking staff to reconsider the Application under the General Set-Aside while requesting some repayable loan provisions outside of the provisions of the 2016-1 NOFA, such as interest-only payments from surplus cash flow. Staff responded accordingly by reviewing the Application as one received under the General Set-Aside. The Application received a review by Real Estate Analysis ("REA") staff this past summer and was recently found to be infeasible both within the parameters of the General Set-Aside of the 2016-1 NOFA and outside of those parameters in ways that the Application would retain some repayable loan attributes. While the "Do Not Recommend" conclusion of the REA Underwriting report is technically the trigger for this appeal, the Applicant is questioning staff administration of the NOFA rather than conclusions of the REA Division.

From February 25, 2016, through June 15, 2016, applications 16405, 16406, 16500, and 16501 were awarded Deferred-Forgivable funds, leaving $142,302 available under the DFL Set-Aside. As a result of insufficient funding available under the DFL Set-Aside, the Applicant is requesting that at least $837,698 in unawarded funds under the General Set-Aside be reallocated to the DFL Set-Aside.

Staff does not recommend reallocating those funds for two reasons. First, applications can no longer be accepted under the NOFA, so other Applicants (who may have submitted an Application, had they known additional funds would be available) are not able to apply. Second, two other applications remain on the waiting list under the DFL Set-Aside after Freedom's Path at Kerrville. Reallocating funds within the NOFA at this point would have ramifications on subsequently submitted applications as well as potential applications that were not submitted since applicants believed that this type of waiver under the NOFA was unlikely.

16502 Freedom's Path at Kerrville
Applicant Appeal to Executive Director

COATS | ROSE
A Professional Corporation

TAMEA A. DULA
OF COUNSEL

tdula@coatsrose.com
Direct Dial
(713) 653-7322
Direct Fax
(713) 890-3918

November 4, 2016

By Email to tim.irvine@tdhca.state.tx.us

Mr. Tim Irvine, Executive Director
Texas Department of Housing and Community Affairs
211 East 11th Street
Austin, Texas 78701-2410

RE: #16502/13167 – Freedoms Path at Kerrville, City of Kerrville, Kerr County, Texas; Appeal of Denial of Deferred Forgivable Debt Funding Under 2016-1 NOFA.

Dear Mr. Irvine:

Freedom's Path at Kerrville ("Project") is a 49-unit Supportive Housing development in Kerrville for disabled Veterans. The Project received 9% tax credits in 2013; construction is completed (please see attached photographs) and the Project is currently 98% occupied. The Project is located in a High Opportunity Area with a poverty rate of only 12.4% and a median household income in the second quartile.

Source of Funding Gap.

After the award of tax credits (limited to not more than $750,000 due to the sub-region), the closing was delayed because of the extended review and approval processes required by the Veterans' Administration, and additionally, the City of Kerrville unexpectedly closed its main water tank, which necessitated a complete redesign and re-routing of the water supply for the Project. These delays resulted in the Project getting caught in the skyrocketing construction pricing sparked by the "fracking" boom in Texas. The higher construction pricing, coupled with the redesign and increased infrastructure costs to re-route utility lines, produced a significant imbalance between sources and uses for the Project. Kerrville Senior Apartments Limited Partners ("Project Owner") advises that to preserve the credits and provide the Veterans' housing, it managed to close by deferring all of the Developer Fee and arranging unsecured loans from several of the professional vendors. This was done in the belief that HOME funding might be available to absorb some of this cost in the future.

As a Supportive Housing development, the Project is expected to be debt free or have no permanent foreclosable or noncash flow debt. The Project Owner has been looking for appropriate funding to close the gap. Kerrville has a population of less than 25,000, is not a Participating Jurisdiction and has no direct HUD funding to provide soft debt. For that reason, Mr. Craig Taylor, a representative of the Project Owner, participated in the TDHCA's Permanent Supportive Housing

Committee hearings concerning the need for soft funding to support Supportive Housing. He also appeared before the TDHCA Board on a regular basis in 2015 to discuss the issues raised for Supportive Housing developments located in Non-Participating Jurisdictions and how the TDHCA is really the sole point of recourse for such projects. Mr. Taylor emphasized the need for deferred payment, forgivable debt in order to operate Supportive Housing pursuant to the TDHCA's Rules which require debt-free projects or projects with no permanent foreclosable or noncash flow debt.

Board Funds NOFA with Deferred Forgivable Debt.

The TDHCA Board listened, and the 2016-1 NOFA was issued, providing $3,000,000 in HOME and/or TCAP RF funds for Deferred Forgivable loans (among other set-asides), on a first-come, first-served basis. Applications for Deferred Forgivable loans were capped at $1,000,000 and required to be a minimum of $500,000. The Project Owner applied on the first day for a Deferred Forgivable loan in the amount of $980,000 as a Priority 1 applicant (not layered with 2016 9% tax credits) (the "Application"). Priority 1 applications were to be prioritized on a first come first served basis, with scoring of the application to be referenced only if there were multiple applicants on the same day within the same set-aside and the same priority level. There were four (4) other Supportive Housing applications filed on the same day and one (1) filed the next day. All five (5) other applicants were located in Participating Jurisdictions.

Freedom's Path Disqualified from Applying in Deferred Forgivable Set-Aside.

On February 5, 2016, after the state-wide collapse on January 29, 2016, the Project Owner was advised that it was unlikely that any funds would be available for the Project because the Application for $980,000 exceeded the amount available in Subregion 9 Rural ($430,427). Staff's position is that an application could only be funded prior to the collapse if the amount requested was for the funding available in the sub-region or less – **but this was never stated in the NOFA**.

A Regional Allocation Formula Amounts chart was attached to the NOFA as Attachment A. The NOFA stated in Section 3, "All funds will be subject to the Regional Allocation Formula ("RAF", located in Attachment A) until January 29, 2016 …" But the instructions in the NOFA for the manner in which funds would be awarded dealt exclusively with the amount of funding available for a region, and made no reference to limiting applications or funding to funds available in a sub-region. In fact, the words "subregion" or "sub-region" are never used in the NOFA! All references in the NOFA are to the amount of funding in the "**region.**" Specifically, in Section 4(a) "Priorities for Awards"' the NOFA states: "

> *a. Any complete applications received during the period of the RAF will be prioritized* ***to the extent that funds are available both in the region and in the set-aside*** *under which the application is received. If multiple applications are received in a* ***region****, then score will be used as the determining factor affecting the priority of the application.* ***If insufficient funds exist in a region*** *to fund all applications then the oversubscribed applications will wait for the collapse of funds by region be combined with other applications received by the deadlines and as described by the additional priority levels below.*

Please note that Region 9 had $1,732,755 in funds available, and the Project was Priority 1 and the only applicant for a Deferred Forgivable loan in Region 9. When the Project Owner was apprised of the Staff's position, it was not permitted to revise the Application to request a Deferred Forgivable loan in the amount of $430,427, which would have been less than needed, but better than nothing.

Appeal Filed, Change to General Set-Aside Suggested.

On February 17, 2016, the Project Owner filed an appeal to you as Executive Director (see attached letter). Effectively, this appeal stated that the Staff was misinterpreting the word "region" to mean "subregion," thus effectively nullifying the Project's application which had been sized to: (i) meet the NOFA's minimum and maximum amount requirements; (ii) ask for no more funding than was available within **Region** 9; and (iii) ask for the funding that was actually needed by the Project. A response from the Executive Director dated February 23, 2016, did not deny the appeal, but instead stated that Staff did not intend to convey that there was no possibility of receiving an award during the February 5th conference call, but that at least $837,698 in funds applied for by four (4) other applicants would need to fall out before the Application could be funded. The letter also stated that there might be potential for funding if the request was restructured and resubmitted outside of the Deferred Forgivable Set-Aside. In subsequent discussions with Don Paxton and Craig Taylor, you suggested that the Project Owner could move its application to the General Set-Aside, even though that funding was for must-pay subordinate debt bearing interest at 3% per annum and a term of 30 years. You indicated that there was precedent in using such funds in connection with USDA Section 515 projects, which had similar restrictions on debt to those for Supportive Housing. This funding would allow for cash flow only loans, thus avoiding the conflict with a "must-pay" debt situation.

Priority 1 Review Deferred; Priority 2 Applications Reviewed and Awarded.

The Project Owner agreed to be transferred to the General Set-Aside, which happened on March 4, 2016. Only one Region 7 Application in the General Set-Aside has a filing date earlier than the Project's, and it and the Project are the only Priority 1 Applications in the General Set-Aside. Notwithstanding the early filing date in a "first come, first served" NOFA, and repeated inquiries as to when the Application would be considered and taken to the Board, the Application appears not to have been reviewed by REA until early August, 2016.

On October 20, 2016, the Project Owner's representatives were advised that the Application would not be recommended for financing under the General Set-Aside. Discussions were had with REA regarding the problem that without hard senior debt (because it is Supportive Housing) the Project did not fit the mold for TDHCA's Direct Loans. The requested loan was inconsistent with the terms of the NOFA, and if structured with terms consistent with the NOFA, the Project was deemed infeasible because the first year expense-to-income ratio was greater than 65% and the debt coverage ratio was below 1.15 with negative cash flow during years 2 through 15. This is simply reflective of the fact that the Project requires soft debt and not must-pay debt as shown in the Direct Loan portion of the NOFA. REA states that they are not permitted to underwrite under any terms other than those included in the NOFA.

In view of the fact that the Project does not, and notwithstanding the Executive Director's suggestion, never could have supported must-pay debt as proposed in the General Set-Aside, we are re-initiating the appeal filed on February 17, 2016, for which no action was taken by the Executive Director. Instead, on February 23, 2016, the Executive Director wrote to explain that because the Project Owner had requested more funds than were available in the sub-region, the Application would not be funded, and upon the state collapse only $142,302 remained after funding the four other Priority 1 applications from Regions 6 and 7. The NOFA was designed so that this Priority 1 Project Owner was prohibited from filing an application for less than $500,000, and therefore was prohibited from filing any application because there was only $430,427 in Rural Sub-Region 9. Although there was more than enough funding in Region 9 as a whole to fund the Application ($1,732,755 in the aggregate), because Staff interpreted "region" to mean "sub-region" there was no opportunity for the Applicant to be funded. By the time of the state collapse, the applications from Participating Jurisdictions in Regions 6 and 7 had used up essentially the entire $3,000,000 provided for the Set-Aside. **No funding was provided at all for any Supportive Housing applicant from a Non-Participating Jurisdiction**.

Request – Exercise Waiver Rights Reserved in the NOFA.

On behalf of the Project Owner, we request that the TDHCA Board exercise its reserved right to waive provisions of the NOFA in order to redress this inequity. Section 11(d) of the NOFA states:

> *d. The Board may on a case by case basis, or in whole, waive provisions of this NOFA where such waiver or exception to the provision(s) are warranted and documented and where such exception is not in violation with any state or federal requirement(s).*

When the only Priority 1 application from a Non-Participating Jurisdiction filed an application on the first possible day and still was prohibited from qualifying for a Deferred Forgivable loan, an injustice has occurred.

The extended application period for the 2016-1 NOFA ended August 28, 2016. The Staff has assured the Project Owner that, even though the Application was only reviewed in October, there are still plenty of funds available under the NOFA. We urge the Board to do the following:

1. Re-allocate at least $837,698 of the currently unawarded funds to the Deferred Forgivable Set-Aside, to be added to the $142,302 that has not yet been allocated;

2. Waive the Staff's questionable interpretation of the NOFA provisions to permit the Application to qualify as the only Priority 1 application filed for Deferred Forgivable loan in Region 9; and

3. Permit the award of a $980,000 Deferred Forgivable loan to Freedom's Path, pursuant to the terms established in the NOFA for such Deferred Forgivable loans.

By doing this, the Deferred Forgivable Set-Aside created by the 2016-1 NOFA will be able to achieve the goal of assisting at least one Supportive Housing development that does not have access to any other soft financing because it is located in a Non-Participating Jurisdiction.

Very truly yours,

Tamea A. Dula

Enclosures:
1. Photographs of Project
2. February 17, 2016 appeal to Executive Director

cc: Marni Holloway
Andrew Sinnott
Donald Paxton
Scott Deaton
Craig Taylor

#16502/13167 – Freedoms Path at Kerrville, City of Kerrville, Kerr County, Texas; Appeal of Denial of Deferred Forgivable Debt Funding Under 2016-1 NOFA

ENCLOSURE 1 – PHOTOGRAPHS OF PROJECT

SEE ATTACHED


Supera
Supera
Supera
Supera
Supera


CYBEX
ARC TRAINER
CYBEX


Home
is where
Life
resides,
Memories
are created and
Laughter
Never ends.

#16502/13167 – Freedoms Path at Kerrville, City of Kerrville, Kerr County, Texas; Appeal of Denial of Deferred Forgivable Debt Funding Under 2016-1 NOFA

ENCLOSURE 2 – FEBRUARY 17, 2016 APPEAL TO EXECUTIVE DIRECTOR

SEE ATTACHED

COMMUNITIES FOR VETERANS

February 17, 2016

By Email to tim.irvine@tdhca.state.tx.us

Mr. Tim Irvine, Executive Director
Texas Department of Housing and Community Affairs
211 East 11th Street
Austin, Texas 78701-2410

RE: Appeal of Denial of Funding Under Deferred Forgivable Loan Set-Aside in 2016-1 NOFA; #13167 – Freedoms Path at Kerrville, Kerrville, Kerr County, Texas.

Dear Mr. Irvine:

This is an appeal for assistance in connection with the denial of funding under the Deferred Forgivable Loan Set-Aside to the above referenced Project. We believe that TDHCA Staff erred by: (i) not following the purpose of the TDHCA as a recipient of HUD funding, and (ii) not following the terms of the NOFA.

Application was filed on January 4, 2016, for a Deferred Forgivable Loan in the amount of $980,000 (maximum permitted request was $1,000,000). The Set-Aside had been funded with $3,000,000 in HOME and/or TCAP funds. The Project was one of only five applications that were filed on the first possible day and therefore had equal priority. All five applications were for Supportive Housing developments. The Project was the only applicant in Region 9 Rural – and the other four applicants were two in Region 7 Urban and two in Region 6 Urban.

On February 5th, Andrew Sinnott, Multifamily Loan Programs Administrator, and Marni Holloway, Director of Multifamily Finance, advised Craig Taylor and Scott Deaton of Communities for Veterans by phone that the Project would not receive any funding. Apparently, although the Project was the only application filed on January 4th from a development in a Non-Participating Jurisdiction, all of the funds have been siphoned off to the four applications from major Texas cities that are Participating Jurisdictions. We were advised of a strategic error in requesting the amount of funding that we actually needed, and which was below the $1,000,000 maximum request. Because the Project's funding request was more than the funds assigned to the Region 9 Rural Sub-Region ($430,427), we were told that the application could not be funded, and the funding of the other four applications drained off essentially all the money in the Set-Aside, leaving only $142,307 uncommitted. Additionally, it is our understanding that because the application was for more funding than shown as available in the Sub-Region, the Project is ineligible for any funding at all.

3550 S. Tamiami Trail, Suite 301 Sarasota, FL 34231 www.cfveterans.com
Phone: (941) 929-1270

Only projects in Participating Jurisdictions will be funded.

We think that it is inappropriate that all of the TDHCA's funding available for Deferred Forgivable Loans, such as are desperately needed for Supportive Housing, has been utilized to support developments located in major Participating Jurisdictions that have other sources of funding available from HUD. Kerrville is not a Participating Jurisdiction, and therefore has no federal source of funding available to provide the type of assistance needed for Supportive Housing. The TDHCA was supposed to provide a source of federal funding for Non-Participating Jurisdictions, but the manner in which this NOFA is being administered is thwarting that purpose!

The NOFA states the funding is on a regional basis - not sub-regional.

The word "sub-region" does not appear anywhere in the NOFA, excerpt on Attachment A, where the total funding for the NOFA is shown as allocated among sub-regions. Instead, the NOFA specifically states that applications are to be funded on a **regional** basis. Section 4(a) states:

> a. Any complete applications received during the period of the RAF will be prioritized to the extent that funds are available both in the **region** and in the set-aside under which the application is received. If multiple applications are received in a **region**, then score will be used as the determining factor affecting the priority of the application. If insufficient funds exist in a **region** to fund all applications then the oversubscribed applications will wait for the collapse of funds by **region** be combined with other applications received by the deadlines and as described by the additional priority levels below.

So, the explicit language dealing with how funding is to be processed states that the amount of funding in the **region** controls, and not the amount of funding in a sub-region. We believe that Staff has erred by treating the initial funding of this NOFA in the same manner as various other TDHCA Programs are funded – on a Sub-Regional basis. This should not be the case when the NOFA explicitly calls out a different approach.

Please refer to the enclosed Attachment A from the NOFA. Region 9 is allocated $1,302,328 for Region 9 Urban and $430,427 for Regions 9 Rural. This totals $1,732,755 available in Region 9. The Project's application for $980,000 did not exceed the funding available for Region 9. Additionally, looking solely at the TCAP RF (which is the funding source likely to be preferred for the Deferred Forgivable Loan Set-Aside) there is a total of $1,021,604 in TCAP RF funding for Region 9 – which is also more than enough to fund the Project's request!

Adequate funding for Region 9 requires that the only applicant in the region receive funding.

Because Region 9, taken as a whole, is shown on Attachment A as having more than sufficient funding to support an application for $980,000, we believe that the application for Freedoms Path at Kerrville should be approved for funding on the same basis as the other four applications in Regions 6 and 7.

Summary.

We sincerely hope that you will act to correct what we believe is a misunderstanding concerning the manner in which the NOFA requires that the Deferred Forgivable Loan Set-Aside be allocated. We spent the last year repeatedly appearing before the TDHCA Board to advise its members of the difficulties inherent for Supportive Housing developments that are not located in a Participating Jurisdiction. We requested the opportunity to apply for TCAP-RF funding that could be provided in the form of a deferred forgivable loan. After finally gaining the opportunity to apply for such funding, we request that the TDHCA make the funding available to the only applicant as of January 28, 2016, that is not located in a Participating Jurisdiction.

Thank you for your consideration of this request.

Sincerely,

Donald W. Paxton
Member of General Partner

Enclosure: Attachment A

cc: Marni Holloway
Andrew Sinnott
Don Paxton

Attachment A

Regional Allocation Formula Amounts
Available Until 5pm Austin Local Time on January 29, 2016

Urban Sub-Regions	HOME	TCAP RF	Total Sub-Region Amounts
Region 1	$150,862	$261,458	$412,320
Region 2	$55,426	$94,737	$150,163
Region 3	$1,890,442	$2,530,723	$4,421,165
Region 4	$463,781	$223,693	$687,474
Region 5	$208,253	$154,846	$363,099
Region 6	$472,833	$2,215,570	$2,688,403
Region 7	$1,194,119	$854,882	$2,049,001
Region 8	$170,076	$274,786	$444,862
Region 9	$376,561	$925,767	$1,302,328
Region 10	$280,388	$258,411	$538,799
Region 11	$415,831	$1,135,707	$1,551,538
Region 12	$258,944	$180,156	$439,100
Region 13	$444,922	$538,105	$983,027
TOTAL URBAN	**$6,382,436**	**$9,648,838**	**$16,031,274**

Rural Sub-Regions	HOME	TCAP RF	Total Sub-Region Amounts
Region 1	$489,226	$143,811	$633,037
Region 2	$375,590	$112,693	$488,283
Region 3	$414,969	$120,514	$535,483
Region 4	$1,074,373	$310,681	$1,385,054
Region 5	$637,247	$187,753	$825,000
Region 6	$261,967	$80,532	$342,499
Region 7	$128,692	$40,419	$169,111
Region 8	$377,855	$115,020	$492,875
Region 9	$334,590	$95,837	$430,427
Region 10	$396,212	$115,230	$511,442
Region 11	$658,933	$186,234	$845,167
Region 12	$282,688	$79,544	$362,232
Region 13	$44,318	$12,894	$57,212
TOTAL RURAL	**$5,476,660**	**$1,601,162**	**$7,077,822**

16387 Freedom's Path at Kerrville
Prior Correspondence

COMMUNITIES FOR VETERANS

February 17, 2016

By Email to tim.irvine@tdhca.state.tx.us

Mr. Tim Irvine, Executive Director
Texas Department of Housing and Community Affairs
211 East 11th Street
Austin, Texas 78701-2410

RE: Appeal of Denial of Funding Under Deferred Forgivable Loan Set-Aside in 2016-1 NOFA; #13167 – Freedoms Path at Kerrville, Kerrville, Kerr County, Texas.

Dear Mr. Irvine:

This is an appeal for assistance in connection with the denial of funding under the Deferred Forgivable Loan Set-Aside to the above referenced Project. We believe that TDHCA Staff erred by: (i) not following the purpose of the TDHCA as a recipient of HUD funding, and (ii) not following the terms of the NOFA.

Application was filed on January 4, 2016, for a Deferred Forgivable Loan in the amount of $980,000 (maximum permitted request was $1,000,000). The Set-Aside had been funded with $3,000,000 in HOME and/or TCAP funds. The Project was one of only five applications that were filed on the first possible day and therefore had equal priority. All five applications were for Supportive Housing developments. The Project was the only applicant in Region 9 Rural – and the other four applicants were two in Region 7 Urban and two in Region 6 Urban.

On February 5th, Andrew Sinnott, Multifamily Loan Programs Administrator, and Marni Holloway, Director of Multifamily Finance, advised Craig Taylor and Scott Deaton of Communities for Veterans by phone that the Project would not receive any funding. Apparently, although the Project was the only application filed on January 4th from a development in a Non-Participating Jurisdiction, all of the funds have been siphoned off to the four applications from major Texas cities that are Participating Jurisdictions. We were advised of a strategic error in requesting the amount of funding that we actually needed, and which was below the $1,000,000 maximum request. Because the Project's funding request was more than the funds assigned to the Region 9 Rural Sub-Region ($430,427), we were told that the application could not be funded, and the funding of the other four applications drained off essentially all the money in the Set-Aside, leaving only $142,307 uncommitted. Additionally, it is our understanding that because the application was for more funding than shown as available in the Sub-Region, the Project is ineligible for any funding at all.

3550 S. Tamiami Trail, Suite 301 Sarasota, FL 34231 www.cfveterans.com
Phone: (941) 929-1270

Only projects in Participating Jurisdictions will be funded.

We think that it is inappropriate that all of the TDHCA's funding available for Deferred Forgivable Loans, such as are desperately needed for Supportive Housing, has been utilized to support developments located in major Participating Jurisdictions that have other sources of funding available from HUD. Kerrville is not a Participating Jurisdiction, and therefore has no federal source of funding available to provide the type of assistance needed for Supportive Housing. The TDHCA was supposed to provide a source of federal funding for Non-Participating Jurisdictions, but the manner in which this NOFA is being administered is thwarting that purpose!

The NOFA states the funding is on a regional basis - not sub-regional.

The word "sub-region" does not appear anywhere in the NOFA, excerpt on Attachment A, where the total funding for the NOFA is shown as allocated among sub-regions. Instead, the NOFA specifically states that applications are to be funded on a **regional** basis. Section 4(a) states:

> a. Any complete applications received during the period of the RAF will be prioritized to the extent that funds are available both in the **region** and in the set-aside under which the application is received. If multiple applications are received in a **region**, then score will be used as the determining factor affecting the priority of the application. If insufficient funds exist in a **region** to fund all applications then the oversubscribed applications will wait for the collapse of funds by **region** be combined with other applications received by the deadlines and as described by the additional priority levels below.

So, the explicit language dealing with how funding is to be processed states that the amount of funding in the **region** controls, and not the amount of funding in a sub-region. We believe that Staff has erred by treating the initial funding of this NOFA in the same manner as various other TDHCA Programs are funded – on a Sub-Regional basis. This should not be the case when the NOFA explicitly calls out a different approach.

Please refer to the enclosed Attachment A from the NOFA. Region 9 is allocated $1,302,328 for Region 9 Urban and $430,427 for Regions 9 Rural. This totals $1,732,755 available in Region 9. The Project's application for $980,000 did not exceed the funding available for Region 9. Additionally, looking solely at the TCAP RF (which is the funding source likely to be preferred for the Deferred Forgivable Loan Set-Aside) there is a total of $1,021,604 in TCAP RF funding for Region 9 – which is also more than enough to fund the Project's request!

Adequate funding for Region 9 requires that the only applicant in the region receive funding.

Because Region 9, taken as a whole, is shown on Attachment A as having more than sufficient funding to support an application for $980,000, we believe that the application for Freedoms Path at Kerrville should be approved for funding on the same basis as the other four applications in Regions 6 and 7.

Summary.

We sincerely hope that you will act to correct what we believe is a misunderstanding concerning the manner in which the NOFA requires that the Deferred Forgivable Loan Set-Aside be allocated. We spent the last year repeatedly appearing before the TDHCA Board to advise its members of the difficulties inherent for Supportive Housing developments that are not located in a Participating Jurisdiction. We requested the opportunity to apply for TCAP-RF funding that could be provided in the form of a deferred forgivable loan. After finally gaining the opportunity to apply for such funding, we request that the TDHCA make the funding available to the only applicant as of January 28, 2016, that is not located in a Participating Jurisdiction.

Thank you for your consideration of this request.

Sincerely,

Donald W. Paxton
Member of General Partner

Enclosure: Attachment A

cc: Marni Holloway
Andrew Sinnott
Don Paxton

Attachment A

Regional Allocation Formula Amounts
Available Until 5pm Austin Local Time on January 29, 2016

Urban Sub-Regions	HOME	TCAP RF	Total Sub-Region Amounts
Region 1	$150,862	$261,458	$412,320
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TOTAL RURAL	**$5,476,660**	**$1,601,162**	**$7,077,822**

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

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February 23, 2016

Writer's direct phone # 512/475-3296
Email: tim.irvine@tdhca.state.tx.us

Donald W. Paxton
Member of General Partner
Communities for Veterans
3550 S. Tammiami Trail, Suite 301
Sarasota, FL 34231

RE: APPLICATION #16502 – FREEDOMS PATH AT KERRVILLE

Dear Mr. Paxton:

We have received your letter of February 17, 2016, regarding the above-referenced Direct Loan application through the 2016-1 Multifamily Direct Loan NOFA ("NOFA"). This applicant was allocated 9% Housing Tax Credits in July 2013, and has applied to access Multifamily Direct Loan as a result of a financing gap. We appreciate your efforts to ensure the project remains economically viable. Though the funding decision on your project has not been made, the likelihood of this project receiving an award of Direct Loan funds is relatively low. Staff did not intend to convey there was no possibility of receiving an award during the February 5th conference call.

The reason there is a small likelihood of this project receiving an award under the sub regional set aside is because, while it is true that the application and four other applications were received on the same day under Deferred Forgivable Loan Set-Aside, the other four applications requested less than the amounts available in those sub-regions under the Regional Allocation Formula ("RAF"). Please see the table below:

Application Number	Direct Loan Request	Sub-Region	RAF Amount Available for Sub-Region	Remaining Balance for Sub-Region
16500	$590,000	Urban 7	$2,049,001	$1,459,001
16501	$1,000,000			$459,001
16405	$607,698	Urban 6	$2,688,403	$2,080,705
16406	$660,000			$1,420,705
16502	$980,000	Rural 9	$430,427	-$549,573

The maximum amounts available for applications in the Rural Sub-Region 9 prior to collapse of the RAF was $430,427. This is $549,573 less than the $980,000 requested in your Application. The funding requests for the four applications below the amounts available in the applicable sub-regions totaled $2,857,698 (below the amount available $3,000,000 in the Deferred Forgivable Loan Set-Aside). While a collapse of the sub-regions has now occurred such that there would be enough funds from a regional basis, the Set-Aside now has only $142,302 remaining if all four priority transactions are funded. Three of those four applications are currently under review, and the fourth one has been reviewed and is being recommended for an award at the February Board meeting. Should at least $837,698 in requests from the three applications under review fall out, your request would be the next development to be reviewed for an award under this set-aside.

A detailed description of the Regional Allocation Formula that is applied to the initial availability of all the Department's Multifamily funds is available in the State Low Income Housing Plan http://www.tdhca.state.tx.us/housing-center/docs/15-SLIHP.pdf Funds were initially allocated using the RAF under the 2016-1 NOFA, and were collapsed on January 29, 2016.

Another potential for funding your development from this NOFA might occur if you could restructure the request and resubmit the application outside of the deferred forgivable set-aside.

We appreciate your interest in the Department's Direct Loan program and hope to make a final determination regarding your application in the coming months.

Sincerely,

Timothy K. Irvine
Executive Director

COMMUNITIES FOR VETERANS

March 3, 2016

Mr. Andrew Sinnott
Multifamily Loan Programs Administrator
Texas Department of Housing & Community Affairs
211 East 11th Street
Austin, TX 78711

Re: 2016-1 Multifamily Direct Loan Application # 16502—Freedom's Path

Dear Mr. Sinnott

In regard to the above referenced application, we would like to request that our application be amended.

In lieu of requesting the funds under the TDHCA Multifamily Direct Loan (Deferred Forgivable) Loan category, we ask that the loan be considered under the TDHCA Multifamily Direct Loan (Repayable) category at the same amount, $980,000, with a 30 year term, a 3% interest rate, subordinate to the deferred developer fee, with interest only payments made subject to available cash flow after payment of the deferred developer fee, with a balloon payment of all outstanding principal and interest at the end of the 30 year term.

Please give me a call at 941-929-1270, ex 110 or email me at dpaxton@cfveterans.com if you have any questions or additional information is required.

Sincerely,

Don Paxton
Manager of the General Partner

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MULTIFAMILY DIRECT LOAN
2016-1 NOTICE OF FUNDING AVAILABILITY (NOFA)

1) **Summary.** The Texas Department of Housing and Community Affairs (the "Department") announces the availability of up to **$23,109,096** in Multifamily Direct Loan funding for the development of affordable multifamily rental housing for low-income Texans. The availability and use of these funds are subject to 10 TAC Chapters 1 ("Administration"), 2 ("Enforcement"), and 10 ("Uniform Multifamily Rules"), and Chapter 2306 of the Texas Government Code. Applications will be subject to the Department of Housing and Urban Development ("HUD'') HOME regulations governing the HOME program found at 24 CFR Part 92 ("HOME Final Rule"). Other Federal regulations that apply to HOME funds include, but are not limited to fair housing (42 U.S.C. 3601-3619), environmental requirements (42 U.S.C. 4321; and 24 CFR part 50 or part 58 depending on the type of activity), Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and HUD Handbook 1378, Section 104(d) of Housing and Community Development Act of 1974, and Davis-Bacon and Related Labor Acts for labor standards (40 U.S.C. §3141-3144 and 3146-3148, 24 CFR §92.354, and HUD Handbook Federal Labor Standards Compliance in Housing and Community Development Programs). HOME-funded developments must comply with HUD Section 3 requirements (24 CFR Part 135). Section 3 requires HOME funded housing and community development activities to give, to the greatest extent feasible (and consistent with existing Federal, State and local laws and regulations) job training, employment, contracting and other economic opportunities to Section 3 residents and business concerns.

   All Applicants, but particularly Applicants with Development Sites located outside Participating Jurisdictions, should assume that HOME funds will be awarded and should likewise be prepared to comply with the applicable regulations. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program. If HOME funds are used and Federal regulations or subsequent guidance imposes additional requirements, such Federal regulations or guidance shall govern.

2) **Sources of Multifamily Direct Loan Funds.** Multifamily Direct Loan funds are made available through program income generated from prior year HOME allocations, de-obligated funds from prior HOME allocations, the 2015 Grant Year HOME allocation, and loan repayments from the Tax Credit Assistance Program ("TCAP Repayment funds" or "TCAP RF"). The Department may amend this NOFA or the Department may release a new

NOFA upon receiving its 2016 HOME allocation from HUD or additional TCAP loan repayments. These funds have been programmed for multifamily activities including acquisition and/or refinance of affordable housing involving new construction or rehabilitation.

3) Set-Asides. All funds will be subject to the Regional Allocation Formula ("RAF", located in Attachment A) until January 29, 2016, and then available on a statewide basis within each set-aside until June 1, 2016, at which time any remaining funds which have not been requested in the form of an application responsive to this NOFA will be available on a statewide basis regardless of set-aside. Applications under any and all set-asides ma**y** or may not be layered with 9% or 4% Housing Tax Credits ("HTC"). The funds made available under this NOFA are available under four set-asides:

Set-Aside	**Amount**
CHDO	$3,236,344
Deferred Forgivable Loan	$3,000,000
4% HTC Layered New Construction	$4,000,000
General	$12,872,752

a. **CHDO Set-Aside.** At least **$3,236,344** in HOME funds are set aside for eligible Community Housing Development Organizations ("CHDO") meeting the requirements of the definition of Community Housing Development Organization found in 24 CFR §92.2 and the requirements of this NOFA. Applicants under the CHDO Set-Aside must be proposing to develop housing in Development Sites located outside Participating Jurisdictions.

b. **Deferred Forgivable Loan Set-Aside.** Funds under this set-aside are intended to increase the number of 30% rent-restricted units and occupy them with households with an annual income of 30% Area Median Income ("AMI") or less who are not currently receiving any type of rental assistance. To achieve that goal, up to **$3,000,000** in TCAP Repayment and/or HOME funds are set aside for applications that meet the underwriting requirements in Subchapter D of the 2016 Uniform Multifamily Rules (the "Underwriting and Loan Policy") and:

   i. The definition of Supportive Housing in 10 TAC §10.3(a) in the 2016 Uniform Multifamily Rules including the other underwriting consideration for Supportive Housing developments Section 10.302(g)(3) of the Underwriting and Loan Policy, *or*

   ii. The requirements below in A-D:

      A) All units assisted with HOME/TCAP RF must be leased to households earning 30% AMI or less as defined in 10 TAC §10.1005 and have rents no higher than the 30% rent limits published by the Department.

      B) No units assisted with HOME/TCAP RF may also be receiving project-based rental assistance.

      C) All floating units assisted with HOME/TCAP RF may not have tenants with tenant-based voucher or rental assistance except if there are no available units within the development that the voucher-holder may occupy. This criteria does not apply for fixed HOME/TCAP units.

D) All units assisted with HOME/TCAP RF may not have any other income or rent restrictions as a result of another income or rent restricting source of funds to the 30% level or below (e.g., 9% HTC units restricted to households earning and with rents not exceeding 30% of the AMI).

c. **4% HTC Layered Set-Aside.** At least **$4,000,000** in TCAP RF and/or HOME funds are set aside for applications layered with 4% HTC that are proposing new construction and do not qualify under the CHDO or Deferred Forgivable Loan Set-Asides. This set-aside will be available under at least $4,000,000 in funds under this set-aside are awarded or until May 31, 2016, whichever occurs first.

d. **General Set-Aside.** All remaining TCAP Repayment and HOME funds available (currently anticipated to be approximately $12,872,752).

4) Priorities for Awards

Awards will be made subject to hard closing deadlines established at the time of award by the Department's Governing Board and which can only be extended by additional Board action on the basis of evidence of delays caused by circumstances outside the control of the applicant or non-HUD or non-USDA lender. When determining the date an application is received, staff will only assign a date that corresponds with a business day and will not assign a time. Applications received after 5pm Austin Local Time will be determined to have been received on the following business day. Applications will be determined to have been received at the time all required third party reports and application fee(s), in addition to the application, are submitted to the Department. Applications that are unable to progress on the timelines described herin due to incomplete information or lack of responsiveness will be given notice and a five day period to cure the incomplete information or non-responsiveness. Failure to cure the notice will result in a reestablishment of the application submission date to the date at which the cure to the notice was provided. As such, an applicant could be de-prioritized in favor of another application received prior to the new application submission date. **All Applications layered with 2016 Competitive (9%) HTCs will be considered to have been received not earlier than April 1, 2016, but must be provided to the Department as part of their 2016 Competitive (9%) HTC application.** Applications will be prioritized for an award as described below to the extent that funds remain available.

a. Any complete applications received during the period of the RAF will be prioritized to the extent that funds are available both in the region and in the set-aside under which the application is received. If multiple applications are received in a region, then score will be used as the determining factor affecting the priority of the application. If insufficient funds exist in a region to fund all applications then the oversubscribed applications will wait for the collapse of funds by region be combined with other applications received by the deadlines and as described by the additional priority levels below.

b. **Priority 1**: Applications not layered with 2016 9% HTC that are received by March 31, 2016. Priority 1 applications will be prioritized on a first come first served basis. Awards of Priority 1 applications are anticipated to be recommended for approval by or before the Board meeting on May 26, 2016.

c. **Priority 2**: Applications layered with 2016 9% HTC will be further prioritized based on being recommended for a 2016 HTC allocation. All Priority 2 applications will receive an April 1, 2016, received date. Awards of Priority 2 applications are anticipated to be

recommended for approval at the Board meeting on July 28, 2016. Applications that will be recommended for HTC and remain tied for HOME/TCAP RF under the scoring criteria below will be further prioritized for funding based upon the scoring and award criteria in 10 TAC Chapter 11 (the "QAP").

d. **Priority 3**: Applications that are received between April 2, 2016 and May 31, 2016. Awards of Priority 3 applications are anticipated to be recommended for approval no later than the Board meeting on September 8, 2016.

5) Scoring Criteria. Applications will be scored based on the scoring criteria below to the extent that other applications were received on the same date *and* within the same set-aside and prioritization based on information as of the Application submission date.

a. All applications will have the opportunity to score points in i. through iv., below:

i. Eligibility for points under 10 TAC §11.9(c)(4) related to the Opportunity Index based on the scale provided in 10 TAC §11.9(c)(4), for a maximum of seven points.

ii. Owners that have committed to providing at least ten 811 units under the 2015 811 Request for Proposals ("RFP") to be published November 2015 (committed units may not count for points under any other program) or applicants whose proposed Development site is not within the targeted areas of the 2015 811 NOFA, but is willing to set aside at least 5 percent of the total Units for Persons with Special Needs in accordance with §11.9(c)(7)(C) of the 2016 Qualified Allocation Plan (committed units may not count for points under any other program) (1 point).

iii. An application that caps the per unit subsidy limit for all unit sizes at:

A) $100,000 per HOME/TCAP RF unit (1 point).

B) $80,000 per HOME/TCAP RF unit (2 points).

C) $60,000 per HOME/TCAP RF unit (4 points).

iv. An application that provides Match in the amount of:

A) 5.1% to 9.0% of the HOME/TCAP RF requested (3 points).

B) 9.1% or more of the HOME/TCAP RF requested (5 points).

C) Match provided in an area where HUD has waived match requirements (5 points).

b. Only applications proposing rehabilitation will have the opportunity to score points in i. through vi., for a maximum of six points:

i. An existing USDA 515 loan that matures January 4, 2021 or earlier (1 point).

ii. At least 80% of the units are Rental Assistance units (1 point).

iii. The Capital Needs Assessment estimates at least $30,000 per unit in rehabilitation costs (1 point).

iv. The past six months' rent rolls indicate at least 95% occupancy in all of the last 6 months for all in-service units (1 point).

v. The development is composed of 36 units or less (2 points).

vi. The development will not be acquired by another entity as part of the transaction and the developer fee is capped at:

A) 10% of total development cost (1 points).

B) 5% of total development cost (2 points).

6) Maximum Funding Requests

a. The maximum funding request for all applications proposing new construction in all set-asides except the Deferred Forgivable Loan Set-Aside, regardless of HOME or TCAP Repayment funds and regardless of layering, shall be $2,000,000.

b. The maximum funding request for all applications proposing rehabilitation or applications in the Deferred Forgivable Loan Set-Aside proposing either rehabilitation or new construction, regardless of HOME or TCAP Repayment Funds and regardless of layering, shall be $1,000,000.

7) Maximum Per Unit Subsidy Limits. The following are the maximum per unit subsidy limits that an applicant may use to determine the amount of HOME/TCAP funds they may request. Stricter per unit subsidy limits are allowable and incentivized as point scoring items in the Scoring Criteria section of this NOFA. Per unit subsidy limits as well as subsidy layering analysis – ensuring that the amount of HOME/TCAP units as a percentage of total units is greater than the percentage of HOME/TCAP funds requested as a percentage of total development costs – will determine the amount of HOME/TCAP units required.

a. 0 bedroom (efficiency): $75,000
b. 1 bedroom: $90,000
c. 2 bedrooms: $110,000
d. 3 bedrooms or more: $135,000

8) Loan Structure

a. Except for deferred forgivable loans, all Multifamily Direct Loans awarded under this NOFA will be structured as fully repayable (must pay) at not less than a 3.0% interest rate and 30 year amortization with a term that matches the term of any superior loans (within 6 months) and an ultimate interest rate that when underwritten by the Department meets a 1.15 to 1.35 debt coverage ratio. The Board may amend this NOFA to adjust the minimum rate as market conditions change.

b. Any material changes to the total development cost and/or other sources of funds from the publication of the Underwriting Report to the time of loan closing must be reevaluated by Real Estate Analysis staff and may cause changes to principal amount and/or repayment structure for the Multifamily Direct Loan such that the Department is able to mitigate any increased risk.

9) Application Submission Requirements

a. Applications under this NOFA will be accepted starting January 4, 2016.

b. All Application materials including manuals, NOFAs, program guidelines, and HOME rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the requirements in effect at the time of the Application submission including any requirements of the HOME Final Rule and subsequent guidance provided by HUD.

c. An Applicant may have only one active Application per Development at a time and may only apply under one set-aside at a time.
d. All applicants will be subject to the 2016 Uniform Multifamily Rules, except as it relates to interest rate and amortization in 10 TAC §10.307, and must use the 2016 Uniform Multifamily Application and Certifications as applicable.
e. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department. Applicants must submit the Application materials as detailed in the Multifamily Programs Procedures Manual ("MPPM") in effect at the time the Application is submitted. All scanned copies must be scanned in accordance with the guidance provided in the MPPM in effect at the time the Application is submitted.
f. Applicants must complete the 2016 CHDO Certification Packet for Applicants applying under the CHDO Set-Aside.
g. All 4% HTC-layered applications must have a certificate of reservation at the time of Multifamily Direct Loan application submission.
h. Applications for funds on developments that received an award of Department assistance – not including HOME or TCAP Repayment funds – within the past three years may be submitted but may be terminated if it is determined that federal regulations would prohibit the Department to invest HOME or TCAP Repayment funds in the Development.
i. Based on the availability of funds, Applications may be accepted until 5pm Austin Local Time on May 31, 2016.
j. The request for project funds may not be less than $500,000, regardless of the set-aside under which an application is being submitted.
k. Each CHDO that is awarded HOME funds may also be eligible to receive a grant of up to $50,000 for CHDO Operating Expenses, which are defined in 24 CFR §92.208 as including salaries, wages, and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; and equipment, materials, and supplies.
l. Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $1,000.00 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive Application fees for private nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not a reimbursable cost under the Multifamily Direct Loan Program.
m. Applications must be sent via overnight delivery, or delivered by hand to:

Multifamily Finance Division
Texas Department of Housing and Community Affairs
Attn: Andrew Sinnott
221 East 11th Street
Austin, TX 78701-2410

or via the U.S. Postal Service to:

Multifamily Finance Division
Texas Department of Housing and Community Affairs
Attn: Andrew Sinnott
Post Office Box 13941
Austin, TX 78711-3941

10) **Post Award Requirements.** Applicants are strongly encouraged to review the applicable Post Award requirements in 10 TAC §10, Subchapter E, as well as the Compliance Monitoring requirements in 10 TAC §10, Subchapter F.
   a. Applicants who receive an award of HOME funds must submit all required environmental clearance documentation to environmental@tdhca.state.tx.us within 30 days of approval by TDHCA's Governing Board.
   b. Awarded applicants may, at the Department's discretion, be charged fees for underwriting, asset management, and ongoing monitoring.
   c. All Applicants will be required to record a Land Use Restriction Agreement limiting residents' income and rent for the amount of units required by the HOME/TCAP RF Unit Calculation Tool for the term of the loan.
   d. Applicants must provide documentation of compliance with the Affirmative Marketing requirements in the Fair Housing Act and will be required to comply with 10 TAC §10.617.
   e. All Developments awarded HOME funds will be required to meet applicable Property Standards in 24 CFR §92.251. Applicants will also be required to submit written cost estimates and construction documents at closing in order that TDHCA can determine if costs are reasonable and if state and local codes will be met. In addition, progress inspections will be conducted to ensure that work is done in accordance with applicable codes and construction documents. Owners of Rehabilitation projects will also be required to meet the requirements in 10 TAC §10.101 (b)(3)(D)(i-iv).
   f. The HOME/TCAP RF units must be occupied by eligible tenants within six months following completion of construction. For any housing unit that has not been rented to eligible tenants within 18 months after completion of construction, repayment of the HOME/TCAP funds is required.
   g. All applicants must be registered in the federal System for Award Management (SAM) prior to execution of a HOME/TCAP RF contract and have a current Data Universal Numbering System (DUNS) number. Applicants may apply for a DUNS number (dnb.com). Once you have the DUNS number, you can register with the SAM.

11) **Miscellaneous**
   a. This NOFA does not include text of the various applicable regulatory provisions pertinent to the HOME Program. For proper completion of the application, the Department strongly encourages potential applicants to review the State and Federal regulations, and contact the HOME Division for guidance and assistance.
   b. All Applicants must comply with public notification requirements in 10 TAC §10.203.
   c. Applicants proposing developments located outside Participating Jurisdictions, must include language in the Purchase Contract or Site Control Agreement to address choice

limiting activities prior to completing the environmental review process such as the following: “Notwithstanding any other provision of this Contract, Purchaser shall have no obligation to purchase the Property, and no transfer of title to the Purchaser may occur, unless and until TDHCA has provided Purchaser and/or Seller with a written notification that: (1) it has completed a federally required environmental review and its request for release of federal funds has been approved and, subject to any other Contingencies in this Contract, (a) the purchase may proceed, or (b) the purchase may proceed only if certain conditions to address issues in the environmental review shall be satisfied before or after the purchase of the property; or (2) it has determined that the purchase is exempt from federal environmental review and a request for release of funds is not required. TDHCA shall use its best efforts to conclude the environmental review of the property expeditiously.”

d. The Board may on a case by case basis, or in whole, waive provisions of this NOFA where such waiver or exception to the provision(s) are warranted and documented and where such exception is not in violation with any state or federal requirement(s).
e. For questions regarding this NOFA, please contact Andrew Sinnott, Multifamily Loan Program Administrator, at andrew.sinnott@tdhca.state.tx.us.

Attachment A

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Available Until 5pm Austin Local Time on January 29, 2016

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TOTAL RURAL	**$5,476,660**	**$1,601,162**	**$7,077,822**

6a

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
NOVEMBER 10, 2016

Presentation, Discussion, and Possible Action on an order adopting the repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and an order adopting the new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and directing its publication in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") is authorized to make Housing Tax Credit allocations for the State of Texas;

WHEREAS, the Department, as required by §42(m)(1) of the Internal Revenue Code and Tex. Gov't Code §2306.67022, developed this Qualified Allocation Plan to establish the procedures and requirements relating to an allocation of Housing Tax Credits;

WHEREAS, the proposed amendments to 10 TAC Chapter 11 were published in the September 23, 2016, issue of the *Texas Register* for public comment; and

WHEREAS, pursuant to Tex. Gov't Code §2306.6724(b) the Board shall adopt and submit to the Governor a proposed Qualified Allocation Plan no later than November 15th;

NOW, therefore, it is hereby,

RESOLVED, that the final order adopting the repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Qualified Allocation Plan and the final order adopting the new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan is hereby ordered and approved, together with the preamble presented to this meeting, for publication in the *Texas Register;* and

FURTHER RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the Qualified Allocation Plan, together with the preamble in the form presented to this meeting, to be delivered to the Governor, not later than November 15th for his review and approval, and to cause the Qualified Allocation Plan, as approved, approved with changes or rejected by the Governor, and thereafter be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The Board approved the proposed repeal and proposed new 10 TAC Chapter 11 regarding the Housing Tax Credit Program Qualified Allocation Plan ("QAP") at the Board meeting of September 8, 2016, to be published in the *Texas Register* for public comment. In keeping with the requirements of the Administrative Procedures Act, staff has reviewed all comments received and provided a reasoned response to these comments. Staff has listed the areas below that received the most comment.

- §11.2 Program Calendar for Competitive Housing Tax Credits
- §11.7 Tie Breaker Factors
- §11.8 Pre-application Requirements
- §11.9(c)(3) Tenant Services
- §11.9(c)(4) Opportunity Index
- §11.9(c)(5) Educational Quality
- §11.9(c)(6) Underserved Area
- §11.9(c)(7) Tenant Populations with Special Housing Needs
- §11.9(c)(8) Proximity to the Urban Core
- §11.9(d)(5) Community Support from State Representative
- §11.9(d)(7) Concerted Revitalization Plan
- §11.9(e)(2) Cost of Development per Square Foot
- §11.9(e)(3) Pre-application Participation
- §11.9(e)(4) Leveraging of Private, State, and Federal Resources
- §11.9(e)(6) Historic Preservation

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Preamble, Reasoned Response, and Amended Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC, Chapter 11, §§11.1 – 11.10 concerning the Housing Tax Credit Program Qualified Allocation Plan. Sections 11.1, 11.2, 11.6, 11.7, 11.8, 11.9, and 11.10 are adopted with changes to text as published in the September 23, 2016 issue of the *Texas Register* (41 TexReg 7354). Sections, 11.3, 11.4, and 11.5 are adopted without change and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the rule will result in a more consistent approach to governing multifamily activity and to the awarding of multifamily funding or assistance through the Department while minimizing repetition among the programs. The comments and responses include both administrative clarifications and revisions to the Housing Tax Credit Program Qualified Allocation Plan based on the comments received. After each comment title, numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the Draft Housing Tax Credit Program Qualified Allocation Plan as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS

Public comments were accepted through October 14, 2016, with comments received from (1) Senator Eddie Lucio, Jr., (2) Representative Eddie Lucio, III, (3) Representative Marisa Márquez, (4) Senator José Menéndez, (5) Representative Joe Moody, (6) Representative Joseph C. Pickett, (7) Senator José Rodríguez, (8) City of Fort Worth, (9) City of Harlingen, (10) City of San Angelo, (11) City of San Saba, (12) Travis County (13) Fort Worth Housing Solutions, (14) San Antonio Housing Authority, (15) Housing Authority of the City of El Paso, (16) Marble Falls Economic Development Corporation, (17) 5th Ward Community Redevelopment Corporation, (18) City Wide Community Development Corporation, (19) Texas Association of Community Development Corporations, (20) Rural Rental Housing Association of Texas, Inc., (21) Trinity University, (22) Texas Affiliation of Affordable Housing Providers, (23) Texas Coalition of Affordable Developers, (24) Low Income Housing Information Service, (25) Corporation for Supportive Housing, (26) Preservation Texas, (27) Atlantic Housing Foundation, Inc., (28) Locke Lord Attorneys and Counselors, (29) Leading Age Texas, (30) Uplift Education, (31) Structure Development, (32) Anderson Development and Construction, LLC, (33) BETCO Consulting, LLC, (34) Savage, William, (35) Casa Linda Development Corporation, (36) Churchill Residential, (37) Columbia Residential, (38) Dharma Development, LLC, (39) DMA Companies, (40) Dominium, (41) Endeavor Real Estate Group, (42) Evolie Housing Partners, (43) Flores Residential, LLC, (44) Foundation Communities, (45) Franklin Development, (46) FW Mason Heights, LP, (47) Marks, Roger, (48) Hamilton Valley Management, Inc., (49) Highridge Costa Development Company, LLC, (50) Hoke Development Services, LLC, (51) Investment Builders, Inc., (52) ITEX Group, (53) Lakewood Property Management, LLC, (54) Leslie Holleman and Associates, Inc., (55) Carpenter, Alyssa, (56) Lucas and Associates, LP, (57) Madhouse Development Services, (58) Mark-Dana Corporation, (59) Marque Real Estate Consultants, (60) Mears Development, (61) MGroup, LLC, (62) Miller Valentine Group, (63) National Church Residences, (64) New Hope Housing, (65) The Brownstone Group, (66) O-SDA Industries, (67) Palladium USA, (68) Prospera Housing Community Services, (69) Purple Martin Real Estate, (70) Saigebrook Development, (71) Stoneleaf Companies, (72) Allgeier, Dan

1. §11 – General Comment (24), (28)
COMMENT SUMMARY: Commenter (24) applauds the great efforts that staff have expended in working with stakeholders to craft the Draft 2017 QAP. Commenter states that many of the rules

and changes contained in the proposed 2017 Multifamily Rules will advance this state's obligation to affirmatively further fair housing and to provide quality housing choices to low-income Texans who are dependent on affordable housing programs. Commenter continues that there are several changes that stand to impede this same obligation and are a regression from the 2016 QAP.

COMMENT SUMMARY: Commenter (28) pointed out several administrative corrections needed.

STAFF RESPONSE: Staff appreciates the support expressed by commenter (24) and provides responses in the specific areas of the rule commented upon.

Staff appreciates the corrections suggested by commenter (28) and has incorporated them throughout the rule as discussed, below.

2. §11.1 General (42), (54), (59)

COMMENT SUMMARY: Commenters (42) and (54) state that the language added to the end of section (b), regarding Due Diligence and Applicant Responsibility, raises procedural questions regarding appeal rights. Commenter asks if the Department intends to move away from issuing scoring notices and rely on the posting of application logs to communicate scoring decisions. Commenter points out that fewer logs were published during the last cycle than from the previous two, and only 3 were announced via Department listserv. Commenter recommends striking this language as it is ambiguous and unnecessary as there is an entire section related to Appeal rights in Subchapter G.

Commenter (59) asks staff to clarify what staff intends to publish to the Department's website that represents the "results of the evaluation process" since a scoring notice will no longer be considered Staff's summary of their assessments of an application.

STAFF RESPONSE: In response to commenters (42), (54), and (59), staff clarifies that the Department is not moving away from issuing scoring notices. As in years past, scoring notices will be issued when the scoring review of an application is complete, and revised scoring notices will be issued when appropriate. The added language clarifies that the scoring notice is a courtesy communication to the Applicant of the score that will appear on a future log at publication. Tex. Gov't Code §2306.67041 requires the Department to post online an application log that includes the application score. In posting such log, the Department provides information regarding the scoring of the application, which is one the appealable decisions indicated in Tex. Gov't Code §2306.6715 regarding appeals. Because Tex. Gov't Code §2306.6715(c) provides for appeal within seven days after publication of scoring results, staff will post the log on a regular basis during the review process. Staff believes that the language in this section should be clarified and has revised the rule accordingly.

> **(b) Due Diligence and Applicant Responsibility.** Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the QAP or may be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. Moreover, after the time that an issue is initially presented and guidance

is provided, additional information may be identified and/or the issue itself may continue to develop based upon additional research and guidance. Thus, until confirmed through final action of the Board, staff guidance must be considered merely as an aid and an Applicant continues to assume full responsibility for any actions Applicant takes regarding an Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to perform independently the necessary due diligence to research, confirm, and verify any data, opinions, interpretations, or other information upon which an Applicant bases an Application or includes in any submittal in connection with an Application. As provided by Tex Gov't Code §2306.6715(c), an applicant is given until the later of the seventh day of the publication on the Department's website of a scoring log reflecting that applicant's score or the seventh day from the date of transmittal of a scoring notice; PROVIDED, however, that an applicant may not appeal any scoring matter after the award of credits unless they are within the above-described time limitations AND have appeared at the meeting when the Department's Governing Board makes competitive tax credit awards and stated on the record that they have an actual or possible appeal that has not been heard. Appeal rights ~~are~~ may be triggered by the publication on the Department's website of the results of the evaluation process. Individual Scoring notices or similar communications are a courtesy only.

3. §11.2 – Program Calendar for Competitive Housing Tax Credits (19), (31), (36), (38), (44)
COMMENT SUMMARY: Commenters (19), (31), (36), and (44) state that the time frame for clearing a deficiency should not be reduced from five (5) days to three (3) days.

Commenter (38) points out that the Application Acceptance Period Begins on January 5, 2017 (a Thursday), and the Pre-Application Final Delivery Date is January 9, 2017 (a Monday). Commenter states that Developers should have the work week to work on the pre-applications and make sure that they are ready prior to the filing deadline.

STAFF RESPONSE: In response to commenters (19), (31), (36), and (44), staff agrees that the time frame for clearing a deficiency should not change. The language in this section and in §10.201(7) will revert to that of the 2016 QAP.

In response to commenter (38), the Application Acceptance Period marks the date on which Applicants may send their applications to the Department and does not mark the date one which an Applicant may start to prepare the Pre-application. Applicants are able (and encouraged) to begin preparing the Pre-application as soon as the application materials are posted on the Department's website. For Program Year 2016, the Pre-application materials were posted on December 4, 2015, giving Applicants access to the materials one month prior to the beginning of the Application Acceptance Period.

Staff recommends no changes based on this comment.

4. §11.3 – Housing De-Concentration Factors (61)
COMMENT SUMMARY: Commenter (61) states that to prevent over-concentration of tax credits in certain census tracts, the de-concentration and linear distance conditions for same year awards should apply statewide and not just in counties with a population in excess of one million people. Commenter suggests adding language to this section so that in urban areas, regardless of

county population, any award is limited to a minimum linear distance de-concentration factor. Commenter proposes a rule that mandates a minimum one mile linear separation for same year development awards. Commenter suggests the following revision to item (d):

> **(d) Limitations on Developments in Certain Census Tracts.** An Application that proposes the New Construction or Adaptive Reuse of a Development ~~proposed to~~ may not be located in a census tract that has more than 20 percent Housing Tax Credit Units per total households as established by the 5-year American Community Survey, regardless of whether 1) the units are existing at the time the application cycle begins, or 2) any multiple awards within the same program year causes the census tract to meet the 20% limit. The application that causes the 20% limit to be exceeded shall be deemed ineligible for an award of tax credits. ~~and the Development is in a Place that has a population greater than 100,000 shall be considered ineligible unless the Governing Body of the appropriate municipality or county containing the Development has, by vote, specifically allowed the Development and submits to the Department a resolution stating the proposed Development is consistent with the jurisdiction's obligation to affirmatively further fair housing. The resolution must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.~~

STAFF RESPONSE: In response to commenter (61), staff believes that these revisions represent sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2018 QAP. Staff encourages commenter to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

5. §11.4 Tax Credit Request and Award Limits (40), (59), (62)

COMMENT SUMMARY: Commenter (40) states that under item (C), the existing language is ambiguous as it pertains to tax exempt bond financed transactions and requests §11.4(c)(1) not apply to 4% bond deals, particularly 4% bond deals that are preservation of existing affordable housing (project based Section 8 or existing Section 42). Commenter suggests the following revisions:

> (1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20 percent Housing Tax Credit Units per total households in the tract as established by the U.S. Census Bureau for the 5-year American Community Survey. New Construction or Adaptive Reuse Developments seeking Competitive Housing Tax Credits located in a QCT that has in excess of 20 percent Housing Tax Credit Units per total households in the tract are not eligible to qualify for a 30 percent increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code. For Tax-Exempt Bond Developments, as a general rule, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. For New Construction or Adaptive Reuse Developments seeking Competitive Housing Tax Credits that are located in a QCT with 20 percent or greater Housing Tax Credit Units per total households, the Development is eligible for the boost if the Application includes a resolution stating that the Governing

Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and referencing this rule. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable. Applicants must submit a copy of the census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT. <u>For Tax-Exempt Bond Developments of existing affordable housing, either Section 42 or HUD-assisted, located in a QCT the 30 percent increase in Eligible Basis would still apply even if the QCT had in excess of 20 percent Housing Tax Credits Units per total household.</u>

Commenter (59) requests that Applicants be given the opportunity to withdraw applications of their choosing if it appears that one or more members of a development team might violate the $3 million cap, instead of TDHCA selecting the Development(s) that most effectively satisfies the Department's goals in fulfilling set-aside priorities and are highest scoring in the regional allocation.

Commenter (62) states that the change in how guarantors are considered for credit cap should be removed and last year's language should be included. Commenter states that any entity with significant involvement in the development and ownership of the property should be considered under the credit cap rules.

STAFF RESPONSE: In response to commenters (20) and (40), staff believes that these revisions represent sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2018 QAP. Staff encourages commenter to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

In response to commenter (59), staff clarifies that the Applicant can withdraw an Application at any time during the application process. The added language establishes a process for decision making if the Applicant has not withdrawn an Application, under which staff will select the Development(s) that most effectively satisfies the Department's goals in fulfilling set-aside priorities and are the highest scoring in the regional allocation.

Staff recommends no changes based on this comment.

In response to commenter (62), staff clarifies that the change in the language regarding the guarantor is to ensure that the credit cap is limited to those permanently involved in the development. General contractors and those providing construction financing may only be involved during construction. Staff believes that the entities considered under the credit cap rules are appropriately limited.

Staff recommends no changes based on this comment.

6. §11.5 – Competitive HTC Set-Asides (43)

COMMENT SUMMARY: Regarding item (3) At-Risk Set-Aside, commenter (43) states that there is a limit on the number of tax credits units for properties where affordable units are being relocated;

however, for an at-risk development on same site, there is no limit on the number of tax credits units. Commenter recommends that the tax credit units should be limited to the same number of affordable units on the site, or perhaps not more than a minimum percentage of additional units.

STAFF RESPONSE: In response to commenters (43), staff believes that this revision represents a sufficiently substantive change from what was proposed that it could not be accomplished without re-publication for public comment. This idea could be taken into consideration for drafting the 2018 QAP. Staff encourages commenter to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

7. §11.6 – Competitive HTC Allocation Process (23), (42), (54), (58), (65)

COMMENT SUMMARY: Regarding item (2), commenters (42) and (54) state that the addition of this new language limits the Department's ability to allocate the entire credit ceiling in any given year. Commenters recommend striking this language.

Regarding item (3)(C), commenter (23) requests clarification on the point in the allocation process at which an award for the highest scoring development that is part of a concerted revitalization plan would be made, particularly in the case that there are revitalization developments in the At-Risk Set-Aside and in the subregion from the same city. Commenter requests clarification on which requirements of 10 TAC §11.9(d)(7) must the application meet.

Commenters (23), (54) and (65) state that subparagraph 11.6(3)(C)(ii) is missing statutory reference (2306.6711(g)).

Commenter (58) points out administrative corrections needed and requests that staff explain the resulting requirements if the last sentence is deleted from §11.6(3)(C)(i).

STAFF RESPONSE: In response to commenters (42) and (54), staff believes the added language is necessary to ensure that the next deal to be awarded from the waiting list can be fully funded.

Staff recommends no changes based on this comment.

In response to commenter (23), the recommendation for an award for such an application would be submitted for approval along with all other award recommendations. The status of applications that may meet the requirements of this subsection will be identified on each application log posted by staff. The requirement does not consider any revitalization developments in the At-Risk Set-Aside as item (C) pertains only to the initial allocation for the subregions. Until the set-aside requirement is met, award recommendations for the At-Risk Set-Aside take precedence over recommendations for the subregions. In no case would an award that would violate 10 TAC §11.3(a) (the "2 mile same year rule") be recommended.

Staff recommends no changes based on this comment.

In response to commenters (23), (54), (58) and (65), the application must meet all requirements of 10 TAC §11.9(d)(7), except the application does not have to score one additional point under §11.9(d)(7)(A)(ii)(III) or §11.9(d)(7)(B)(iv). Staff agrees that this scoring item should be clarified and has revised §11.9(d)(7) accordingly.

(C) Initial Application Selection in Each Sub-Region (Step 3). The highest scoring Applications within each of the 26 sub-regions will then be selected provided there are sufficient funds within the sub-region to fully award the Application. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made generally available within each of the sub-regions. . The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex Gov't Code, §2306.6711(h) and will publish such percentages on its website.

(ii) In accordance with Tex Gov't Code, §2306.6711(g), in Uniform State Service Regions containing a county with a population that exceeds 1.7 million, the Board shall allocate competitive tax credits to the highest scoring development, if any, that is part of a concerted revitalization plan that meets the requirements of §11.9(d)(7) (except for §11.9(d)(7)(A)(ii)(III) and §11.9(d)(7)(B)(iv)), is located in an urban subregion, and is within the boundaries of a municipality with a population that exceeds 500,000.

In response to commenter (58), the language deleted from clause (i) has been added to item (C). The Department will continue to calculate the maximum percentage in accordance with Texas Gov't Code, §2306.6711(h) and publish such percentages on its website.

Staff recommends no changes based on this comment.

8. §11.7 Tie Breaker Factors (12), (20), (22), (25), (33), (35), (39), (40), (41), (42), (43), (44), (45), (49), (52), (54), (58), (59), (60), (63), (65)

COMMENT SUMMARY: Commenters (12), (20), (22), (33), (35), (40), (41), (42), (43), (49), (52), (54), (60), and (65) suggest removal of item (4). Commenters (12), (22), (40), (41), (42), and (43) state that having Educational Quality as two of the seven tie breakers seems unnecessary. Commenter (20) states that item (3) regarding Opportunity Index scoring is sufficient to capture the Department's preference for high opportunity without repeating a selection for Educational Quality.

Commenters (12), (22), (33), (40), (41), (42), (43) suggests that staff remove item (6).

Commenter (20) asks that item (6) regarding the poverty rate in a census tract become the last tie breaker.

Commenters (25) and (58) suggest not applying item (1) to applications in the At-Risk Set-Aside. Commenter (25) states that this addition creates an uneven playing field as at-risk applications compete state-wide and include both rural and urban applications.

Commenters (33), (45), (59), (63) suggest that staff remove item (1). Commenter (59) states that item (1) should be removed because Urban Core points only apply to developments in five cities. Commenter (63) states that item (1) creates an uneven playing field, especially in regards to at-risk developments that might be located in rural areas.

Commenters (35), (42), (49) and (54) state that as written, the rule presents problems for Applicants wishing to judge potential competition as there is no enforcement mechanism by which to require disclosure at Pre-application. Commenter (35) states that at the September Board meeting, public comment was made that Opportunity Index menu items above the point cap (items (3) and (4)) should be disclosed at Pre-Application. Commenter (42) suggests that the chosen menu items not be allowed to swing more than 4 items up or down at Full Application

Commenters (35), (42), (43), (54), (60), (65) recommend revision to item (3). Commenter (42) states that using one menu item to break a tie when another application may have a positive attribute that is not on the list is not a good policy. Commenter recommends limiting the number of above the point cap menu items that can be claimed on this tie break factor to 4 or more to incentivize finding High Opportunity sites.

> (3) Applications having achieved the maximum Opportunity Index Score and ~~the highest number of~~ have at least four (4) additional point items on the Opportunity index menu that they were unable to claim because of the 7-point cap on that item.

Commenter (39) supports the new Proximity to Urban Core scoring category and its rank as the first tie breaker.

Commenter (44) expresses support of the additions for tiebreaker factors. Commenter encourages staff to consider adding proximity to public transportation versus one of the two current Educational Quality tie breakers, as the property that is most accessible to public transportation is the project that will align with responsible development and broader appeal to the State's affordable housing residents living in urban areas.

Commenter (52) states that item (1) should be lowered to the 3rd tie breaker, item (3) should be the first tie-breaker, and item (5) should be removed.

Commenter (58) proposes the following tie breaker rubric:

> (i) Applications having achieved a score on Proximity to the Urban Core (does not apply to Applications in the At-Risk Set-Aside)
> (ii) Applications having achieved the highest score on the Opportunity Index
> (iii) Applications having the most amenities on the Opportunity Index
> (iv) The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site.
> (v) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear measurement will be performed from closest boundary to closest boundary.

STAFF RESPONSE: In response to commenters (12), (20), (22), (33), (35), (40), (41), (42), (43), (49), (52), (54), (60), and (65), staff agrees that item (4) should be removed due to the lowered point value for the item. Staff has revised the rule accordingly.

In response to commenters (12), (22), (33), (40), (41), (42), (43), staff believes that when all scoring factors fail to break a tie, there must be some objective measures utilized to break the tie. Two such measures are included: the poverty rate and the distance from the nearest HTC Development. The poverty rate measure is an objective measure that directly affects the Development. If this measure fails to break the tie, the last tie breaker is the only measure that has the least effect on the Development.

Staff recommends no changes based on this comment.

In response to commenter (20), the last tie breaker is reserved for an item that has the least bearing on the actual development. In this case, that is the greatest linear distance from the nearest HTC assisted Development.

Staff recommends no changes based on this comment.

In response to commenters (25) and (58), staff clarifies that Proximity to the Urban Core will not apply to Applications in the At-Risk Set-Aside. Staff has revised the rule accordingly.

In response to commenters (33), (45), (59), (63), staff believes that item (1) represents a policy priority of the Department to encourage the placement of affordable housing in areas that are proximate to the urban core of major cities. As such, staff believes that it is an appropriate measure as the first tie breaker. This item will not apply to Applications in the At-Risk Set-Aside. Regarding items (4) and (6), as a result of public comment, item (4) has been removed from the list; however, staff believes that item (6) should remain. Staff has revised the rule accordingly.

In response to commenter (35), (42), (49) and (54), the 2017 Pre-Application will require that applicants disclose which Opportunity Index and Educational Quality items they intend to count for tie-breaker items.

Staff recommends no changes based on this comment.

In response to commenters (35), (42), (43), (54), (60), (65), staff believes that as written, the scoring item will provide incentive to the application that is able to claim the most items under Opportunity Index. Staff does not see the necessity of adding a lower limit. If there are items that the commenter believes should be included on the list, staff encourages commenter to suggest those items during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

In response to commenter (39), staff appreciates the support expressed.

Staff recommends no changes based on this comment.

In response to commenter (44), staff believes that this revision represents sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. This idea could be taken into consideration for drafting the 2018 QAP. Staff encourages commenter to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

In response to commenter (52), staff believes that item (1) represents a policy priority of the Department to encourage the placement of affordable housing in areas that are proximate to the urban core of major cities. As such, staff believes that it is an appropriate measure as the first breaker. Regarding item (5), as a result of public comment, item (4), the other tie breaker item dealing with Educational Quality, has been removed from the list. Staff believes that as a result, item (5) should remain. Staff has revised the rule accordingly.

(1) Applications having achieved a score on Proximity to the Urban Core. This item does not apply to the At-Risk Set-Aside.
(2)Applications scoring higher on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.
(3) Applications having achieved the maximum Opportunity Index Score and the highest number of point items on the Opportunity Index menu that they were unable to claim because of the 7 point cap on that item.
~~(4) Applications having achieved the maximum Educational Quality score and the highest number of point items on the Educational Quality menu that they were unable to claim because of the 5 point cap on that item.~~
~~(5)~~ (4) The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site.
~~(6)~~ (5) Applications proposed to be located in a census tract with the lowest poverty rate as compared to another Application with the same score.
~~(7)~~ (6) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear measurement will be performed from closest boundary to closest boundary.

In response to commenter (58), staff believes that this revision represents sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. This idea could be taken into consideration for drafting the 2018 QAP. Staff encourages commenter to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

9. §11.8 Pre-Application Requirements (20), (22), (32), (33) (40), (57), (58)
COMMENT SUMMARY: Commenters (20), (22), (33), (40) and (58) recommend that the disclosure requirement be removed from Pre-application. Commenter (20) states that the added requirement under (B) that applicants must disclose Undesirable Neighborhood Characteristics should be moved to full application as property sites, and particularly new construction sites, will not know all of the undesirable neighborhood characteristics at Pre-application. Commenter (58) states that developers need more time to investigate and identify Undesirable Neighborhood Characteristics than what the pre-application deadline currently allows.

Commenter (32) states that such disclosure was provided in the past and TDHCA staff was unable to respond to the voluminous request for waivers and review. Commenter suggests that unless adequate time can be dedicated by TDHCA staff to provide meaningful feedback and timely presentation to the Board if necessary, this threshold requirement adds undue burden to the developer should the Department disagree with the disclosure or lack thereof, which could subsequently result in inconsistency and subjective termination of applications.

Commenter (57) asks staff to clarify whether or not a townhome is still considered an eligible type of development.

STAFF RESPONSE: In response to commenters (20), (22), (32), (33), (40) and (58), staff believes that it may be impractical to require the disclosure of certain Undesirable Neighborhood

Characteristics at Pre-application. Staff has revised the rule so that Applicants must only provide disclosure at Pre-Application for items that are easily identified, as shown below:

> Pursuant to Tex Gov't Code, §2306.6704(c) pre-applications will be terminated unless they meet the threshold criteria described in subsection (a) of this section and paragraphs (1) and (2) of this subsection:
> (1) Submission of the competitive HTC pre-application in the form prescribed by the Department which identifies at a minimum: . . .
>
> (I) Disclosure of ~~any~~ the following Undesirable Neighborhood Characteristics under §10.101(a)(4):
> (i) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.
> (ii) The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met Standard rating by the Texas Education Agency.

In response to commenter (57), staff clarifies that a townhome that meets all accessibility requirements can be considered an eligible unit type.

Staff recommends no changes based on this comment.

10. §11.9(a) – General Information (59)

COMMENT SUMMARY: Commenter (59) asks staff to clarify what the repercussions would be if an Applicant fails to provide this disclosure. Also, commenter asks staff to specify what constitutes evidence for providing this disclosure to the statewide elected and local officials or stakeholders.

STAFF RESPONSE: In response to commenter (59), staff clarifies that failure to make such disclosure to a state representative, local governmental body, Neighborhood Organization, or anyone else to secure support or approval that may affect the Applicant's competitive posture would be considered an incomplete notification. The disclosure must be included in any pre-application, Application or other materials provided.

Staff recommends no changes based on this comment.

11. §11.9(c)(3) – Tenant Services (19), (22), (25), (29), (40), (42), (44), (54), (60), (63), (64), (65)

COMMENT SUMMARY: Commenters (19), (25), (29), (44), (63) and (64) suggest the following revisions in order to ensure value for tenants:

> A Supportive Housing Development proposed by a Qualified Nonprofit may qualify to receive up to eleven (11) points and all other Developments may receive up to ten (10) points. . . .
>
> (B) The Applicant certifies that the Development will have a dedicated Service Coordinator or Case Manager to contact local service providers, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. The Service Coordinator will

proactively engage and assess residents' needs through direct communication and tailor services appropriately.

Commenters (19), (25), (44), (63), and (64) suggest the following additional scoring item:

A Development selecting these points will also provide:
(i) Minimum of 1 monthly program onsite provided by a local service provider, and
(ii) minimum of 3 local service providers engaged to provide services to residents, or
(iii) The applicant is a nonprofit organization and is itself providing services to residents of the Development. (1 point)

Commenters (22), (40), suggest that in the event that Educational Quality is removed as a separate point category, staff should reduce the total points available for this item from 11 points to 10 points for all development types based on the scoring parity bill.

Commenters (42), (43) (54), (60) (65) state that paragraph (B) is ambiguous and should therefore be removed from this section and added as an option under 10.101(7) in more clearly defined terms. Commenters (42) and (54) ask several questions seeking clarification regarding item (3)(B) and Commenter (54) further questions if services used to score under §10.101(7) could be used to score under §11.9(c)(3).

STAFF RESPONSE: In response to commenters (19), (25), (29), (44), (63) and (64), during planning meetings held by staff with the development community and other stakeholders (including advocates for tenants), there was overwhelming opposition to including the requirements that Developments have a dedicated service coordinator or case manager and that tenants must be assessed for case management services. Commenters stated that, in most cases, tenants that require case management services already receive those services from one or more providers. Further, if the services go unused, a Development may be sidled with dedicated staff that is not being utilized.

Staff recommends no changes based on this comment.

In response to commenters (19), (25), (44), (63), and (64), staff believes that this revision represents sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. This idea could be taken into consideration for drafting the 2018 QAP. Staff encourages commenter to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

In response to commenters (22) and (40), Educational Quality is not being removed as a separate point category; therefore the point value for this item will remain unchanged.

Staff recommends no changes based on this comment.

In response to commenters (42) and (54), staff has revised the rule as follows to provide greater clarity:

B) The Applicant certifies that the Development will contact local ~~service~~ nonprofit and governmental providers of services that would support the health and well-being of the Development's tenants, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. Applicants may contact service providers on the

Department list, or contact other providers that serve the general area in which the Development is located. (1 point)

In response to commenter (54), Staff understands that this scoring scenario is possible.

Staff recommends no changes based on this comment.

In response to commenters (42), (43) (54), (60) and (65), staff does not agree that item (B) should be moved to §10.101(7) as that section applies to services that the Applicant agrees to provide to tenants, while this section only requires outreach and dedicated space.

Staff recommends no changes based on this comment.

12. §11.9(c)(4) – Opportunity Index (11), (16), (19), (20), (22), (23), (24), (31), (32), (33), (36), (38), (39), (40), (42), (43), (44), (45), (48), (52), (53), (54), (55), (57), (58), (59), (65), (67), (71), (72)

ITEM (A) COMMENT SUMMARY: Commenters (11) and (16) state that due to the nature of economic and socioeconomic patterns in their cities, any scoring criteria that is ranked according to quartiles will yield uneven results. Commenters state that the existing criteria are adequate and request that any broad application of quartile and poverty rankings in rural areas be reconsidered.

Commenter (19) supports the increase of the poverty rate to 20% and allowing second and third quartile census tracts to score under this item as these changes will open new areas to locate housing.

Commenters (23), (31), (58) state that under item (A), the change from calculating quartiles by Metropolitan Statistical Area ("MSA") or County (if outside of an MSA) to by Region will be a huge shift for rural areas as some will now have no high opportunity census tracts, or the high opportunity census tracts will be disproportionately urban. Commenter (31) requests that staff not change the calculation.

Commenter (24) states that the equalization of 1st, 2nd, and 3rd quartile tracts in scoring accompanied by a raising of the poverty threshold from 15 percent to the higher of 20 percent or the average for the state service region takes the QAP from rewarding deals in high opportunity tracts where few LIHTC developments are currently located to, poverty rate aside, placing three-fourths of census tracts in Texas on an equal playing field. Commenter states that given that property values, a major factor in development decisions, are likely to be lower in 3rd quartile tracts, it is reasonable to presume that there will be a significant shift in the locations of awards in the 2017 cycle away from the progress which has been made over the past several competitive cycles. Commenter states that with the addition of the Proximity to the Urban Core points which are weighted equally with Educational Quality, there is a further reduced incentive to pursue developments in these top quartile tracts. Commenter recommends that 3rd quartile tracts be eligible for a maximum of 6 points for the opportunity index scoring item.

Commenter (32) states that a 20% poverty rate limitation unfairly limits financing in certain neighborhoods. Commenter further states that including "without physical barriers…and the Development Site is no more than 2 miles from the boundary…" is the prime definition of the unlawful Redlining that blatantly violates the Fair Housing Act. Either a census tract is eligible or it isn't. Refusing the same financing across the highway or railroad tracks where minorities historically

live is perpetuating racial discrimination. Commenter states that the physical barrier and distance language must be removed.

Commenter (45) states that there is a discrepancy in the total points a development site can receive between items (i) or (ii) under 11.9(c)(4)(A). Clause (i) qualifies for 2 points, whereas clause (ii) qualifies for 1 point. Commenter (45) asks staff to review this possible discrepancy.

Commenter (55) requests that under item (A)(i), staff further clarify what TDHCA means by "highway." Commenter (55) states that, according to both Merriam Webster and Wikipedia, 'highway' can be interpreted as any "public way," such as a local street. Commenter proposes that staff replace "highway" with "controlled access highway," which is more likely to create "non-contiguous" areas than local streets.

Commenters (20), (22), (33), (39), (40), (42), (43), (44), (45), (48), (54), (55), (58), (59), (60), (65), and (67) suggest revisions to item (A).

Commenter (20) suggests revisions to support the preservation of existing rural properties and new rural construction:

> (A) A Proposed Development is eligible for ~~a maximum of seven (7)~~ up to two (2) opportunity index points if it is located in a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and meets the requirements in (i) or (ii) below. The requirements in (i) and (ii) do not apply to the USDA and the At- Risk Set-Asides.
> (i)The Development Site is located in ~~a~~ an urban census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and an income rate in the two highest quartiles within the uniform service region. (2 points)
> (ii) The Development Site is located in ~~a~~ an urban census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile, without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. and, (1 points)

Commenters (22), (39), (40), suggest revisions to further clarify the item. Commenters suggest including aspects of the Educational Quality scoring item into the menu of items:

> (A) A Proposed Development is eligible for ~~a maximum of seven (7)~~ up to two (2) opportunity index points if it is located in a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and meets the requirements in (i) or (ii) below. Rural developments and developments that are competing in the At-Risk and/or USDA set-asides can achieve the maximum score without meeting (i) or (ii) below.
> (ii) The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile, ~~without physical barriers such as highways or rivers between,~~ and the Development Site is no more than 2 miles from the boundary between the census tracts. and, (1 points)

Commenter (33) states that due to the manner in which the quartiles are assigned, rural communities would be at a significant disadvantage in meeting this criteria and providing needed new housing opportunities for the community. Commenter states that because rural areas do not have the transportation infrastructure in place that an urban/metro place has, residents in a rural community depend on personal transportation to reach amenities and services. Commenter suggests the following revisions:

> (A) A Proposed Development is eligible for ~~a maximum of seven (7)~~ up to two (2) opportunity index points if it is located in a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and meets the requirements in (i) or (ii) below. Rural developments and developments that are competing in the At-Risk and/or USDA set-asides can achieve the maximum 7 points without meeting (i) or (ii) below.

Commenters (42), (43), (54), (60), and (65) suggest the following revisions:

> (A) A ~~Proposed~~ proposed Development is eligible for ~~a maximum of seven (7)~~ up to two (2) opportunity index points if it is located in a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and ~~meets the requirements in (i) or (ii) below.~~ has:
> (i) ~~The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and~~ an income rate in the two highest quartiles within the uniform service region; (2 points)
> (ii) ~~The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with~~ an income rate in the third quartile within the region, ~~and is~~ contiguous to a census tract in the first or second quartile, without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the first or second quartile census tracts. and, (1 point)

Commenters (48) and (58) request that rural developments just not be required to meet the criteria set forth in Clauses (A)(i) and (ii). Commenter (48) states that Clauses (A)(i) and (ii) exacerbate the "donut hole" effect, whereby in non-MSA rural areas, the ranking of quartiles and poverty rate for any given census tract is indirectly proportionate to the density of population within the county. Commenter (48) asks that staff consider language that exempts developments competing in the Rural Set Aside from poverty rates or quartile rankings, and just default to the already existing criteria where presence of and proximity to certain amenities and services helps to define Rural high opportunity. Commenter (48) proposes the following rule:

> For Developments located in a Rural Area, an Application may qualify to receive points through a combination of requirements in subclauses {i) - (xiii) of this subparagraph if the Development Site is located within a census tract that has a poverty rate below 20 percent.

Commenter (59) asks staff to clarify how it calculates the median poverty rate for a region. Commenter recommends using the median for all of the census tracts in a Region since this methodology give equal weight to more sparsely populated and smaller counties as large counties

with high populations. Commenter asks TDHCA to continue to recognize that Regions 11 and 13 have higher median poverty rates, as it did in 2016. Commenter suggests the following language if the proposed Development Site is located in a census tract in Regions 11 or 13, in order to add more eligible 1st and 2nd quartile census tracts to Regions 11 and 13:

> "…with a poverty rate of less than the greater of 20% (35% for Regions 11 and 13) or the median poverty rate for the region..."

Commenter (62) asks that TDHCA issue the data sets it will use to evaluate applications for Opportunity Index points as quickly as possible. Commenter proposes that this information be provided before October.

Commenter (67) believes that there is a significant difference between 1st quartile and 3rd quartile census tracts, and the scoring system for the Opportunity Index should reflect that. Commenter proposes that development sites located in 1st quartile census tracts qualify for an extra point under paragraph (A) of this section. Commenter also asks that the maximum number of opportunity index points be raised to eight (8) points. Commenter's proposed language seeking to privilege development sites in 1st quartile census tracts is as follows:

> (A) A Proposed Development is eligible for a maximum of ~~seven (7)~~ eight (8) opportunity index points if it is located in a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and meets the requirements in (i) or (ii) below.
> (i) The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and an income rate in the ~~two~~ highest quartile~~s~~ within the uniform service region. (2 points)
> (ii) The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with income in the second quartile or the third quartile within the region, as long as ~~and~~ the third quartile census tract is contiguous to a census tract in the first or second quartile, without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. and, (1 points)

ITEM (B) COMMENT SUMMARY: Commenter (23) requests clarification of what data source(s) can be used to obtain property crime rates.

Commenter (23) requests clarification of what constitutes a government-sponsored museum. Commenter (58) also asks that staff strike "government sponsored" as a descriptor of "museum," as there are very good and reputable privately funded museums.

Commenter (23) requests clarification of what constitutes a university, Commenter (31) asks staff to clarify if two-year colleges constitute a University of Community College campus.

Commenters (22), (31), (39), (40), (42), (44), (54), (58), (60) and (65) made comments regarding "accessible playground". Commenter (31) asks ask staff to clarify what TDHCA means by 'accessible playground', 'access', 'play equipment', especially from the perspective of the child and/or caregiver. Commenter (44) asks whether "accessible playground" means the equipment itself has to be accessible or the route to the playground must be accessible. Commenter expresses concern that if the 2010 ADA accessibility standard is used, older playgrounds in urban areas may

not meet this requirement. Commenters (22), (39), (40), (42), (54), (60), and (65) recommend removing the accessible playground language in favor of a playground that is not accessible because the accessibility of a public path is difficult to prove and the term "accessible" is not specific and could mean compliance with a variety of laws dealing with accessibility. Commenter (57) asks if by "accessible" staff mean handicap ramps, sidewalks, crosswalks, or driveway without a sidewalk. Commenter (57) asks if staff mean a playground that is fairly easy to access, ore a playground equipped for handicapped children. Commenter (38) requests that staff clarify the definition of "accessible playground".

Commenter (42) recommends striking the square footage requirement as one million square feet limits this point item to only the largest shopping malls. Commenter also recommends striking "big-box" as this is not a defined term. Commenter recommends tying "adults 25 and older with associate's degrees or higher" to exceeding the statewide average, which per the commenter is 24.5% according to the 2014 American Community Survey. Commenter states that the phrase "government-sponsored" is vague and recommends substituting the word "nonprofit" to achieve the intended goal while using objective data point.

Commenters (57) and (58) ask staff to specify how it measures distances; does it mean "drivable" or "as the crow flies."

Commenters (31), (36), (52), (53), (57), and (58) request clarification regarding item (IX) proximity to concentrated retail. Commenter (31) states that "4 big-box national retail stores" is preferable to "at least 1 million square feet." Commenter further asks how staff determines the proximity of big box retail stores, and proposes the walkable standard of ¼ mile. Commenter (36) requests that staff allow retailers to be in scattered locations within 3 miles of subject site, rather than in one concentrated retail shopping center. Commenter (52) asks that staff reduce the square footage for a retail shopping center to 250,000 square feet. Commenter (53) states that tax appraisal district information does not always include square footages of buildings and is not available everywhere, particularly in rural counties. Commenters (53) and (58) state that the square footage of a retail shopping center seems difficult to verify and unnecessary due to online purchasing and his understanding that retail stores are getting smaller (like WalMart Express). Commenters (53), (57), (58) ask how national big box retail stores will be defined. Commenter (53) suggests that staff define this requirement in both urban and rural areas as a retail center with at least 3 stores that sell goods to the general public and are open at least from 10 a.m. to 5 p.m. Monday through Friday. Commenter (57) asks that the total square footage be reduced to at least 500,000 square feet, but still comprises four big-box retail stores.

Commenters (58) and (71) request that staff consider the distance to amenities in rural communities. Commenter (71) states that rural communities generally have amenities but usually located within the vicinity of downtown, while most new construction is located on the outskirts of town due to the availability of land. Commenter states that reducing the distance to these amenities restricts the physical size of a city that can be considered.

Commenter (72) requests that the distances to museums, indoor and outdoor recreation facilities and community, civic or service organizations in Rural areas be the same as in Urban areas.

Commenters (20), (22), (33), (39), (40), (42), (43), (44), (45), (48), (54), (55), (58), (59), (60), (65), (67) and (71) suggest revisions to item (B).

Commenter (20) suggests the following revisions:

An application that meets the foregoing criteria, and applications in the USDA and At-Risk Set-Asides, may qualify for additional points up to seven (7) points for any one or more of the following factors. Each facility or amenity may be used only once for scoring purposes, regardless of the number of categories it fits:
(i) For Developments located in an Urban Area, an Application may qualify to receive points through a combination of requirements in clauses (~~1~~I) through (~~15~~XV) of this subparagraph.
(XV) For properties in the At-Risk or USDA Set-Aside, the Development Site is located within 1 mile of an elementary, middle and high school that meets 77 or higher on the 2016 TEA Index 1 score, or the average of the regional subregion score (1 point for each school up to 3 points).
(ii) For Developments located in a Rural Area, an Application may qualify to receive points through a combination of requirements in clauses (~~1~~I) through (~~13~~XIV) of this subparagraph.
(VI) The Development Site is located within 3 miles of a public park or outdoor recreation facility. (1 point)
(VII) The Development Site is located within ~~7 miles~~ 15 miles of a University or Community College campus (1 point)
(VIII) The Development Site is located within 5 miles of a retail shopping center with ~~XX square feet of stores~~ specialty stores, around a central plaza or a main street with 10 or more distinctly identifiable and separate businesses (3 points), or a retail shopping center containing 5 or more stores. (1point)
(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is ~~27%~~ 20% or higher. (1 point)
(X) Development Site is within ~~2 miles~~ 3 miles of a government-sponsored, nonprofit, or privately sponsored museum (1 point)
(XI) Development Site is within ~~1 mile~~ 3 miles of an indoor recreation facility available to the public (1 point)
~~(XII) Development Site is within 1 mile 3 miles of an outdoor recreation facility available to the public (1 point)~~
(XII) For existing properties in the At-Risk or USDA Set-Aside, Development Site is within 3 miles of a high school (1 point), elementary school (1 point) or middle school (1 point) with a rating of Met Standard rating.
(XIII) Development Site is within ~~1 mile~~ 3 miles of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point)
(XIV) Development Site is within 3 miles of a movie theater, and at least 3 restaurants open to the public (1 point).

Commenters (22), (39), (40), suggest the following revisions:

An application that meets the foregoing criteria may qualify for additional points up to seven (7) points for any one or more of the following factors. Each facility or amenity may be used only once for scoring purposes, regardless of the number of categories it fits:
(i) For Developments located in an Urban Area, an Application may qualify to receive points through a combination of requirements in clauses (1) through (15) of this subparagraph.

(I) The Development Site is located less than 1/2 mile on an accessible route from a public park with ~~an accessible~~ a playground (1 point)
(II) The Development Site is located less than ½ mile on an accessible route from Public Transportation with a route schedule that provides regular service (meaning buses scheduled between 7 and 9 a.m. and 4 and 6 p.m., Monday through Friday) to employment and basic services (1 point)
(IX) The Development Site is located within 3 miles of a concentrated retail shopping center of at least ~~1 million~~ 500,000 square feet or that includes at least 4 big-box national retail stores (1 point)
(X) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher as tabulated by the 2010-2014 American Community Survey 5-year Estimate. (1 point)
(XI) Development Site is within 2 miles of a government or 501(c)(3) nonprofit-sponsored museum (1 point)
(XV) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (3 points)
(XVI) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (2 points)
(XVII) The Development Site is within the attendance zone of any one of the following three schools (an elementary school, a middle school, and a high school) with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. Center.(1 point)
(ii) For Developments located in a Rural Area, an Application may qualify to receive points through a combination of requirements in clauses (1) through (13) of this subparagraph.
(I) The Development Site is located within ~~2 miles~~ 5 miles of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point)
(VII) The Development Site is located within ~~7 miles~~ 15 miles of a University or Community College campus (1 point)
(VIII) The Development Site is located within 5 miles of a retail shopping center with ~~XX square feet of stores~~ at least three retail establishments.(1point)
(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is ~~27%~~ 20% or higher as tabulated by the 2010-2014 American Community Survey 5-year Estimate. (1 point)
(X) Development Site is within ~~2 miles~~ 5 miles of a government-sponsored museum (1 point)
(XI) Development Site is within ~~1 mile~~ 3 miles of an indoor recreation facility available to the public (1 point)
(XII) Development Site is within ~~1 mile~~ 3 miles of an outdoor recreation facility available to the public (1 point)

(XIII) Development Site is within ~~1 mile~~ 3 miles of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point)

Commenter (33) suggests the following revisions:

An application that meets the foregoing criteria may qualify for additional points up to seven (7) points for any one or more of the following factors. Each facility or amenity may be used only once for scoring purposes, regardless of the number of categories it fits:
(ii) For Developments located in a Rural Area, an Application may qualify to receive points through a combination of requirements in clauses (1) through (13) of this subparagraph.
(I) The Development Site is located within ~~2 miles~~ 3 miles of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point)
(VII) The Development Site is located within ~~7 miles~~ 15 miles of a University or Community College campus (1 point)
(VIII) The Development Site is located within 5 miles of a retail shopping center with ~~XX square feet of stores~~ at least three retail establishments. (1point)
(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is ~~27%~~ 20% or higher. (1 point)
(X) Development Site is within 2 miles of a ~~government-sponsored~~ nonprofit museum (1 point)
(XI) Development Site is within ~~1 mile~~ 3 miles of an indoor recreation facility available to the public (1 point)
(XII) Development Site is within ~~1 mile~~ 3 miles of an outdoor recreation facility available to the public (1 point)
(XIII) Development Site is within ~~1 mile~~ 3 miles of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point)

Commenter (42) suggests the following revisions:

(B) An application that meets the foregoing criteria may qualify for additional points ~~up to seven (7) points~~ for any one or more of the following factors. Each facility or amenity may be used only once for scoring purposes, regardless of the number of categories it fits:
(i) For Developments located in an Urban Area:~~; an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIV) of this subparagraph.~~

(I) The Development site is located less than 1/2 mile ~~on an accessible route~~ from a public park with ~~an accessible~~ a playground (1 point);
(II) The Development Site is located less than ½ mile ~~on an accessible route~~ from Public Transportation with a route schedule that provides regular service to employment and basic services (1 point);
(VI) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less, as defined by neighborhoodscout.com (1 point);
(IX) The Development Site is located within 3 miles of a concentrated retail shopping center ~~of at least 1 million square feet or~~ that includes at least 4 ~~big-box~~ national retail stores (1 point);
(X) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher ~~is 27% or higher~~ exceeds that of the State-wide average. (1 point);
(XI) Development site is within 2 miles of a ~~government-sponsored~~ non-profit museum (1 point);
(XV) Development Site is within the attendance zone of a high school (1 point), elementary school (1 point) or middle school (1 point) with a Met Standard rating.
(ii) For Developments located in a Rural Area:~~, an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIII) of this subparagraph.~~
(I) The Development site is located within ~~2 miles~~ 5 miles of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point);
(IV) The Development Site is located in a census tract with a property crime rate 26 per 1,000 or less, as defined by neighborhoodscout.com (1 point);
(VII) The Development Site is located within ~~7 miles~~ 15 miles of a University or Community College campus (1 point);
(VIII) The Development Site is located within 5 miles of a retail shopping center with ~~XX square feet of stores~~ at least 3 retail stores (1point);
(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher ~~is 27% or higher~~ exceeds that of the State-wide average. (1 point);
(X) Development site is within 2 miles of a ~~government-sponsored~~ non-profit museum (1 point);
(XI) Development site is within ~~1 mile~~ 3 miles of an indoor recreation facility available to the public (1 point);
(XII) Development site is within ~~1 mile~~ 3 miles of an outdoor recreation facility available to the public (1 point); and
(XIII) Development site is within ~~1 mile~~ 3 miles of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point).

(XIV) Development Site is within the attendance zone of a high school (1 point), elementary school (1 point) or middle school (1 point) with a rating of Met Standard rating.

Commenter (44) provides comments and/or requested clarification on the following items:

(II) Definition of "regular". Commenter suggests using the Federal Home Loan Bank of San Francisco's definition as service at least every 30 minutes between 7 and 9 a.m. and between 4 and 6 p.m., Monday through Friday.
(XII): Commenter suggests that "indoor recreation facility" be more fully described and recommends that staff add specific descriptors such as publicly operated and/or specific features the facility must offer, and whether fees are required.
(XIII) Commenter suggests that "outdoor recreation facility" be more fully described and recommends that staff add specific descriptors such as publicly operated and/or specific features the facility must offer, and whether fees are required.
(XIV) Commenter states that this item seems to duplicate items in §11.9(c)(3) Tenant Services. Commenter suggests for replacement a Public Community Garden or Farmer's Market, Proximity to full banking services (used by FHLB San Francisco), or Proximity to Fire, Police or Post Office (used by FHLB San Francisco)

Commenter (53) suggests the following revisions:

(I) The Development site is located within ~~2 miles~~ 4 miles of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point)
(II) The Development is located within ~~4 miles~~ 8 miles of health -related facility, such a full service hospital, community health center, or minor emergency center. Physician specialty offices are not considered in this category. (1 point)
(III) The Development Site is within ~~3 miles~~ 6 miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten (1 point)
(V) The development site is located within ~~3 miles~~ 6 miles of a public library (1 point)
(VI) The development site is located within ~~3 miles~~ 6 miles of a public park (1 point)
(VII) The Development Site is located within ~~7 miles~~ 14 miles of a University or Community College campus (1 point)
(VIII) The Development Site is located within ~~5 miles~~ 10 miles of a retail shopping center with XX square feet of stores (1point)
(X) Development Site is within ~~2 miles~~ 5 miles of a ~~government-sponsored~~ nonprofit museum (1 point)
(XI) Development Site is within ~~1 mile~~ 3 miles of an indoor recreation facility available to the public (1 point)

(XII) Development Site is within ~~1 mile~~ 3 miles of an outdoor recreation facility available to the public (1 point)
(XIII) Development site is within ~~1 mile~~ 3 miles of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point).

Commenters (54), (60), and (65) propose the following revisions:

An application that meets the foregoing criteria may qualify for additional points up ~~to seven (7) points~~ for any one or more of the following factors. Each facility or amenity may be used only once for scoring purposes, regardless of the number of categories it fits~~:~~.
(i) For Developments located in an Urban Area~~:~~, ~~an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIV) of this subparagraph.~~
(I) The Development site is located less than 1/2 mile on an ~~accessible route~~ from a public park with an ~~accessible~~ playground (1 point);
(II) The Development Site is located less than ½ mile ~~on an accessible route~~ from Public Transportation with a route schedule that provides regular service to employment and basic services (1 point);
(VI) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less, as defined by neighborhoodscout.com (1 point);
(IX) The Development Site is located within 3 miles of a concentrated retail shopping center ~~of at least 1 million square feet or~~ that includes at least 4 ~~big-box~~ national retail stores (1 point);
(X) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher exceeds that of the State-wide average ~~is 27% or higher~~. (1 point);
(XI) Development site is within 2 miles of a ~~government-sponsored~~ non-profit museum (1 point);
(ii) For Developments located in a Rural Area~~:~~, ~~an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIII) of this subparagraph.~~
(I) The Development site is located within ~~2 miles~~ 5 miles of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point);
(IV) The Development Site is located in a census tract with a property crime rate 26 per 1,000 or less, as defined by neighborhoodscout.com (1 point);
(VII) The Development Site is located within ~~7 miles~~ 15 miles of a University or Community College campus (1 point);
(VIII) The Development Site is located within 5 miles of a retail shopping center with ~~XX square feet of stores~~ at least 3 retail stores (1point);

(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher exceeds that of the State-wide average ~~is 27% or higher~~. (1 point);
(X) Development site is within 2 miles of a ~~government-sponsored~~ non-profit museum (1 point);
(XI) Development site is within ~~1 mile~~ 3 miles of an indoor recreation facility available to the public (1 point);
(XII) Development site is within ~~1 mile~~ 3 miles of an outdoor recreation facility available to the public (1 point); and
(XIII) Development site is within ~~1 mile~~ 3 miles of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point).

Commenter (58) notes that the wording for health care facilities is different for Urban and Rural Areas. In Urban, the item states, "The Development is located within 3 miles of either an emergency room or an urgent care facility." In Rural, the item states, "The Development is located within 4 miles of health -related facility, such a full service hospital, community health center, or minor emergency center. Physician specialty offices are not considered in this category. (1 point)" Commenter asks that they be the same, and proposes the following language:

The Development is located within 4 miles of a health -related facility, such a full-service hospital, community health center, minor emergency center, emergency room or ~~an~~ urgent care facility. ~~Physician specialty offices are not considered in this category.~~

Commenter (58) also recommends increasing rural distances by two miles for subclauses (XIV)-(XII).

(XIV) The Development Site is located within ~~3 miles~~ 5 miles of a concentrated retail shopping center of at least 1 million square feet or that includes at least 4 big-box national retail stores (1 point)
(XI) Development site is within ~~2 miles~~ 4 miles of a government-sponsored museum (1 point)
(XII) Development site is within ~~1 mile~~ 3 miles of an indoor recreation facility available to the public (1 point)

Commenter (67) proposes adding another scoring item under 4(B)(i) to reward development sites that already has the appropriate zoning in place to allow the proposed use of the development. Commenter offers the following language:

An application that meets the foregoing criteria may qualify for an additional ~~points up to seven (7)~~ six (6) points for any one or more of the following factors. Each facility or amenity may be used only once for scoring purposes, regardless of the number of categories it fits:

(XVI) Development site is appropriately zoned for the proposed use by March 1, 2017 (1 point)

Commenter (71) suggests that the distance to the grocery store/pharmacy remain at 3 miles, the distance to a museum be 4-7 miles, the distance to a university or community college should be at least 11 miles (based on his data).

> (I) The Development site is located within ~~2 miles~~ 3 miles of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point);
> (VII) The Development Site is located within ~~7 miles~~ 11 miles of a University or Community College campus (1 point);
> (X) Development site is within ~~2 miles~~ 4-7 miles of a ~~government-sponsored~~ non-profit museum (1 point);

ITEM (A) STAFF RESPONSE: In response to commenters (11), (16), (23), (31), and (58), it is understood that the quartiles will yield different results for different applications. Staff believes that expanding the quartiles so that they are regional provides an avenue for more applications to compete for points for this item.

Staff recommends no changes based on this comment.

Staff appreciates the support expressed by commenter (19).

In response to commenters (20), (22), (33), (39), (40), (48), (58), items (3)(A)(i) and (ii) are threshold items for meeting the requirement for Opportunity Index. All Applications must meet this threshold in order to score any points under this scoring item.

Staff recommends no changes based on this comment.

In response to commenters (22), (32), (39), and (40), staff does not agree that the language regarding physical barriers between the Development Site and amenities should be removed as there are instances where such a barrier makes the amenity inaccessible to those on the other side of the barrier. If an Applicant believes that a barrier between the census tracts should not be considered to make the amenity inaccessible, the Applicant should provide information in the application supporting this belief.

Staff recommends no changes based on this comment.

In response to commenter (24), staff believes that it is premature to conclude that the item as written will result in reduced incentive to pursue development in top quartile tracts. Staff welcomes commenter to provide further information during preparations for the 2018 QAP if this issue is relevant at the time.

Staff recommends no changes based on this comment.

In response to commenter (32), staff believes that it is premature to conclude that the item as written will result in limited financing in certain neighborhoods. Staff welcomes commenter to provide further information during preparations for the 2018 QAP if this issue is relevant at the time.

Staff recommends no changes based on this comment.

In response to commenter (42), staff has revised the rule to include the citation for neighborhoodscout.com and to clarify requirements for museums. Regarding the rest of the recommended revisions, staff believes that the revisions represent sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. This idea could be taken into consideration for drafting the 2018 QAP. Staff encourages commenter to suggest this revision during planning for the 2018 QAP.

In response to commenters (42), and (43), (54), (60) and (65), staff does not believe that it is appropriate to remove this measure from the rule, and staff did not receive comment regarding an acceptable adjustment. Staff believes that this is an appropriate measure as written.

Staff recommends no changes based on this comment.

In response to commenter (45), the most points an Applicant can receive for paragraph (A) under 11.9(c)(4) is seven (7) points. Clause (i) is preferable to Clause (ii) since it stipulates an income rate in the two highest quartiles, whereas the latter allows an income rate in the third quartile in a census tract contiguous with a first or second quartile census tracts. Thus, clause (i) warrants more points. An Applicant selecting Clause (ii) can still achieve a total of seven (7) points by selecting six (6) items under paragraph (B).

Staff recommends no changes based on this comment.

In response to commenters (54), (60) and (65), the median rate among census tracts for adults age 25 and older with an Associate's Degree or higher is 27%. The statewide rate is approximately 33%. Staff believes this is an appropriate measure as written.

Staff recommends no changes based on this comment.

In response to commenter (55), staff agrees that highway should be better defined and has revised the rule accordingly:

> (ii) The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile, without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. <u>For purposes of this scoring item, a highway is a limited-access road with a speed limit of 50 miles per hour or more</u>; and, (1 points)

In response to commenter (59), staff will calculate the median poverty rate for the region by taking the median of the poverty rates of all census tracts within the region. Regarding using a higher poverty rate for Regions 11 and 13, staff did not include that provision in the published draft, and staff believes that this revision represents sufficiently substantive changes from what was proposed

that it could not be accomplished without re-publication for public comment. This idea could be taken into consideration for drafting the 2018 QAP. Staff encourages commenter to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

In response to commenter (62), staff cannot post the datasets it will use to evaluate applications until the Board adopts the rules at the Board meeting of November 10, 2016. Staff will post the rules and supporting information as soon after the board meeting as possible.

Staff recommends no changes based on this comment.

In response to commenter (67), staff believes that this revision represents sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. This idea could be taken into consideration for drafting the 2018 QAP. Staff encourages commenter to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

ITEM (B) STAFF RESPONSE: In response to commenter (20), items (3)(A)(i) and (ii) are threshold items for meeting the requirement for Opportunity Index. All Applications must meet this threshold to score any points under this scoring item. Regarding the suggested items (i)(XV), (ii)(XII) and (ii)(XIV), staff believes that the addition of menu items represents a sufficiently substantive change from what was proposed that it could not be accomplished without re-publication for public comment. This idea could be taken into consideration for drafting the 2018 QAP. Staff encourages commenter to suggest this revision during planning for the 2018 QAP. Regarding items (ii)(VI) and (ii)(XII), staff believes that there is a difference between a public park and an outdoor recreation facility. For example, a public park might not have a soccer field, but a soccer field would be considered an outdoor recreation facility.

Staff recommends no changes based on this comment.

In response to commenters (20), (22), (33), (39), (40), (42), (44), (53), (54), (58), (60), (65), and (71), staff agrees that revisions to this section are required and has revised the rule accordingly.

> (B) An application that meets the foregoing criteria may qualify for additional points up to seven (7) points for any one or more of the following factors. Each facility or amenity may be used only once for scoring purposes, regardless of the number of categories it fits:
> (i) For Developments located in an Urban Area, an Application may qualify to receive points through a combination of requirements in clauses (~~I~~I) through (~~15~~XIII) of this subparagraph.
> (I) The Development site is located less than 1/2 mile on an accessible route from a public park with an accessible playground, both of which meet 2010 ADA standards. (1 point)
> (II) The Development Site is located less than ½ mile on an accessible route from Public Transportation with a route schedule that provides regular service to employment and basic services. For purposes of this scoring item, regular is defined as scheduled service beyond 8 a.m. to 5 p.m., plus weekend service. (1 point)

(III) The Development site is located within 1 mile of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point)

(IV) ~~The Development is located within 3 miles of either an emergency room or an urgent care facility~~ The Development is located within 3 miles of a health-related facility, such a full service hospital, community health center, minor emergency center, emergency room or urgent care facility. Physician specialty offices are not considered in this category. (1 point)

(V) The Development Site is within 2 miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten (1 point)

(VI) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less as defined by neighborhoodscout.com. (1 point)

(VII) The development site is located within 1 mile of a public library (1 point)

(VIII) The Development Site is located within 5 miles of a University or Community College campus. To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered Community Colleges. Universities and Community Colleges must have a physical location within the required distance; online-only institutions do not qualify under this item. (1 point)

~~(IX) The Development Site is located within 3 miles of a concentrated retail shopping center of at least 1 million square feet or that includes at least 4 big-box national retail stores (1 point)~~

(~~X~~ IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher as tabulated by the 2010-2014 American Community Survey 5-year Estimate. (1 point)

(~~XI~~ X) Development site is within 2 miles of a ~~government-sponsored~~ museum that is a government-sponsored or non-profit, permanent institution open to the public and is not an ancillary part of an organization whose primary purpose is other than the acquisition, conservation, study, exhibition, and educational interpretation of objects having scientific, historical, or artistic value. (1 point)

(~~XII~~XI) Development site is within 1 mile of an indoor recreation facility available to the public (1 point)

(~~XIII~~XII) Development site is within 1 mile of an outdoor recreation facility available to the public (1 point)

(~~XIV~~XIII) Development site is within 1 mile of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point)

(ii) For Developments located in a Rural Area, an Application may qualify to receive points through a combination of requirements in clauses (~~I~~I) through (~~13~~XII) of this subparagraph.

(I) The Development site is located within ~~2 miles~~ 4 miles of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point)
(II) The Development is located within 4 miles of health-related facility, such a full service hospital, community health center, or minor emergency center. Physician specialty offices are not considered in this category. (1 point)
(III) The Development Site is within ~~3 miles~~ 4 miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten (1 point)
(IV) The Development Site is located in a census tract with a property crime rate 26 per 1,000 or less, as defined by neighborhoodscout.com. (1 point)
(V) The development site is located within ~~3 miles~~ 4 miles of a public library (1 point)
(VI) The development site is located within ~~3 miles~~ 4 miles of a public park (1 point)
(VII) The Development Site is located within ~~7 miles~~ 15 miles of a University or Community College campus (1 point)
~~(VIII) The Development Site is located within 5 miles of a retail shopping center with XX square feet of stores (1point)~~
(~~IX~~VIII) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher as tabulated by the 2010-2014 American Community Survey 5-year Estimate. (1 point)
(~~X~~IX) Development site is within ~~2 miles~~ 4 miles of a ~~government-sponsored~~ museum that is a government-sponsored or non-profit, permanent institution open to the public and is not an ancillary part of an organization whose primary purpose is other than the acquisition, conservation, study, exhibition, and educational interpretation of objects having scientific, historical, or artistic value. (1 point)
(~~XI~~X) Development site is within ~~1 mile~~ 3 miles of an indoor recreation facility available to the public (1 point)
(~~XII~~XI) Development site is within ~~1 mile~~ 3 miles of an outdoor recreation facility available to the public (1 point)
(~~XIII~~XII) Development site is within ~~1 mile~~ 3 miles of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point)

In response to commenters (20), (22) (39), (40), (42), and (67) regarding suggested revisions and the addition of menu items, staff believes that the revisions represent sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. This idea could be taken into consideration for drafting the 2018 QAP. Staff encourages commenter to suggest the revisions during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

In response to commenters (22) (39), (40) and (44), staff believes that the suggested definition of "regular service" does not consider persons who need transportation outside of what is referred to as "A shift". Staff would define "regular service" as scheduled service beyond 8 a.m. to 5 p.m., plus weekend service and has revised the rule accordingly.

In response to commenters (22), (31), (38), (39), (40), (42), (44), (54), (57), (58), (60), and (65), staff believes the availability of an accessible playground on an accessible route is a valuable community amenity and therefore should be considered in scoring. Playgrounds that are not accessible would be able to gain points through item (XIII).

Staff recommends no changes based on this comment.

In response to commenters (22), (31), (36), (39), (40), (42), (52), (53), (54), (57) and (58), (60), and (65), staff could find no consensus among the commenters to revise the scoring item regarding concentrated retail shopping. Staff has removed the item from the menu and may consider it for the 2018 QAP.

In response to commenters (42), (54), (60), (65) regarding items (i) and (ii), staff believes that as written there is clear definition of which scoring items pertain to Developments in Urban areas.

Staff recommends no changes based on this comment.

In response to commenter (44), regarding items (XII) and (XIII), "Recreational activities" are generally those done for pleasure and by choice. As such, it would be difficult to make an exhaustive list of everything recreation could include or what the facility must offer. Staff suggests that if commenter has questions about whether a specific recreational activity would count, commenter may contact staff for guidance. The activity does not have to publicly operated and may require fees. Staff does not agree that item (XIV) is duplicative of §11.9(c)(3). For this scoring item, the organization only needs to be within the required distance of the Development; for §11.9(c)(3), the Applicant must actively engage the organization to secure services for tenants.

Staff recommends no changes based on this comment.

In response to commenters (57) and (58), staff clarifies that distance is measured as linear distance, or "as the crow flies" from the closest points of the boundaries of the amenity and Development Site.

Staff recommends no changes based on this comment.

In response to commenters (58) and (71), staff believes that doubling the distances to amenities in rural areas across the board would not accomplish the Department's affordable housing location goals. Staff believes that it is more convenient for tenants to have a variety of amenities closer to the Development Site rather than farther away, and that the Development Site should be as close to the downtown area as possible. Staff has incorporated changes to the distance on some items in the rule.

Staff recommends no changes based on this comment.

In response to commenter (72), staff believes that it is appropriate for distances to amenities to be longer in rural areas than in urban areas as the concentration of people and development are

different in rural areas. Often, some amenities are in the older part of the downtown area, and some are in the newer parts near major roads; or all the amenities are in the downtown area, and all new development is farther from downtown. Staff believes that even though the distances may be longer, they are reasonable distances that accomplish the Department's affordable housing location goals.

Staff recommends no changes based on this comment.

13. §11.9(c)(5) – Educational Quality (8), (9), (18), (20), (22), (23), (24), (25), (30), (31), (33), (34), (35), (37), (39), (40), (41), (42), (43), (46), (47), (49), (54), (55), (58), (59), (60), (62), (65), (66), (67)

COMMENT SUMMARY: Commenters (8), (30), (34), (37), (46), and (47) state that most schools have some registration/application process and capacity or enrollment limit and suggests the following change for clarity:

> Schools with an application process for admittance~~, limited enrollment or other requirements that~~ that include academic achievement or other potentially restrictive requirements that may prevent a tenant from attending will not be considered as the closest school or the school which attendance zone contains the site.

Commenters (8), (30), (34), (37), (46), and (47) suggest adding the following items to §11.9(c)(5)(A)-(E):

> The Development Site is part of a concerted revitalization plan that meets the requirements in section 11.9(d)(7) and is within the attendance zone of an elementary school, a middle school, and a high school with an index 1 score that has improved for three consecutive years prior to application (5 points)
>
> The Development Site is part of a concerted revitalization plan that meets the requirements in section 11.9(d)(7) and is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with an index 1 score that has improved for three consecutive years prior to application (3 points, or 2 points for a Supportive Housing Development)

Commenters (9) and (31) request that staff allow an applicant an opportunity to score the additional points under item (E) without first scoring points under items (A)-(D). Commenter (9) states that this item would effectively disqualify any site in Harlingen as the mean score for Region 11 is 73 and none of the high schools in Harlingen meet that score. Commenter states that this has the effect of pushing housing to suburban areas and neutralizing points for historic rehabilitation.

Commenter (18) states that Development Sites subject to an Elderly Limitation are exempt from schools as an undesirable neighborhood characteristic; therefore, these sites should not be subject to Educational Quality rating and should be awarded 5 points.

Commenter (20) states that the item should be stricken from the USDA and At-Risk Set-Asides as a result of the Supreme Court's decision in ICP v TDHCA, and that there is sufficient location criteria for existing properties under Opportunity Index.

Commenters (22), (35), (39), (40), (41), (42), (43), (49), (54), (58), (59), (60), and (65) suggest that this scoring provision should be deleted entirely but that aspects of it should be included in the

Opportunity Index scoring. Commenters state that the testing and standards by which Texas schools are rated are flawed and unreliable.

Commenters (23) and (55) state that, as written, Supportive Housing appears to be eligible for five points, but that was not the case last year and does not appear to be the case based on the "Selection Criteria" table posted in the board book of July 28, 2016.

Commenter (24) recommends that there be no changes to this section from its current form in the 2017 draft. Commenter states that states that TEA metrics are the sole source of the objective measures that TDHCA has to work with. Commenter states that emphasizing school quality has contributed to the trend of awards to areas which haven't had affordable housing available, providing new housing choices to low-income Texans. Commenter does not agree with others who comment that school quality become one of the "menu items" under opportunity index.

Commenter (25) suggests that in Elderly and Supportive Housing projects serving only adults the residents do not benefit from proximity to a high performing school. Commenter recommends either placement of this criterion as an item in the Opportunity Index so that Elderly and Supportive Housing projects select it if they wish and not be penalized, or leave it in place and allow Supportive Housing projects to score just as highly as other developments.

Commenter (31) states that for subclause (3) of paragraph (E), staff recognize that not all extended day Pre-K programs are on the same premises as the elementary school. Commenter suggests changing this language to provide points if Pre-K is offered at all for the development site, regardless of the length of the day, and not required to be within the elementary school.

Commenter (33) suggests that this item has had significant impact on awards and not always to the benefit of the residents being served. Commenter states that education is an important factor that should be considered in the placement of housing, but it should not dwarf other factors that are just as important to residents. Commenter recommends placing items relating to education in the menu of items that are being considered when determining a "good real estate transaction" under Opportunity Index.

Commenter (58) states that, if Educational Quality must remain a threshold item, staff revise paragraphs (A)-(D) to use the same criteria for evaluating schools. Currently, paragraph (D) only specifies statewide comparisons, while paragraphs (A)-(C) specify statewide and region comparisons.

Commenter (59) proposes revising Educational Quality as a menu item under §11.9(c) (4)(B), as this would promote dispersion of senior developments to locations with the appropriate amenities. Commenter has proposed the following scoring menu be added to §11.9(c)(4)(B):

> (XV) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score (3 points)
> (XVI) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (2points)
> (XVII) The Development Site is within the attendance zone of any one of the following three schools (an elementary school, a middle school, and a high school)

with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (1point).

Commenter (62) asks that TDHCA issue the data sets it will use to evaluate applications for Education Quality points as quickly as possible. Commenter proposes that this information be provided before October. Commenter (62) specifies that schools' scores for subregions should be made available immediately.

Commenter (66) states that, as currently stated, Supportive Housing Developments receive an unfair advantage in this subdivision. Commenter shares in that the November 12, 2015 board book, staff wrote that Supportive Housing Developments would be limited to two (2) points under Educational Excellence. In the draft 2017 QAP, however, the proposed language allows Supportive Housing Developments to quality for three (3) points. Commenter says that Supportive Housing Developments already hold an unfair advantage over non-Supportive Housing Developments. Commenter references the three (3) additional points through Rent Levels of the Tenants and Tenant Service, the removal of size minimums, the fewer features required to score well, the permissibility of owner contributions to the development, and feasibility allowances under REA rules—all of which already extend advantages to Supportive Housing Developments. To maintain parity, Commenter recommends that staff limits points available to Supportive Housing Developments under the Educational Quality Scoring Item. If Education Quality is removed or minimized, Commenter asks that staff find another way to remove the three (3) point advantage of Supportive Housing Developments in order to maintain parity.

Commenter (67) states disagreement with TAAHP's suggestion to remove or minimize Educational Quality in the QAP. Commenter also disagrees with the suggestion from other developers that placing a new affordable housing development in an undesirable urban neighborhood is the economic driver to lift that neighborhood into renewal. Commenter (67) requests that Education Quality points as currently written remain the same.

STAFF RESPONSE: In response to the suggestion from commenters (8), (30), (34), (37), (46), and (47) staff does not agree that the suggested clarification achieves the same outcome as the original text. The suggested revision considers only the application process, while the original text considers the application in concert with other factors. In response to the second suggestion from commenters, staff believes this suggestion is a sufficiently substantive change from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2018 QAP. Staff encourages commenters to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

In response to commenters (9) and (31), items (A)-(D) are threshold items for meeting the requirement under Educational Quality. All Applications must meet this threshold in order to score any points under this scoring item. Staff did revise the point structure for the scoring item:

Staff recommends no changes based on this comment.

In response to commenter (18), staff clarifies that regarding Educational Quality, Development Sites subject to an Elderly Limitation are exempt from the disclosure requirements of §10.101(a)(4)(B) regarding Undesirable Neighborhood Characteristics but are not exempt from the requirements of this section and will not be automatically awarded 5 points.

Staff recommends no changes based on this comment.

In response to commenter (20), staff has revised the point structure for the scoring item so the point item will have less impact for those Applications that do not score points under this item. Staff does not agree that this item should be deleted in its entirety and can find no policy reason for making the item not applicable to the USDA and At-Risk Set-Asides as Applications in the set-asides already compete on a similar basis.

Staff recommends no changes based on this comment.

In response to commenters (20), (22), (33), (35), (39), (40), (41), (42), (43), (49), (54), (58), (59), (60), and (65), staff does not agree that this item should be deleted in its entirety or moved to Opportunity Index; however, staff has revised the point structure for the scoring item:

> (A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score (~~5 points~~ 3 points);
> (B) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (~~3 points~~ 2 points, or ~~2 points~~ 1 point for a Supportive Housing Development); or
> (C) The Development Site is within the attendance zone of a middle school or a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. ~~Center.~~ (1 point); or
> (D) The Development Site is within the attendance zone of an elementary school with an Index 1 score in the first quartile of all elementary schools statewide. (1 point); or
> (E) If the Development Site is able to score one or ~~three~~ two points under clauses (B) through- (D) above, ~~two~~ one additional ~~points~~ point ~~or 1 point for a Supportive Housing Development~~ may be added if one or more of the features described in subclause (1) - (4) is present:

In response to commenters (23) and (55), staff agrees and has revised the rule accordingly:

> In order to qualify for points under Educational Quality, the elementary school and the middle school or high school within the attendance zone of the Development must have a TEA rating of Met Standard. Except for Supportive Housing Developments, an Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs (A) - (E) of this paragraph, as determined by the Texas Education Agency. A Supportive Housing Development may qualify to receive no more than two (2) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs (A) or (B) of this paragraph, as determined by the Texas Education Agency. For districts without attendance zones, the schools closest to the site which may possibly be attended by the tenants must be used for scoring. Choice districts with attendance zones will use the school zoned to the Development site. Schools

with an application process for admittance, limited enrollment or other requirements that may prevent a tenant from attending will not be considered as the closest school or the school which attendance zone contains the site. The applicable ratings will be the 2016 accountability rating determined by the Texas Education Agency for the State, Education Service Center region, or individual campus. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating.

In response to commenter (24), staff appreciates the comment. Rather than delete the scoring item entirely, staff has revised the point structure for the item.

Staff recommends no changes based on this comment.

In response to commenter (25), staff believes that only a small portion of Elderly Developments serve adults only. Only certain Elderly Limitation Developments are absolutely closed to families with children as most are open to the elderly and to disabled tenants. Staff has revised the point structure for the item including the scoring for Supportive Housing Developments.

Staff recommends no changes based on this comment.

In response to commenter (31), regarding item (E)(2), to determine the 4-year graduation rate, staff will refer to the TEA 2016 Index 4: Postsecondary Readiness Data table for the district found at http://tea.texas.gov/2016accountability.aspx. Regarding item (E)(3), staff's intent with extended pre-kindergarten is that there be pre-kindergarten provided beyond the required 7 hours of full day pre-kindergarten. The program does not have to be held at a campus for which the site is zoned, as school districts have designated campuses that the entire district may access. Programs that include restrictions such as limited participation with preference given to parents who work for the school system, or programs where participation is limited would be questionable as these programs are like magnet schools where attendance is limited. If commenter has a program that commenter would like for staff to review, commenter should contact staff. Staff agrees that item (E)(2) requires clarification and staff has revised the rule accordingly.

(E) If the Development Site is able to score one or ~~three~~ two points under clauses (B) through- (D) above, ~~two~~ one additional ~~points~~ point ~~or 1 point for a Supportive Housing Development~~ may be added if one or more of the features described in subclause (1) - (4) is present:

(2) The Development Site is located in the attendance zone of a general admission high school with a four-year longitudinal graduation rate in excess of the statewide four-year longitudinal graduation rate for all schools for the latest year available, based on the TEA 2016 Index 4: Postsecondary Readiness Data table for the district found at http://tea.texas.gov/2016accountability.aspx. (1 point)

In response to commenter (58), staff believes that item (D) is a separate and distinct scoring item and should not mirror items (A)-(C).

Staff recommends no changes based on this comment.

In response to commenter (62), data regarding schools' scores for subregions is posted on the TEA website at http://tea.texas.gov/2016accountability.aspx.

Staff recommends no changes based on this comment.

In response to commenter (66), staff has revised the point structure for the item including the scoring for Supportive Housing Developments.:

In response to commenter (67), staff agrees that this item should be not deleted in its entirety or moved to Opportunity Index; however, staff has revised the point structure for the scoring item.

Staff recommends no changes based on this comment.

14. §11.9(c)(6) – Underserved Area (18), (20), (22), (23), (24), (25), (35), (36), (38), (40), (45), (49), (55), (56), (57), (59), (61), (63), (67)

COMMENT SUMMARY: Commenters (18), (20), (22), (25), (36), (38), (40), (61), (63), (67) suggest adding the phrase "serving the same population" to items (C), (D) and (E).

(C) A census tract within the boundaries of an incorporated area that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development serving the same population within the past 15 years (3 points);
(D) For areas not scoring points for (C) above, a census tract that does not have a Development serving the same population subject to an active tax credit LURA; (2 points);
(E) A census tract within the boundaries of an incorporated area and all contiguous census tracts for which neither the census tract in which the Development is located nor the contiguous census tracts have received an award or HTC allocation serving the same population within the past 15 years and continues to appear on the Department's inventory. This item will apply in cities with a population of 500,000 or more, and will not apply in the At-Risk Set-Aside (5 points).

Commenter (20) suggests the following revision to item (C):

(C) A census tract ~~within the boundaries of an incorporated area~~ that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development within the past 15 years (3 points);

Commenters (22), (40), suggest adding the following options for scoring to the rule:

(C) A census tract within the boundaries of an incorporated area that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development serving the same population within the past 15 years (2 points);

(~~C~~D) A census tract within the boundaries of an incorporated area that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development within the past 15 years (3 points);

~~(D) For areas not scoring points for (C) above, a census tract that does not have a Development subject to an active tax credit LURA; (2 points);~~

(E) A census tract within the boundaries of an incorporated area and all contiguous census tracts for which neither the census tract in which the Development is located nor the contiguous census tracts have received an award or HTC allocation serving the same population within the past 15 years. This item will apply in cities with a population of 500,000 or more, and will not apply in the At-Risk Set-Aside (4 points).

(~~E~~F)A census tract within the boundaries of an incorporated area and all contiguous census tracts for which neither the census tract in which the Development is located nor the contiguous census tracts have received an award or HTC allocation within the past 15 years ~~and continues to appear on the Department's inventory~~. This item will apply in cities with a population of 500,000 or more, and will not apply in the At-Risk Set-Aside (5 points).

Commenter (23) expressed concern about the accuracy of the inventory and census tract data. Commenter suggests that subparagraph C should be consistent with subparagraph E and refer to allocations that continue to appear on the Department's inventory.

Commenter (24) states that limiting part (E) of this scoring item to cities of 500,000 or more is a significant advantage available to qualifying proposals in large urban areas which smaller cities do not have. Commenter states that this item should not carry the same scoring weight as educational quality. Commenter states that scoring criteria should not place suburban areas at such a disadvantage given the current lack of affordable housing options in many of these areas. Commenter recommends that either lowering the population threshold for the 5-point underserved area item to 100,000 people or reducing the point award to a level below that of educational quality.

Commenters (31) and (61) state that the current language of paragraph (E) does not account for census tracts that straddle city boundaries. Therefore, commenter proposes using language that emphasizes incorporated areas, first and foremost, and any census tracts that share a boundary with those incorporated areas. Commenter (61) states that there are several census tracts that have both un-incorporated areas as well as incorporated areas.

Commenter (35) states that in order to further the goal of attracting affordable housing to urban centers, points under this item should only be eligible for sites within the corporate limits of a municipality. Commenter suggests the following revisions:

(C) A census tract within the boundaries of an incorporated area, not including the ETJ, that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development within the past 15 years (3 points);

(E)A census tract within the boundaries of an incorporated area, not including the ETJ, and all contiguous census tracts for which neither the census tract in which the Development is located nor the contiguous census tracts have received an award or HTC allocation within the past 15 years and continues to appear on the Department's inventory. This item will apply in cities with a population of 500,000 or more, and will not apply in the At-Risk Set-Aside (5 points).

Commenter (38) requests that staff clarify the statement "A census tract within the boundaries of an incorporated area…" as some areas will have a census tract large enough that it will fall within the boundaries of an incorporated area and also outside the boundaries of an incorporated area.

Commenter (45) proposes completely removing paragraph (E), or reducing the possible points to two (2), whereas it currently grants five (5) points.

Commenter (49) states that the Extraterritorial Jurisdiction (ETJ) should not be considered part of an incorporated area in regards to paragraphs (C) and (E) of §11.9(c)(6).

Commenter (55) states that items (C), (D), and (E) have inconsistent language with regard to whether there is a development in the census tract that is currently active. Commenter proposes that these items only apply to developments that are subject to an active tax credit LURA and currently being monitored by TDHCA.

Commenters (57), (59) and (68) suggest that the population limitation in item (E) is problematic for moderately-sized cities. Commenters propose no threshold or lower thresholds for the population minimum.

Commenter (59) proposes that staff remove "within the boundaries of an incorporated area" requirement.

STAFF RESPONSE: In response to commenters (18), (20), (22), (25), (36), (40), (61), (63), (67), the purpose of the scoring item is to ensure that areas that are underserved by LIHTC-funded projects in general receive points for being underserved. Staff believes that differentiating among populations served does not meet the spirit or the intent of the scoring item.

Staff recommends no changes based on this comment.

In response to commenters (20) and (59), staff believes that removing the option for a census tract within an incorporated area from this scoring is not in keeping with the intent of this scoring item.

Staff recommends no changes based on this comment.

In response to commenters (22), (40), the suggestion to add scoring items is a sufficiently substantive change from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2018 QAP. Staff encourages commenters to suggest this revision during planning for the 2018 QAP. Commenters did not give a reason for requesting that the option for a census tract that does not have a Development subject to a LURA be removed. Staff does not agree that the item should be removed as the item offers an opportunity for different areas to qualify for points. Staff believes that removing the requirement that a Development continues to appear on the Department's inventory would make it difficult for the Department to objectively score the item.

Staff recommends no changes based on this comment.

In response to the first comment from commenter (23), staff works to ensure that all information provided to Applicants is accurate and encourages everyone to bring identified errors to staff's attention. However, pursuant to 10 TAC §11.1(b), "...while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. Moreover, after the time that an issue is initially presented and guidance is provided, additional information may be identified and/or the issue itself may continue to develop based upon additional research and guidance. Thus, until confirmed through final action of the Board, staff guidance must be considered merely as an aid and an Applicant continues to assume full responsibility for any actions Applicant takes regarding an Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to perform independently the necessary due diligence to research, confirm, and verify any data, opinions, interpretations, or other information upon which an Applicant bases an Application or includes in any submittal in connection with an Application".

Staff recommends no changes based on this comment.

In response to the second comment from commenter (23), staff agrees and has revised the rule accordingly:

> (C) A census tract within the boundaries of an incorporated area that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development within the past 15 years <u>and continues to appear on the Department's inventory</u> (3 points);

In response to commenter (24), the scoring criteria for §11.9(c)(5) Educational Quality has been revised to reduce the maximum score. Staff does not believe that this item should have a lower point value than Educational Quality as this scoring item advances the Department's stated policy of the dispersion of affordable housing.

Staff recommends no changes based on this comment.

In response to commenters (31), (38) and (61), staff clarifies that "within the boundaries of an incorporated area" means that the entire census tract is completely within the boundaries of the incorporated area of a home rule or general law city as defined by Texas law. If any portion of the census tract is outside of the incorporated area, the census tract would not qualify for points under any item that includes this requirement.

Staff recommends no changes based on this comment.

In response to commenter (35), staff believes that the proposed rule includes appropriate incentives to encourage the development of affordable housing in urban centers.

Staff recommends no changes based on this comment.

In response to commenter (45), staff does not agree that the item should be removed as the item offers an opportunity for different areas to qualify for points and advances the Department's stated policy of the dispersion of affordable housing

Staff recommends no changes based on this comment.

In response to commenter (49), ETJ is defined in Texas Local Gov't Code Sec. §42.021. Extent of Extraterritorial Jurisdiction "(a) The extraterritorial jurisdiction of a municipality is the unincorporated area that is contiguous to the corporate boundaries of the municipality." Because ETJ by definition is an unincorporated area, sites in an ETJ would not be able to score points under this item.

Staff recommends no changes based on this comment.

In response to commenter (55), staff does not believe that items (C), (D), and (E) should only apply to developments that are subject to an active tax credit LURA as this scoring item advances the Department's stated policy of the dispersion of affordable housing.

Staff recommends no changes based on this comment.

In response to commenters (57), (59), (68), staff agrees that the population limitation in item (E) should be lowered to a level that captures cities that staff believes would most likely require attention regarding housing de-concentration. Staff has revised the rule accordingly:

> (E) A census tract within the boundaries of an incorporated area and all contiguous census tracts for which neither the census tract in which the Development is located nor the contiguous census tracts have received an award or HTC allocation within the past 15 years and continues to appear on the Department's inventory. This item will apply in cities with a population of ~~500,000~~ 300,000 or more, and will not apply in the At-Risk Set-Aside (5 points).

15. §11.9(c)(7) – Tenant Populations with Special Housing Needs (22), (23), (27), (33), (40), (58), (62), (69)

COMMENT SUMMARY: Commenters (22), (33), (40), (62), (69), suggest reverting back to the language that was included in the 2016 QAP.

Commenter (23) and (58) state that it is premature to make participation in the 811 Program a threshold item. Commenter suggests that this should remain a scoring item where an applicant has the choice of participation until the program has been fully implemented and has some history of performance.

Commenter (27) states that inclusion of the Section 811 Program as a threshold item will result in developers being forced to make the project for which an application is submitted or an existing project with the developer's portfolio fall under the definition of "federally assisted housing" according to 42 U.S.C. 13641. Commenter states that making the Section 811 program a threshold criteria will remove the choice as to whether or not to accept the "federally assisted housing" designation and the requirements that accompany the designation such as Davis Bacon Wages, the Uniform Relocation Act (with additional cost burdens), etc. Commenter suggests that expanding the reach of the 811 program would be better achieved by imposing the threshold requirement on

Direct Loan applications or others already choosing to receive funds that would designate the project as federally assisted.

Commenter (58) suggests revising the rule so that in order for a Development Site to be eligible for points under this item, the Site must be located in an Urban Region in one of the areas specified previously in clause (iv) for the same reasons that the 811 program is only required in certain MSAs. Commenter also proposes making the Section 811 Program a separate program that requires its own RFP process.

STAFF RESPONSE: In response to commenters (22), (23), (27), (33) and (40), (58), (62), and (69), staff believes that moving the Section 811 Project Rental Assistance Program to threshold, we are responding to stakeholder input that indicated this would be the preferred method to make use of the program. Staff is seeking more existing developments for the program and initially proposed a point incentive for existing developments. Stakeholders expressed that this would create an unfair advantage to established, experienced developers who already had developments located in the state (and in the eligible MSAs). By relocating Section 811 into 10 TAC §10.204, the program prioritizes access to existing developments, while still allowing Applicants who do not have existing developments to participate in the program. In addition, by opening participation to more programs, Texas is able to increase housing choice for extremely low-income persons with disabilities.

Staff recommends no changes based on this comment.

In response to commenter (58), staff believes this suggestion is a sufficiently substantive change from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2018 QAP. Staff encourages commenters to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

16. §11.9(c)(8) – Proximity to the Urban Core (3), (5), (6), (7), (12), (14), (15) (18), (19), (21), (23), (24), (25), (32), (33), (36), (39), (41), (42), (43), (45), (51), (54), (55), (59), (60), (63), (65)

COMMENT SUMMARY: Commenters (3), (5), (6) (7), (15), (23), (25), (42), (43), (51), (54), (59), (60), (63), and (65) state that this item should not be a scoring factor for the At-Risk Set-Aside. Commenters (3), (5), (6) (7), and (15) expressed concern and strong opposition to having this item apply to the At-Risk Set-Aside because it excludes El Paso. Commenters state that this would effectively disqualify El Paso from the set-aside and request that the At-Risk Set-Aside be exempted from this item. Commenters (23), (51), (54), (59), (60), (63), and (65) state that because of its regional impact, urban areas would have an insurmountable scoring advantage in a statewide competition and

Commenters (12), (14), (19) (21), (39) and (41), support the new scoring item.

Commenter (14) is opposed to changing the item so that it does not apply to the At-Risk Set-Aside. Commenter states that At-Risk deals are already ineligible for full points under §11.9(c)(6) Underserved Areas and it would be unfair for deals to be ineligible for these points as well because the points are available to other urban deals.

Commenter (18) suggests revising the rule to include areas that have transit options that offer access to the urban core.

A development in a County with a population over 1 million and in a City with a population over 500,000 if the Development Site is located within 4 miles of the main City Hall facility, or if the Development Site is located less than ½ mile from a light rail station and is located within 8 miles of the main city Hall. The main City Hall facility will be determined by the location of regularly scheduled City Council, City Commission, or similar governing body meetings. Distances are measured from the nearest property boundaries, not inclusive of non-contiguous parking areas. (5 points)

Commenters (23), (51), (54), (59), (60), (63), and (65) question whether this item conflicts with the legislative purpose of the Regional Allocation Formula.

Commenter (24) states that this item should not carry the same scoring weight as educational quality. Commenter recommends that either lowering the population threshold for the 5-point underserved area item to 100,000 people or reducing the point award to a level below that of educational quality.

Commenters (24) and (59) state that limiting this scoring item to cities of 500,000 is problematic for smaller cities. Commenter (24) states that scoring criteria should not place suburban areas at such a disadvantage given the current lack of affordable housing options in many of these areas. Commenter (59) states that only five cities are eligible for these points, which would have the effect of concentrating developments instead of dispersing them. Commenter proposes the following language:

Proximity to the Urban Core. A development in a County with a population over 500,000, and in a City located in an Urban Area ~~with a population over 1 million and in a City with a population over 500,000~~ if the Development Site. This item will apply to only one development, if any, in a qualifying Urban Area and will not apply to the At-Risk Set-Aside. (5 points)

Commenter (32) states that Proximity to Urban Core should be located within seven (7) miles to allow more site availability with reasonably priced land that is more feasible for responsible use of the limited tax credit and program resources.

Commenter (33) recommends that should Educational Quality be removed, this section should be removed in its entirety, as this would give an advantage to Urban Core applications. Commenter states that with the Educational Quality and Proximity to Urban Core categories being removed together, urban core and outside the urban core can compete equally.

Commenter (36) states that Dallas and Fort Worth already have somewhat of a set aside for the top scoring application. Comment requests that staff remove this scoring item or limit the point value to 1 versus 5.

Commenter (39) supports the new Proximity to Urban Core scoring category and its rank as the first tie breaker.

Commenter (45) asks that this scoring item be removed since urban core development sites are already incentivized through House Bill 3535 and the urban prioritization of Community Revitalization Plan projects.

Commenter (55) states the purpose of section 11.9(c)(8) – Proximity to the Urban Core was to counterbalance the Educational Quality scoring item, so that urban areas with lower performing schools would remain competitive with suburban areas with higher performing schools. If staff deletes Educational Quality as a threshold item or moves it to a menu item, then staff should make a similar adjustment to this item, section 11.9(c)(8).

STAFF RESPONSE: In response to commenters (3), (5), (6) (7), (15), (23), (25), (42), (43), (51), (54), (59), (60), (63), and (65), staff agrees that this scoring item should not apply to the At-Risk Set-Side and has revised the rule accordingly:

> Proximity to the Urban Core. ~~A development in a County with a population over 1 million and~~ A Development in a City with a population over ~~500,000~~ 300,000 may qualify for points under this scoring item. ~~if the~~ The Development Site ~~is~~ must be located within 4 miles of the main City Hall facility if the population of the city is more than 500,000, or within 2 miles of the main City Hall facility if the population of the city is 300,000 - 500,000. The main City Hall facility will be determined by the location of regularly scheduled City Council, City Commission, or similar governing body meetings. Distances are measured from the nearest property boundaries, not inclusive of non-contiguous parking areas. This scoring item will not apply to the At-Risk Set-Aside. (5 points)

Staff appreciates the support expressed by commenters (12), (14), (19), (21), (39) and (41).

Staff recommends no changes based on this comment.

In response to commenter (14), urban deals in the At-Risk Set-Aside do not compete against urban deals in the subregions. Staff does not agree that changing the item so that it does not apply to the At-Risk Set-Aside would be unfair to urban deals in the set-aside. Staff believes that this change levels the playing field for applications in the set-aside in relation to this scoring item.

Staff recommends no changes based on this comment.

In response to commenter (18), staff believes this suggestion is a sufficiently substantive change from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2018 QAP. Staff encourages commenters to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

In response to commenters (23), (51), (54), (59), (60), (63), and (65), staff believes that the scoring item does not conflict with the legislative purpose of the Regional Allocation Formula. The scoring item does not direct additional funding to any region or set-aside but simply provides points according to the location of a development within a region.

Staff recommends no changes based on this comment.

In response to commenters (24) and (55), the scoring criteria for §11.9(c)(5) Educational Quality has been revised to reduce the maximum score. Staff does not believe that this item should have a lower point value than Educational Quality as this scoring item advances the Department's stated policy of the dispersion of affordable housing.

Staff recommends no changes based on this comment.

In response to commenters (24), (36) and (59), staff agrees that the 500,000-population limitation plus the requirement for the county to have a population over 1 million is problematic for smaller cities and has revised the rule accordingly:

> Proximity to the Urban Core. ~~A development in a County with a population over 1 million and~~ A Development in a City with a population over ~~500,000~~ 300,000 may qualify for points under this scoring item. ~~if the~~ The Development Site ~~is~~ must be located within 4 miles of the main City Hall facility if the population of the city is more than 500,000, or within 2 miles of the main City Hall facility if the population of the city is 300,000 - 500,000. The main City Hall facility will be determined by the location of regularly scheduled City Council, City Commission, or similar governing body meetings. Distances are measured from the nearest property boundaries, not inclusive of non-contiguous parking areas. This scoring item will not apply to the At-Risk Set-Aside. (5 points)

In response to commenters (32), (33), and (45), staff believes that the suggested revision is contrary to the stated policy of the Department and the purpose of the scoring item, which is to encourage the placement of affordable housing in areas that are proximate to the urban core of major cities.

Staff recommends no changes based on this comment.

17. §11.9(d)(2) Commitment of Development Funding by Local Subdivisions (42), (54)
COMMENT SUMMARY: Commenters (42) and (54) question why terms would be necessary on a de minimis contribution and recommend including statutory citation (2306.6725(e)).

STAFF RESPONSE: In response to commenters (42) and (54), the word "terms" as used here is not the same as when the term is used for documentation of a loan. The commitment of development funding must be reflected in the Application as a financial benefit to the Development, i.e. reported as a source of funds on the Sources and Uses Form and/or reflected in a lower cost in the Development Cost Schedule, such as a reduction in building permits fees. Whatever the form of the contribution, the letter from the Local Political Subdivision must describe value of the contribution, the form of the contribution, e.g. reduced fees or gap funding, and any caveats to delivering the contribution. Staff believes that the item requires clarification and staff agrees that statutory citation (2306.6725(e)) should be included. Staff has revised the rule accordingly:

> (2) Commitment of Development Funding by Local Political Subdivision. (§2306.6725(a)(5)); (2306.6725(e)) An Application may receive one (1) point for a commitment of Development funding from the city (if located in a city) or county in which the Development Site is located. The commitment of development funding must be reflected in the Application as a financial benefit to the Development, i.e. reported as a source of funds on the Sources and Uses Form and/or reflected in a lower cost in the Development Cost Schedule, such as notation of a reduction in building permits and related costs. Documentation must include a letter from an official of the municipality, county, or other instrumentality with jurisdiction over the proposed Development stating they will provide a loan, grant, reduced fees or contribution of other value for the benefit of the Development. ~~The letter must include the amount of support and the terms under which it will be provided.~~ The

letter must describe value of the contribution, the form of the contribution, e.g. reduced fees or gap funding, and any caveats to delivering the contribution. Once a letter is submitted to the Department it may not be changed or withdrawn.

18. §11.9(d)(5) – Community Support from State Representative (19), (22), (23), (24), (28), (31), (32), (33), (40), (42), (43), (54), (59), (60), (62), (65)

COMMENT SUMMARY: Commenter (19) states that if a state representative seat is vacated, developers should be allowed an extension to request a letter after the seat is filled.

Commenters (22), (40), (42), (43), (52), (54), (60), and (65) state that because this item has a 16-point swing between letters of opposition and support, allowing state representatives to change their position after developers have incurred significant expense creates and unfair burden on the development community and suggests that the item not to be changed as indicated in the proposed rule.

Commenters (23), (28), (31), (32), (33), (59), (62), state that new language adds another avenue for communities with a "not in my back yard" kind of stance to adversely impact the scoring process. Commenter (23) recommends that the Department sanction an applicant who misrepresents items in the application or that Representatives pursue legal options if an applicant lies or misrepresents information to the official. Commenter (28) states that this encourages behind-the-scenes activities that are not healthy for the program. Commenter (32) states that allowing rescission of a letter after submission provides for "NIMBYism", which is a violation of the Fair Housing Act. Commenter (62) states that the new language opens the door for corruption.

Commenters (24) and (28) state that the burden should be upon the representative to get the information and facts they need to make their decision. Commenter (24) states that changes to this item stand to make it easy for state representatives to effectively veto LIHTC developments. Commenter (28) states that the State Representatives should perform some due diligence and be comfortable with the proposal before issuing a letter of support and if an Applicant has truly provided false information, there is a mechanism in the threshold criteria to address that situation with a different procedure and remedy.

STAFF RESPONSE: In response to commenters (19), (22), (23), (24), (28), (31), (32), (33), (40), (42), (43), (52), (54), (59), (60), (62), and (65), staff agrees that the rule requires revision and has revised the rule accordingly:

Applications may receive up to eight (8) points or have deducted up to eight (8) points for this scoring item. To qualify under this paragraph letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development and clearly state support for or opposition to the specific Development. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative and must be submitted no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Once a letter is submitted to the Department it may not be changed or withdrawn except in the instance where a representative who has provided a letter then provides an additional letter to the Department, on or before April 3, 2017, supported by substantiating or corroborating evidence such as copies of communications or contemporaneous notes about verbal communications, stating that in their estimation a material factual representation made to them to secure their original letter has proven to have been inaccurate or misleading and therefore insufficient to serve as a basis for their

support, neutrality, or opposition and, accordingly, their letter is withdrawn. A change in this manner is final and will result in a score of zero (0) points for this scoring item. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. A letter expressly stating opposition is scored – 8 points. A letter expressly stating neutrality is scored 0 points. Any other letter conveying a sense of support is scored 8 points. If support cannot be discerned in a letter that does not expressly state support, neutrality or opposition, the representative will be contacted and given five (5) business days to indicate in writing if they wish to have the letter scored as support or neutral. If clarification is not timely provided, the letter will be scored as neutral.

19. §11.9(d)(6) – Input from Community Organizations (22), (40)

COMMENT SUMMARY: Commenters (22), (40), recommend a new scoring category for additional letter in the event that the application gets zero points under Local Government Support and suggests the following revisions to the rule:

> Where, at the time of Application, the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization, then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. Additionally, the Application may receive up to four (4) additional points if it claims less than 17 points under §11.7(d)(1). No more than ~~four (4)~~ eight (8) points will be awarded under this point item under any circumstances. All letters must be submitted within the Application. Once a letter is submitted to the Department it may not be changed or withdrawn. Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item.

STAFF RESPONSE: In response to commenters (22) and (40), staff believes that these revisions represent sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2018 QAP. Staff encourages commenters to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

20. §11.9(d)(7) – Concerted Revitalization Plan (4), (8), (9), (10), (12), (13), (17), (18), (20), (22), (23), (25), (30), (31), (32), (34), (37), (39), (40), (41), (42), (43), (46), (47), (48), (54), (58), (59), (60), (62), (63), (65)

COMMENT SUMMARY: Commenters (4), (9) and (31) propose tying Concerted Revitalization Plans ("CRP") to Qualified Census Tracts ("QCT"). Commenter (4) suggests that staff amend (7)(A) to allow Qualified Census Tracts ("QCT") in Concerted Revitalization Plans ("CRP") to compete regardless of population size which is more in line with Chapter 42 of the Internal Revenue Code.

Commenter (9) requests that staff amend the rule to award full CRP points for a development in a QCT regardless of population or in a QCT in a jurisdiction of at least 50,000.

Commenters (4), (9), (10), (12), (22), (31), (39), (40), (41), (43), (54), (58), (59), (60), and (65), commented on the 100,000-population limit. Commenter (4) states that the proposed rules arbitrarily limit a downtown revitalization area to only cities with a population of 100,000 or more, disqualifying any rural or mid-sized city. Commenter (10) states that the federal Office of Management and Budget ("OMB") defines a Metropolitan Statistical Area ("MSA") as an area that has at least one core urbanized area of 50,000 or more population plus adjacent territory that has a high degree of social and economic integration with that core as measured by commuting ties. Commenter requests that staff lower the population requirement to 50,000 to coincide with the MSA definition. Commenter (42) states that with this population limitation, all of Region 4 would be ineligible for points under this scoring criterion. Commenter states that if a limitation must be included it should be 25,000 or more. Commenters (54), (58), (59), (60), (65) state that if a population limit must be included, they recommend 25,000 or more people as the limit. Commenters (31) and (59) state that the population threshold of 100,000 limits cities' goal and ability to revitalize their towns and should therefore be removed. Commenter (59) states that the requirement that a Development be in a city with a population of 100,000 or more significantly reduces the number of cities in Urban Areas with active revitalization efforts underway in targeted areas of their city from qualifying for these points. Commenters (12), (22), (31), (39), (40), (41), (54), (58), (59), (60), and (65) recommend deleting the language entirely.

Commenters (8), (34), (46), and (47) point out that the assigned point value is inconsistent with other information in the rule as (A)(i) says six (6) points and (A)(ii) says seven points.

Commenters (8), (17), (18), (20), (30), (31), (34), (37), (42), (46), (47), (48), and (59), state that meeting the Opportunity Index threshold requirements under §11.9(c)(4)(A) should not be required in order to score points under items (A)(ii)(III) and (B)(iv).

> An Application may qualify for points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.
> (A) For Developments located in an Urban Area, and in a city with a population of 100,000 or more.
> (i) An Application may qualify to receive ~~up to six (6)~~ points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed and executed. The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems. The concerted revitalization plan that meets the criteria described in subclauses (I) - (IV) of this clause:
> (ii) Up to seven (7) points will be awarded based on:
> (III) Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4)(B), but for the criteria found in §11.9(c)(4)(A) and subparagraphs §11.9(c)(4)(A)(i) and §11.9(c)(4)(A)(ii).

Commenters (12), (13), (20), (22), (25), (39), (40), (41), (42) and (63) state that properties previously funded by HUD, should be added to the list of eligible properties for clauses (i) and (ii). Commenter (63) specifically mentions HUD 202 developments at risk of being lost.

(B) For Developments located in a Rural Area.
(i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction in a location meeting the threshold requirements of the Opportunity Index, §11.9(c)(4)(A) of a development in a rural area that is currently leased at 90% or greater by low income households and which was initially constructed prior to 1980 as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program. Demolition and relocation of units must be determined locally to be necessary to comply with the Affirmatively Furthering Fair Housing Rule, or if necessary to create an acceptable distance form Undesirable Site Features or Undesirable Neighborhood Characteristics.
(ii) Applications will receive 3 points for the rehabilitation of a development in a rural area that is currently leased at 90% or greater by low income households and which was initially constructed prior to 1980 as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program if the proposed location requires no disclosure of Undesirable Neighborhood Features under Section §10.101(a)(4) or required such disclosure but the disclosed items were found acceptable.

Commenters (12), (22), (39), (40), and (41), state that the TDHCA definition for a CRP is extremely codified making it difficult to achieve points under the scoring item. Commenter suggests the following revisions to the rule to open up areas that are truly undergoing revitalization:

An Application may qualify for points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.
~~(A) For Developments located in an Urban Area, and in a city with a population of 100,000 or more.~~
(i) An Application may qualify to receive ~~up to six (6)~~ points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed ~~and executed~~. The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems. The concerted revitalization plan that meets the criteria described in subclauses (I) - (IV) of this clause:
~~(I) The concerted revitalization plan must have been adopted by the municipality or county in which the Development Site is located. The resolution adopting the plan must be submitted with the application.~~
(IV) The adopted plan must have a sufficient, documented and committed ~~funding~~ budget to accomplish its purposes on its established timetable. ~~This~~ The funding for the budgeted expenses must either be identified in the plan or have already been spent in full or in part ~~have been flowing in accordance with the plan,~~ such that the problems identified within the plan will have been sufficiently mitigated and addressed ~~prior to the Development~~ within 5 years of being placed into service.
(ii) Up to seven (7) points will be awarded based on:
(II) Applications may receive (2) points in addition to those under subclause (I) of this clause if the Development is explicitly identified in a ~~resolution by~~ letter from the city or county as contributing more than any other to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under

this subclause. ~~The resolution from the Governing Body of the city or county that approved the plan is required to be submitted in the Application.~~ If multiple Applications submit ~~resolutions~~ letters under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points.

Commenter (13) suggests that the item be open to HUD-approved plans such as a demolition/disposition approval or the Choice Neighborhoods program. Commenter also suggests that the points be limited to QCTs. Commenter states that if HUD approves a plan, then the requirement for a resolution should be removed, and that the requirement that funding must have been previously committed to the plan is too restrictive. Commenter states that a letter from a city official or HUD that a site is a revitalizing area should suffice for these points.

Commenters (17) and (59) state that it seems duplicative to grant 2 points to a development that is explicitly identified since we now have a set-aside requiring an award to the highest scoring revitalization development. Commenter (17) recommends deleting the item, and commenter (59) proposes deleting the item and relocating the two (2) points to the preceding item which requests a letter from the appropriate local official providing documentation of measurable improvements within the revitalization area:

(ii) Up to seven (7) points will be awarded based on:
(I) Applications will receive ~~four (4)~~ six (6) points for a letter from the appropriate local official providing documentation of measurable improvements within the revitalization area based on the target efforts outlined in the plan; and
~~(II) Applications may receive (2) points in addition to those under subclause (I) of this clause if the Development is explicitly identified in a resolution by the city or county as contributing more than any other to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause. The resolution from the Governing Body of the city or county that approved the plan is required to be submitted in the Application. If multiple Applications submit resolutions under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points.~~

Commenters (17), (32) and (59) suggest the following revision. Commenter (32) states that requiring the CRP to "include the limited availability of safe, decent, affordable housing" prevents real plans that have been duly adopted from being considered.

(II) The problems in the revitalization area must be identified through a process in which affected local residents had an opportunity to express their views….and prioritized. These ~~problems must include the limited availability of safe, decent, affordable housing and~~ may include the following:

Commenters (20), (25), (42), and (54) suggest the following revisions to section (B) of the rule to make it open to more viable preservation solutions:

(B) For Developments located in a Rural Area.
(i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction in an location meeting the threshold requirements of the Opportunity Index, §11.9(c)(4)(A) of a development of 50 or more units in a rural area that is currently leased at ~~90%~~ 85% or greater by low income households and which was

initially constructed prior to ~~1980~~ 1985; or for a development of less than 50 units in a rural area that is currently leased at 80% or greater by low income households and which was initially constructed prior to 1985, as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program. Demolition and relocation of units must be determined locally to be necessary to comply with the Affirmatively Furthering Fair Housing Rule, or if necessary to create an acceptable distance form Undesirable Site Features or Undesirable Neighborhood Characteristics. The requirements in §11.9(c)(4)(A) do not apply to the USDA and the At- Risk Set-Asides.

(ii) Applications will receive 3 points for the rehabilitation of a development in a rural area that is currently leased at ~~90%~~ 85% or greater by low income households and which was initially constructed prior to ~~1980~~ 1985 as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program if the proposed location requires no disclosure of Undesirable Neighborhood Features under Section §10.101(a)(4) or required such disclosure but the disclosed items were found acceptable. Any property that has less than 85% occupancy for a property of 50 or more units, or 80% occupancy for a property of less than 50 units, may petition the TDHCA Board for a waiver of this rule in order to rehab an existing property(s).

(iii) Applications may receive (2) points in addition to those under subclause (i) or (ii) of this clause if the Development is explicitly identified in a letter by the city or county as contributing ~~more than any other Development~~ to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause. The letter from the Governing Body of the city or county that approved the plan is required to be submitted in the Application. If multiple Applications submit valid letters under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application as contributing more than any other Development to concerted revitalization efforts.

(iv) Applications may receive (1) additional point if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4). The requirements in §11.9(c)(4)(A) do not apply to the USDA and the At- Risk Set-Asides.

Commenter (23) states that new language required in the plan is too prescriptive and does not seem to match what staff of the Board says they want to see in the plans. Commenter recommends the following revisions:

(IV) The adopted plan must have sufficient, documented and committed ~~funding~~ budget to accomplish its purposes on its established timetable. This funding for the budgeted expenses must ~~have been flowing in accordance with~~ be identified in the plan, such that the problems identified within the plan will have been sufficiently mitigated and addressed ~~prior to the Development being placed into service~~ within 5 years of the Development being placed in service.

Commenter (31) suggests the following revision to (A)(ii)(III):

Applications will receive (1) point in addition to those under sub clause (I) and (II) if the development is in a location that ~~would score at least 4 points~~ meets 4 factors under Opportunity Index 11.9 (c)(4).

Commenter (48) states that the chances are slim of finding an RD 515 that is in a town with a CRP that will qualify; is built prior to 1980 (he states that only 18% of the RD 515 portfolio was built before 1980); is over 90% occupied; and is in a 1st or 2nd quartile census tract. Commenter suggests moving the built by date to 1985 and moving the occupancy requirement to 85%. Commenter states that if the property would otherwise qualify for Concerted Revitalization Plan points then quartile 3 or 4 should be acceptable as the first and second quartile areas are outside of town. Commenter suggests that location in a first or second quartile census tract need not be applicable to At-Risk applications to get points under Opportunity Index.

Commenter (62) states that points for rehabilitation and demolition/reconstruction developments should be removed from clauses (i), (ii), and (iii) of (7)(B). Commenter worries that the current language incentivizes replacing existing units rather than creating new and quality affordable units.

STAFF RESPONSE: In response to commenters (4), (9) and (31), §11.4(C), the rules allow for a 30 percent increase in eligible basis for developments located in QCTs. Staff believes that this item is in line with Chapter 42 of the Internal Revenue Code without an allowance for CRPs in QCTs. Staff believes that the full requirements of the CRP must be satisfied for an application to be awarded full points under this item. Simply having a Development Site located within a QCT does not guarantee that the application will meet all the requirements.

Staff recommends no changes based on this comment.

In response to commenters (4), (9), (10), (12), (22), (31), (39), (40), (41), (43), (54), (58), (59), (60), and (65), staff agrees that the 100,000-population limit could be problematic for smaller cities with CRPs and has removed the restriction:

An Application may qualify for points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.
(A) For Developments located in an Urban Area~~, and in a city with a population of 100,000 or more.~~

Staff appreciates the correction suggested by commenters (8), (34), (46), and (47) and has revised the rule accordingly.

(i) An Application may qualify to receive ~~up to six (6)~~ points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed and executed. The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems. The concerted revitalization plan that meets the criteria described in subclauses (I) - (IV) of this clause:

In response to commenters (8), (17), (18), (20), (30), (31), (34), (37), (42), (46), (47), (48), and (59), staff clarifies that meeting the Opportunity Index threshold requirements under §11.9(c)(4)(A) is not

required to score an extra point under items (A)(ii)(III) and (B)(iv). Staff has revised the rule to clarify this issue:

> (ii) Up to seven (7) points will be awarded based on:
> (III) Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4)(B), except for the criteria found in §11.9(c)(4)(A) and subparagraphs §11.9(c)(4)(A)(i) and §11.9(c)(4)(A)(ii).

In response to commenters (12), (13), (20), (22), (25), (39), (40), (41), (42) and (63), staff agrees that HUD programs should be included and has revised the rule accordingly:

> (B) For Developments located in a Rural Area.
> (i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction in an location meeting the threshold requirements of the Opportunity Index, §11.9(c)(4)(A) of a development in a rural area that is currently leased at ~~90%~~ 85% or greater by low income households and which was initially constructed prior to ~~1980~~ 1985 as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program. Demolition and relocation of units must be determined locally to be necessary to comply with the Affirmatively Furthering Fair Housing Rule, or if necessary to create an acceptable distance form Undesirable Site Features or Undesirable Neighborhood Characteristics.
> (ii) Applications will receive 3 points for the rehabilitation of a development in a rural area that is currently leased at ~~90%~~ 85% or greater by low income households and which was initially constructed prior to ~~1980~~ 1985 as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program if the proposed location requires no disclosure of Undesirable Neighborhood Features under Section §10.101(a)(4) or required such disclosure but the disclosed items were found acceptable.

In response to commenters (12), (13), (22), (39), (40), and (41), staff believes that the requirements for a resolution and for budgeted and appropriated funding should remain to evidence the local jurisdiction's acceptance of and commitment to the plan.

Staff recommends no changes based on this comment.

In response to commenter (13), staff believes that the full requirements of the Community Revitalization Plan ("CRP") must be satisfied for an application to be awarded full points under this item. The HUD-approved plans may be acceptable if they meet the requirements of the point item. Staff believes that limiting the point item to QCTs would limit the dispersion of affordable housing, which is a policy priority for the Department.

Staff recommends no changes based on this comment.

In response to commenters (17), (23), (32) and (59), staff agrees that the plan may not include the language prescribed in the proposed rule and has revised the rule accordingly:

> (A) For Developments located in an Urban Area~~: and in a city with a population of 100,000 or more.~~

(i) An Application may qualify to receive ~~up to six (6)~~ points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed and executed. The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems. The concerted revitalization plan that meets the criteria described in subclauses (I) - (IV) of this clause:
(I) The concerted revitalization plan must have been adopted by the municipality or county in which the Development Site is located. The resolution adopting the plan must be submitted with the application.

(II) The problems in the revitalization area must be identified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. These problems ~~must include the limited availability of safe, decent, affordable housing and~~ may include the following: . . .

(ii) Up to seven (7) points will be awarded based on:
(I) Applications will receive four (4) points for a letter from the appropriate local official providing documentation of measurable improvements within the revitalization area based on the target efforts outlined in the plan. <u>The letter must also discuss how the improvements will result in the area being appropriate for the development of safe, decent, affordable housing</u>; and

In response to commenters (17) and (59), the CRP requirement included in §11.6(3)(C)(ii) requires that an application meets the requirements of this subsection. Staff believes this includes the two points for a development that is explicitly identified in a resolution.

Staff recommends no changes based on this comment.

In response to commenters (20), (25), (42), and (54), staff believes that the recommendations to limit item (B)(i) to Developments with 50 or more units, to add the option for a development of less than 50 units in a rural area that is currently leased at 80% or greater, that any property that has less than 85% occupancy for a property of 50 or more units, or 80% occupancy for a property of less than 50 units, may petition the TDHCA Board for a waiver of this rule in order to rehab an existing property(s), and that staff remove the requirement that the Development is explicitly identified in a letter by the city or county as contributing more than any other Development to the concerted revitalization efforts of the city or county represent sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2018 QAP. Staff encourages commenters to suggest this revision during planning for the 2018 QAP. Staff has no objection to changing the leasing requirement to 85%, changing the initial construction date to 1985, and including HUD programs. Staff has determined that applicants do not have to meet the Opportunity Index threshold requirements to score points for concerted revitalization. Staff believes it is not necessary to add language exempting the At-Risk and USDA Set-Asides from the requirement. Staff has revised the rule accordingly:

(B) For Developments located in a Rural Area.

(i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction ~~in a location meeting the threshold requirements of the Opportunity Index, §11.9(c)(4)(A)~~ of a development in a rural area that is currently leased at ~~90%~~ 85% or greater by low income households and which was initially constructed prior to ~~1980~~ 1985 as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program. Demolition and relocation of units must be determined locally to be necessary to comply with the Affirmatively Furthering Fair Housing Rule, or if necessary to create an acceptable distance form Undesirable Site Features or Undesirable Neighborhood Characteristics.

(ii) Applications will receive 3 points for the rehabilitation of a development in a rural area that is currently leased at ~~90%~~ 85% or greater by low income households and which was initially constructed prior to ~~1980~~ 1985 as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program if the proposed location requires no disclosure of Undesirable Neighborhood Features under Section §10.101(a)(4) or required such disclosure but the disclosed items were found acceptable.

(iii) Applications may receive (2) points in addition to those under subclause (i) or (ii) of this clause if the Development is explicitly identified in a letter by the city or county as contributing more than any other Development to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause. The letter from the Governing Body of the city or county that approved the plan is required to be submitted in the Application. If multiple Applications submit valid letters under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application as contributing more than any other Development to concerted revitalization efforts.

(iv) Applications may receive (1) additional point if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4).

In response to commenter (23), staff believes that the suggested revision would remove the assurance that there is a local financial commitment to the revitalization area. Staff believes that extending the time frame for when revitalization efforts must be completed to within 5 years after the Development is placed into service would further weaken the jurisdiction's commitment to the revitalization and would be problematic for scoring and monitoring purposes should the revitalization not be completed.

Staff recommends no changes based on this comment.

In response to commenter (31), staff agrees that the item requires clarification and has revised the rule accordingly:

> Applications will receive (1) point in addition to those under sub clause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index 11.9(c)(4)(B).

In response to commenter (48), staff believes that the option (A)(ii) of this item, which allows for a development to be in a census tract that is in the third quartile but contiguous to a census tract in the first or second quartile, gives applicants the ability to locate

developments in areas of opportunity. Further, staff believes that by offering a menu of amenities from which to choose, point differentials are more easily managed. Staff has no objection to revising the rule to require that a development be built prior to 1985 and have 85% occupancy and has revised the rule accordingly:

> (7) Concerted Revitalization Plan. An Application may qualify for points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.
> (B) For Developments located in a Rural Area.
> (i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction ~~in a location meeting the threshold requirements of the Opportunity Index, §11.9(c)(4)(A)~~ of a development in a rural area that is currently leased at ~~90%~~ 85% or greater by low income households and which was initially constructed prior to ~~1980~~ 1985 as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program. Demolition and relocation of units must be determined locally to be necessary to comply with the Affirmatively Furthering Fair Housing Rule, or if necessary to create an acceptable distance form Undesirable Site Features or Undesirable Neighborhood Characteristics.
> (ii) Applications will receive 3 points for the rehabilitation of a development in a rural area that is currently leased at ~~90%~~ 85% or greater by low income households and which was initially constructed prior to ~~1980~~ 1985 as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program if the proposed location requires no disclosure of Undesirable Neighborhood Features under Section §10.101(a)(4) or required such disclosure but the disclosed items were found acceptable.

STAFF RESPONSE: In response to commenter (62), staff believes that the QAP should provide some incentives for the preservation of existing units through rehabilitation and demolition/reconstruction. Staff does not believe that points for these activities should be removed from clauses (i), (ii), and (iii) of (7)(B).

Staff recommends no changes based on this comment.

21. §11.9(e)(2) – Cost of Development per Square Foot (13), (19), (22), (23), (25), (35), (36), (39), (40), (42), (43), (52), (54), (58), (60), (63), (66), (69), (70)

COMMENT SUMMARY: Commenter (19) supports the revisions to the scoring item.

Commenters (13), (22), (23), (35), (39), (40), (42), (43), (49), (54), (60), (65), (66), (69), and (70) suggest the following revisions to clarify the rule. Commenter (58) also requests that items can be voluntary excluded from Eligible Basis:

> An Application may qualify to receive up to twelve (12) points based on either the Building Cost per square foot of the proposed Development voluntarily included in eligible basis ("Eligible Building Cost") or the Hard Costs per square foot of the proposed Development voluntarily included in eligible basis ("Eligible Hard Cost"), as originally submitted in the Application. For purposes of this paragraph, Eligible Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Eligible Hard Costs will include general contractor overhead, profit, and general requirements. Structured parking or commercial space

costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking or commercial construction, as applicable. The square footage used will be the Net Rentable Area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule. If the proposed Development is a Supportive Housing Development, the NRA will include common area up to 50 square feet per Unit.
(B) Applications proposing New Construction or Reconstruction will be eligible for twelve (12) points if one of the following conditions is met:
(i) The Eligible Building Cost per square foot is less than $72.80 per square foot;
(ii) The Eligible Building Cost per square foot is less than $78 per square foot, and the Development meets the definition of a high cost development;
(C) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:
(i) The Eligible Building Cost per square foot is less than $78 per square foot;
(ii) The Eligible Building Cost per square foot is less than $83.20 per square foot, and the Development meets the definition of a high cost development;
(D) Applications proposing New Construction or Reconstruction will be eligible for ten (10) points if one of the following conditions is met:
(i) The Eligible Building Cost is less than $93.60 per square foot; or

Commenters (25) and (63) applaud TDHCA for increasing the cost per square foot of hard cost by 4% and states that the allowance remains well below the actual cost to house seniors, who require buildings with elevators, interior hallways and common space; all with costs that are not included in the Net Rentable calculation. Commenters recommend that developments electing to coordinate with local service providers under Tenant Services and have appropriate community space for services be allowed to add an additional 50 square feet per unit; or that any development serviced by elevators and includes social service offices or a service coordinator office and includes common area for providers to deliver services be allowed an additional 50 square feet per unit.

Commenter (36) states that staff should increase Building Cost per square foot by 8% versus 4% due to large construction cost increases in Texas.

Commenter (52) proposes the following revisions to encourage Historic Preservation projects:

An Application may qualify to receive up to twelve (12) points based on either the Building Cost or the Hard Costs per square foot of the proposed Development voluntarily included in eligible basis ("Eligible Hard Cost"), as originally submitted in the Application. For purposes of this paragraph, Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Eligible Hard Costs will include general contractor overhead, profit, and general requirements. Structured parking or commercial space costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking or commercial construction, as applicable. The square footage used will be the Net Rentable Area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule. If the proposed Development is a Supportive Housing Development or Adaptive Reuse involving Historic Preservation, the NRA will include common area up to 50 square feet per Unit.

(A) A high cost development is a Development that meets one of the following conditions:
(v) the Development is Adaptive Reuse involving Historic Preservation
(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:
(i) Twelve (12) points for Applications which include Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than ~~$104~~ $135 per square foot;
(ii) Twelve (12) points for Applications which include Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than $135.20 per square foot, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or
(iii) Eleven (11) points for Applications which include Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than ~~$135.20~~ $150 per square foot.

Commenter (58) proposes a 5th conditional clause for High Cost Developments:

(v) the Development qualifies for five (5) points under subsection (c)(8) of this section related to proximity to the Urban Core.

STAFF RESPONSE: Staff appreciates the support expressed by commenter (19).

Staff recommends no changes based on this comment.

In response to commenters (13), (22), (23), (35), (39), (40), (42), (43), (52), (54), (60), (65), (66), (69) and (70), Staff agrees with commenters that "voluntarily included in eligible basis" should apply to both Building Costs and Hard Costs, not just Hard Costs. Staff's goal is to solicit real estimates of cost. The proposed 2017 QAP provides the option to limit Hard Costs claimed as Eligible for scoring. Staff agrees with commenters that the same logic should be extended to Building Costs to promote the same outcome, assuming Applicant selects that option. To clarify these changes, Staff has defined "Eligible Building Costs" within this rule. Staff has revised the rule accordingly.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii)) An Application may qualify to receive up to twelve (12) points based on either the Eligible Building Cost or the Eligible Hard Costs per square foot of the proposed Development voluntarily included in eligible basis ~~("Eligible Hard Cost"),~~ as originally submitted in the Application. For purposes of this ~~paragraph~~ scoring item, Eligible Building Costs will be defined as Building Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation. Eligible Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Eligible Hard Costs will include general contractor overhead, profit, and general requirements. Structured parking or commercial space costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking or commercial construction, as applicable. The square footage used will be the Net Rentable Area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule. If the proposed Development is a Supportive Housing Development, the NRA will include common area up to 50 square feet per Unit.

(A) A high cost development is a Development that meets one of the following conditions:
(i) the Development is elevator served, meaning it is either a Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors;
(ii) the Development is more than 75 percent single family design;
(iii) the Development is Supportive Housing; or
(iv) the Development Site qualifies for a minimum of five (5) points under subsection (c)(4) of this section, related to Opportunity Index, and is located in an Urban Area.
(B) Applications proposing New Construction or Reconstruction will be eligible for twelve (12) points if one of the following conditions is met:
(i) The voluntary Eligible Building Cost per square foot is less than $72.80 per square foot;
(ii) The voluntary Eligible Building Cost per square foot is less than $78 per square foot, and the Development meets the definition of a high cost development;
(iii) The voluntary Eligible Hard Cost per square foot is less than $93.60 per square foot; or
(iv) The voluntary Eligible Hard Cost per square foot is less than $104 per square foot, and the Development meets the definition of high cost development.
(C) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:
(i) The voluntary Eligible Building Cost per square foot is less than $78 per square foot;
(ii) The voluntary Eligible Building Cost per square foot is less than $83.20 per square foot, and the Development meets the definition of a high cost development;
(iii) The voluntary Eligible Hard Cost per square foot is less than $98.80 per square foot; or
(iv) The voluntary Eligible Hard Cost per square foot is less than $109.20 per square foot, and the Development meets the definition of high cost development.
(D) Applications proposing New Construction or Reconstruction will be eligible for ten (10) points if one of the following conditions is met:
(i) The voluntary Eligible Building Cost is less than $93.60 per square foot; or
(ii) The voluntary Eligible Hard Cost is less than $114.40 per square foot.
(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:
(i) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than $104 per square foot;
(ii) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than $135.20 per square foot, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or
(iii) Eleven (11) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than $135.20 per square foot.

In response to commenters (25), (52), (58) and (63), staff believes that these revisions represent sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the

2018 QAP. Staff encourages commenters to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

In response to commenter (36), staff did not find, and the commenter did not provide, evidence to suggest that building costs in Texas have risen by eight percent in Texas since publication of the 2016 QAP.

Staff recommends no changes based on this comment.

In response to commenter (52), regarding the recommendation to increase the allowable cost per square foot for Adaptive Reuse involving Historic Preservation, staff believes that commenter's proposed revision is a substantive change staff's original revision and that it cannot be accomplished without re-publication for public comment. Staff reminds commenter that Eligible Hard Costs per square foot for Adaptive Reuse involving Historic Preservation has been raised by 4% for the 2017 QAP. Staff believes that the increase for this type of construction should reflect the 4% increase in other development cost sections. Staff encourages commenter to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

22. §11.9(e)(3) – Pre-application Participation (20), (22), (28), (40), (42), (43), (54), (58), (60), (65)

COMMENT SUMMARY: Commenters (20), (22), (40) and (58) suggest removing the requirement that Undesirable Neighborhood Characteristics be disclosed at Pre-application from the rule and keeping the requirement that such disclosures be made at full Application. Commenters state that it is difficult to vet all aspects of a neighborhood prior to pre-application and that losing these points based on something the applicant missed prior to is an undue burden. Commenter suggests removing the requirement that Undesirable Neighborhood Characteristics be disclosed at Pre-application from the rule and keeping the requirement that such disclosures be made at full Application.

Commenter (28) suggests the following clarification for item (F) to account for the possibility of a change in an elected public official:

> The Development Site at Pre-Application and full Application are the same or have contiguous borders of at least 10% with the site at full application, and the site at both pre-application and at full application are entirely within the same census tract. The site at full Application may not require notification to any person or entity not required to have been notified at pre-application, other than by reason of a change in elected public officials;

Commenters (42), (43), (54), (60) and (65) state that the current language should not be changed. Commenters (42) and (54) state that if an Applicant submits a Pre-App with one piece of property, but then submit a Full Application with an entirely different piece of property, but the two pieces happen to share a boundary, that should be considered a completely new application.

STAFF RESPONSE: In response to commenters (20), (22), (40), and (58), staff believes that it may be impractical to require the disclosure of certain Undesirable Neighborhood Characteristics at

Pre-application. Staff has revised the rule so that Applicants must only provide disclosure at Pre-Application for the items below. Staff has revised the rule accordingly.

> (G) The Development Site does not have the following Undesirable Neighborhood Characteristics as described in 10 TAC §10.101(a)(4) that were not disclosed with the pre-application:
> (i) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.
> (ii) The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met Standard rating by the Texas Education Agency.

In response to commenter (28), staff does not believe that the suggested revision is necessary as the notification requirement in the scoring item pertains only to notifications triggered by changes in the Development Site. Requirements for the notification of newly elected (or appointed) officials are covered under 10 TAC §10.203.

Staff recommends no changes based on this comment.

In response to commenters (42), (43), (54), (60) and (65), staff agrees and has revised the rule to remove the added language.

23. §11.9(e)(4) – Leveraging of Private, State, and Federal Resources (22), (23), (25), (32), (35), (36), (38), (40), (42), (43), (49), (52), (54), (58), (59), (63), (65), (66), (69), (70)

COMMENT SUMMARY: Commenters (22), (23), (25), (32), (35), (38), (40), (42), (43), recommend not changing the percentages to ensure the quality and feasibility of Developments.

Commenter (36) recommends not changing the percentages as it is necessary to obtain these 3 points to have a competitive application, especially with senior living, and the change in percentage would require too many market rate units at rental rates that are not achievable in a mixed income environment.

COMMENT SUMMARY: Commenters (49), (52), (54), (58), (59), (60), (63), (65), (66), (69), and (70) also state that leveraging percentages remain at the 2016 level. Commenter (70) states that the percentage reduction is devastating to deals and creates less financially sound developments.

STAFF RESPONSE: In response to commenters (22), (23), (25), (32), (35), (36), (38), (40), (42), (43), staff agrees and has revised the rule accordingly:

> "(A) An Application may qualify to receive up to three (3) points if at least five (5) percent of the total Units are restricted to serve households at or below 30 percent of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) - (iv) of this subparagraph:
> (i) The Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 9 percent of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or

(ii) If the Housing Tax Credit funding request is less than ~~seven (7)~~ eight (8) percent of the Total Housing Development Cost (3 points); or
(iii) If the Housing Tax Credit funding request is less than ~~eight (8)~~ nine (9) percent of the Total Housing Development Cost (2 points); or
(iv) If the Housing Tax Credit funding request is less than ~~nine (9)~~ ten (10) percent of the Total Housing Development Cost (1 point)."

24. §11.9(e)(6) – Historic Preservation (1), (2), (9), (17), (26), (36), (59)
COMMENT SUMMARY: Commenters (1), (2), (9) and (36) state that the proposal that a project that qualifies for points under Historic Preservation loses points if located in an area served by a school not having high Educational Quality scores would have a negative effect on the 84th Legislature's intent that the rehabilitation and adaptive reuse of certified historic structures is a priority for Texas through the LIHTC process, as established in SB 1316 and codified in Tex. Gov't Code §2306.6725(a)(6).

Commenters (17) and (59) recommend the following revisions to incentivize historic preservation and the use of historic tax credit leveraging.

At least ~~seventy-five~~ ten percent of the residential units shall reside within the Certified Historic Structure and the Development must reasonably be expected to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609. The Application must include either documentation from the Texas Historical Commission that the property is currently a Certified Historic Structure, or documentation determining preliminary eligibility for Certified Historic Structure status.

Commenter (26) states that vacant and underused historic buildings can be efficiently repurposed as affordable housing, becoming dynamic catalysts for the revitalization of historic downtowns. Commenter encourages TDHCA to give priority consideration to the scoring of applications for historic structures.

STAFF RESPONSE: In response to commenters (1), (2), (9) and (36), the requirement that an application that includes the Rehabilitation or Adaptive Reuse of a Historic Structure meet certain Educational Quality scoring item (10 TAC §11.9(c)(5)) requirements was not included in the published proposed rule. Staff notes that in revising the rule for publication in the draft, removal of the education scoring provision inadvertently removed the score for this subsection. Staff will make a technical correction and add language describing this as a five (5) point item.

Staff recommends no changes based on this comment.

In response to commenters (17) and (59), staff believes that this revision represents sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2018 QAP. Staff encourages commenters to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

In response to commenter (26), staff believes that such consideration cannot be given as priority consideration to the scoring of applications is prescribed by Tex. Gov't Code §2306.6710(b)(1).

Staff recommends no changes based on this comment.

STAFF RESPONSE: In response to commenter (36), the requirement that an application that includes the Rehabilitation or Adaptive Reuse of a Historic Structure meet certain Educational Quality scoring item (10 TAC §11.9(c)(5)) requirements was not included in the published proposed rule.

Staff recommends no changes based on this comment.

25. §11.9(e)(8) – Funding Request Amount (52)

COMMENT SUMMARY: Commenter (52) states that a developer should not be penalized by 1 point for producing an excess number of affordable units if the market study supports the number of units proposed in a new development. Commenter states that if a developer asks for a higher amount than a competitor, but his/her application provides for a more affordable units on a percentage basis than a competitor requesting a lesser amount, it may not be in the best interest to award the developer producing fewer affordable units 1 additional point over a competitor who is better leveraging the tax credits

STAFF RESPONSE: In response to commenter (52), staff believes that this revision represents a sufficiently substantive change from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2018 QAP. Staff encourages commenter to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

26. §11.9(f) Point Adjustments (58)

COMMENT SUMMARY: Commenter (58) states that the paragraphs in this section are not numbered properly, and that they should be correctly referenced.

STAFF RESPONSE: In response to commenter (58), staff appreciates the suggested correction and has revised the rule accordingly.

> (1) If the Applicant or Affiliate failed to meet the original Carryover submission or 10 percent Test deadline(s) or has requested an extension of the Carryover submission deadline, the 10 percent Test deadline (relating to either submission or expenditure).
> (2) If the Applicant or Affiliate failed to meet the commitment or expenditure requirements of a HOME or National Housing Trust Fund award from the Department.
> ~~(2)~~ (3) If the Developer or Principal of the Applicant violates the Adherence to Obligations.
> ~~(3)~~ (4) Any deductions assessed by the Board for paragraph (1) or (2) of this subsection based on a Housing Tax Credit Commitment from the preceding Application Round will be attributable to the Applicant or Affiliate of an Application submitted in the current Application Round.

27. §11.10 – Third Party Request for Administrative Deficiency for Competitive HTC Applications (22), (23), (40), (59)

COMMENT SUMMARY: Commenters (22) and (40) state that staff sometimes makes errors and it is important that these errors be caught during the third party request for administrative deficiency process.

Commenter (23) requests that the Development community continues to have the right to point out mistakes on the part of competing applicants, as well as Department staff as the added language "seems to indicate that staff mistakes cannot be a part of this review." Commenter requests that the Department use the same process previously used for Challenges, including posting of all information received from both the Requestor, applicant, and staff determinations in a timely manner.

Commenter (59) requests that staff remove the requirement that the requester send a copy of the request and supporting information directly to the Applicant at the same time it is provided to the Department:

> The purpose of the Third Party Request for Administrative Deficiency ("RFAD") process is to allow an unrelated person or entity to bring new, material information about an Application to staff's attention. Such Person may request the staff to consider whether a matter in an Application in which the Person has no involvement should be the subject of an Administrative Deficiency. Staff will consider the request and proceed as it deems appropriate under the applicable rules including, if the Application in question is determined by staff to not be a priority Application, not reviewing the matter further. ~~Staff actions are not subject to RFAD, as the request does not bring new information to Staff's attention.~~ Requestors must provide, at the time of filing the challenge, all briefings, documentation, and other information that the requestor offers in support of the deficiency. ~~A copy of the request and supporting information must be provided directly to the Applicant at the same time it is provided to the Department.~~ Requestors must provide sufficient credible evidence that, if confirmed, would substantiate the deficiency request. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered. The results of a RFAD may not be appealed by the Requestor.

STAFF RESPONSE: In response to commenters (22), (23), (40), and (59), staff believes that allowing an applicant to question the review of a competitor's application is tantamount to an appeal of staff's determination, which is prohibited by Tex. Gov't Code §2306.6715(b), which states that An applicant may not appeal a decision made under §2306.6710, Evaluation and Underwriting of Applications, regarding an application filed by another applicant. Staff will ensure that all information received from the requester and the applicant, as well as staff determinations, is posted online in a timely manner. Staff has revised the rule as follows:

> The purpose of the Third Party Request for Administrative Deficiency ("RFAD") process is to allow an unrelated person or entity to bring new, material information about an Application to staff's attention. Such Person may request the staff to consider whether a matter in an Application in which the Person has no involvement should be the subject of an Administrative Deficiency. Staff will consider the request and proceed as it deems appropriate under the applicable rules including, if the Application in question is determined by staff to not be a priority Application, not reviewing the matter further. ~~Staff actions are not subject to RFAD, as the request does not bring new information to Staff's attention.~~ Requestors must provide, at

the time of filing the challenge, all briefings, documentation, and other information that the requestor offers in support of the deficiency. A copy of the request and supporting information must be provided directly to the Applicant at the same time it is provided to the Department. Requestors must provide sufficient credible evidence that, if confirmed, would substantiate the deficiency request. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered. Staff shall provide to the Board a written report summarizing each third party request for administrative deficiency and the manner in which it was addressed. Interested persons may provide testimony on this report before the Board's takes any formal action to accept the report. The results of a RFAD may not be appealed by the Requestor.

In response to commenters (59), staff believes that in order to ensure that each applicant his aware of the request at the time it is submitted, the requester must inform the applicant.

Staff recommends no changes based on this comment.

The Board approved the final order adopting the new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan on November 10, 2016.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

INDEX OF COMMENTERS

(1) Senator Eddie Lucio, Jr.
(2) Representative Eddie Lucio, III
(3) Representative Marisa Márquez
(4) Senator José Menéndez
(5) Representative Joe Moody
(6) Representative Joseph C. Pickett
(7) Senator José Rodríguez
(8) City of Fort Worth
(9) City of Harlingen
(10) City of San Angelo
(11) City of San Saba
(12) Travis County
(13) Fort Worth Housing Solutions
(14) San Antonio Housing Authority
(15) Housing Authority of the City of El Paso
(16) Marble Falls Economic Development Corporation
(17) 5th Ward Community Redevelopment Corporation
(18) City Wide Community Development Corporation
(19) Texas Association of Community Development Corporations
(20) Rural Rental Housing Association of Texas, Inc.
(21) Trinity University
(22) Texas Affiliation of Affordable Housing Providers
(23) Texas Coalition of Affordable Developers
(24) Low Income Housing Information Service
(25) Corporation for Supportive Housing
(26) Preservation Texas
(27) Atlantic Housing Foundation, Inc.
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(29) Leading Age Texas
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(34) Savage, William
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(67) Palladium USA
(68) Prospera Housing Community Services
(69) Purple Martin Real Estate
(70) Saigebrook Development
(71) Stoneleaf Companies
(72) Allgeier, Dan

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Preamble, Reasoned Response, and Repealed Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC, Chapter 11, §§11.1 – 11.10, concerning the 2016 Housing Tax Credit Program Qualified Allocation Plan, without changes to the proposed text as published in the September 23, 2016 issue of the *Texas Register* (41 TexReg 7354) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the repeal will replace the sections with a new QAP applicable to the 2017 application cycle.

The Department accepted public comments between September 23, 2016 and October 14, 2016. Comments regarding the repeal sections were accepted in writing and by fax. No comments were received concerning the repeal section.

The Board approved the final order adopting the repeal section on November 10, 2016.

STATUTORY AUTHORITY. The repealed sections are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the repealed sections are adopted pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

§11.1 General
§11.2 Program Calendar for Competitive Housing Tax Credits
§11.3 Housing De-Concentration Factors
§11.4 Tax Credit Request and Award Limits
§11.5 Competitive HTC Set-Asides
§11.6 Competitive HTC Allocation Process
§11.7 Tie Breaker Factors
§11.8 Pre-Application Requirements
§11.9 Competitive HTC Selection Criteria
§11.10 Third Party Request for Administrative Deficiency for Competitive HTC Applications

Housing Tax Credit Program Qualified Allocation Plan

§11.1.General.

(a) Authority. This chapter applies to the awarding and allocation by the Texas Department of Housing and Community Affairs (the "Department") of Housing Tax Credits. The federal laws providing for the awarding and allocation of Housing Tax Credits require states to adopt a qualified allocation plan. Pursuant to Tex Gov't Code, Chapter 2306, Subchapter DD, the Department is assigned responsibility for this activity. As required by Internal Revenue Code (the "Code"), §42(m)(1), the Department has developed this Qualified Allocation Plan (QAP) and it has been duly approved to establish the procedures and requirements relating to an award and allocation of Housing Tax Credits. All requirements herein and all those applicable to a Housing Tax Credit Development or an Application under Chapter 10 of this title (relating to Uniform Multifamily Rules), or otherwise incorporated by reference herein collectively constitute the QAP required by Tex Gov't Code, §2306.67022.

(b) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the QAP or may be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. Moreover, after the time that an issue is initially presented and guidance is provided, additional information may be identified and/or the issue itself may continue to develop based upon additional research and guidance. Thus, until confirmed through final action of the Board, staff guidance must be considered merely as an aid and an Applicant continues to assume full responsibility for any actions Applicant takes regarding an Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to perform independently the necessary due diligence to research, confirm, and verify any data, opinions, interpretations, or other information upon which an Applicant bases an Application or includes in any submittal in connection with an Application. As provided by Tex Gov't Code §2306.6715(c), ~~appeal~~ an applicant is given until the later of the seventh day of the publication on the Department's website of a scoring log reflecting that applicant's score or the seventh day from the date of transmittal of a scoring notice; provided, however, that an applicant may not appeal any scoring matter after the award of credits unless they are within the above-described time limitations and have appeared at the meeting when the Department's Governing Board makes competitive tax credit awards and stated on the record that they have an actual or possible appeal that has not been heard. Appeal rights ~~are~~ may be triggered by the publication on the Department's website of the results of the evaluation process. Individual Scoring notices or similar communications are a courtesy only.

(c) Competitive Nature of Program. Applying for competitive housing tax credits is a technical process that must be followed completely. As a result of the highly competitive nature of applying for tax credits, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that could not

have been anticipated and makes timely adherence impossible. If an Applicant chooses to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants should further ensure that all required documents are included, legible, properly organized, and tabbed, and that materials in required formats involving digital media are complete and fully readable. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Staff, when accepting Applications, may conduct limited reviews at the time of intake as a courtesy only. If staff misses an issue in such a limited review, the fact that the Application was accepted by staff or that the issue was not identified does not operate to waive the requirement or validate the completeness, readability, or any other aspect of the Application.

(d) Definitions. The capitalized terms or phrases used herein are defined in §10.3 of this title (relating to Definitions), unless the context clearly indicates otherwise. Any capitalized terms that are defined in Tex Gov't Code, Chapter 2306, §42 of the Code, or other Department rules have, when capitalized, the meanings ascribed to them therein. Defined terms when not capitalized, are to be read in context and construed according to common usage.

(e) Census Data. Where this chapter requires the use of census or American Community Survey data, the Department shall use the most current data available as of October 1, 2016, unless specifically otherwise provided in federal or state law or in the rules. The availability of more current data shall generally be disregarded.

(f) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be submitted on or before 5:00 p.m. Austin local time on the day of the deadline. If the deadline falls on a weekend or holiday, the deadline is 5:00 p.m. Austin local time on the next day which is not a weekend or holiday and on which the Department is open for general operation. Unless otherwise noted deadlines are based on calendar days.

§11.2.Program Calendar for Competitive Housing Tax Credits.

Non-statutory deadlines specifically listed in the Program Calendar may be extended by the Department for a period of not more than five (5) business days provided that the Applicant has, in writing, requested an extension prior to the date of the original deadline and has established to the reasonable satisfaction of the Department that there is good cause for the extension. Except as provided for under 10 TAC §1.1 relating to Reasonable Accommodation Requests, extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party or the documentation involves signatures needed on certifications in the Application.

Deadline	Documentation Required
01/05/2017	Application Acceptance Period Begins.
01/09/2017	Pre-Application Final Delivery Date (including waiver requests).

Deadline	Documentation Required
02/17/2017	Deadline for submission of application for .ftp access if pre-application not submitted
03/01/2017	Full Application Delivery Date (including Quantifiable Community Participation documentation; Environmental Site Assessments (ESAs), Property Condition Assessments (PCAs); Appraisals; Primary Market Area Map; Site Design and Development Feasibility Report; all Resolutions necessary under §11.3 of this chapter related to Housing De-Concentration Factors). Final Input from Elected Officials Delivery Date (including Resolution for Local Government Support pursuant to §11.9(d)(1) of this chapter and State Representative Input pursuant to §11.9(d)(5) of this chapter).
04/01/2017	Market Analysis Delivery Date pursuant to §10.205 of this title.
Mid-May	Final Scoring Notices Issued for Majority of Applications Considered "Competitive."
06/01/2017	Third Party Request for Administrative Deficiency
06/23/2017	Public Comment to be included in the Board presentation for awards
June	Release of Eligible Applications for Consideration for Award in July.
July	Final Awards.
Mid-August	Commitments are Issued.
11/01/2017	Carryover Documentation Delivery Date.
06/30/2018	10 Percent Test Documentation Delivery Date.
12/31/2019	Placement in Service.
~~Three (3)~~ Five (5) business days after the date on the Deficiency Notice (without incurring point loss)	Administrative Deficiency Response Deadline (unless an extension has been granted).

§11.3.Housing De-Concentration Factors.

(a) Two Mile Same Year Rule (Competitive HTC Only). As required by Tex Gov't Code, §2306.6711(f), staff will not recommend for award, and the Board will not make an award to an Application that proposes a Development Site located in a county with a population that exceeds one million if the proposed Development Site is also located less than two linear miles from the proposed Development Site of another Application within said county that is awarded in the same calendar year.

(b) Twice the State Average Per Capita. As provided for in Tex Gov't Code, §2306.6703(a)(4), if a proposed Development is located in a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins (or for Tax-Exempt Bond Developments at the time the Certificate of Reservation is issued by the Texas Bond Review Board), the Applicant must obtain prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development. Such approval must include a resolution adopted by the Governing Body of the municipality or county, as applicable, setting forth a written statement of support, specifically citing Tex Gov't Code, §2306.6703(a)(4) in the text of the actual adopted resolution, and authorizing an allocation of Housing Tax Credits for the Development. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) or Resolutions Delivery Date in §10.4 of this title (relating to Program Dates), as applicable.

(c) One Mile Three Year Rule. (§2306.6703(a)(3))

(1) An Application that proposes the New Construction or Adaptive Reuse of a Development that is located one linear mile or less (measured between closest boundaries by a straight line on a map) from another development that meets all of the criteria in subparagraphs (A) - (C) of this paragraph shall be considered ineligible.

(A) The development serves the same type of household as the proposed Development, regardless of whether the Development serves families, elderly individuals, or another type of household; and

(B) The development has received an allocation of Housing Tax Credits or private activity bonds for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Certificate of Reservation is issued); and

(C) The development has not been withdrawn or terminated from the Housing Tax Credit Program.

(2) Paragraph (1) of this subsection does not apply to a Development:

(A) that is using federal HOPE VI (or successor program) funds received through HUD;

(B) that is using locally approved funds received from a public improvement district or a tax increment financing district;

(C) that is using funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701 et seq.);

(D) that is using funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.);

(E) that is located in a county with a population of less than one million;

(F) that is located outside of a metropolitan statistical area; or

(G) that the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under paragraph (1)(A) of this subsection. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

(3) Where a specific source of funding is referenced in paragraph (2)(A) - (D) of this subsection, a commitment or resolution documenting a commitment of the funds must be provided in the Application.

(d) Limitations on Developments in Certain Census Tracts. An Application that proposes the New Construction or Adaptive Reuse of a Development proposed to be located in a census tract that has more than 20 percent Housing Tax Credit Units per total households as established by the 5-year American Community Survey and the Development is in a Place that has a population greater than 100,000 shall be considered ineligible unless the Governing Body of the appropriate municipality or county containing the Development has, by vote, specifically allowed the Development and submits to the Department a resolution stating the proposed Development is consistent with the jurisdiction's obligation to affirmatively further fair housing. The resolution must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

(e) Additional Phase. Applications proposing an additional phase of an existing tax credit Development serving the same Target Population, or Applications proposing Developments that are adjacent to an existing tax credit Development serving the same Target Population, or Applications that are proposing a Development serving the same Target Population on a contiguous site to another Application awarded in the same program year, shall be considered ineligible unless the other Developments or phase(s) of the Development have been completed and have maintained occupancy of at least 90 percent for a minimum six (6) month period as reflected in the submitted rent roll. If the Application proposes the Rehabilitation or replacement of existing federally-assisted affordable housing units or federally-assisted affordable housing units demolished on the same site within two years of the beginning of the Application Acceptance Period, this provision does not apply.

§11.4.Tax Credit Request and Award Limits.

(a) Credit Amount (Competitive HTC Only). (§2306.6711(b)) The Board may not award or allocate to an Applicant, Developer, Affiliate or Guarantor (unless the Guarantor is also the General Contractor or provides the guaranty only during the construction period, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an aggregate amount greater than $3 million in a single Application Round. If the Department determines that an allocation recommendation would cause a violation of the $3 million credit limit per Applicant, the Department will select the Development(s) that most effectively satisfies the Department's goals in fulfilling set-aside priorities and are highest scoring in the regional allocation. All entities that are under common Control are Affiliates. For purposes of determining the $3 million limitation, a Person is not deemed to be an Applicant, Developer, Affiliate or Guarantor solely because it:

(1) raises or provides equity;

(2) provides "qualified commercial financing;"

(3) is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services; or

(4) receives fees as a Development Consultant or Developer that do not exceed 10 percent of the Developer Fee (or 20 percent for Qualified Nonprofit Developments and other Developments in which an entity that is exempt from federal income taxes owns at least 50% of the General Partner) to be paid or $150,000, whichever is greater.

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150 percent of the credit amount available in the sub-region based on estimates released by the Department on December 1, or $1,500,000, whichever is less, or $2,000,000 for Applications under the At-Risk Set-Aside. In addition, for Elderly Developments in a Uniform State Service Region containing a county with a population that exceeds one million, the request may not exceed the final amount published on the Department's website after the release of the Internal Revenue Service notice regarding the 2016 credit ceiling. For all Applications, the Department will consider the amount in the Funding Request of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant's request to the maximum allowable under this subsection if exceeded. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than $2 million in a single Application Round. (§2306.6711(b))

(c) Increase in Eligible Basis (30 percent Boost). Applications will be evaluated for an increase of up to but not to exceed 30 percent in Eligible Basis provided they meet the criteria identified in paragraphs (1) - (3) of this subsection, or if required under §42 of the Code. Staff will recommend no increase or a partial increase in Eligible Basis if it is determined it would cause the Development to be over sourced, as evaluated by the Real Estate Analysis division, in which case a credit amount necessary to fill the gap in financing will be recommended. The criteria in paragraph (3) of this subsection are not applicable to Tax-Exempt Bond Developments.

(1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20 percent Housing Tax Credit Units per total households in the tract as established by the U.S. Census Bureau for the 5-year American Community Survey.

New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20 percent Housing Tax Credit Units per total households in the tract are not eligible to qualify for a 30 percent increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code. For Tax-Exempt Bond Developments, as a general rule, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. For New Construction or Adaptive Reuse Developments located in a QCT with 20 percent or greater Housing Tax Credit Units per total households, the Development is eligible for the boost if the Application includes a resolution stating that the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and referencing this rule. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable. Applicants must submit a copy of the census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT.

(2) The Development is located in a Small Area Difficult Development Area (SADDA) (based on Small Area Fair Market Rents (FMRs) as determined by the Secretary of HUD) that has high construction, land and utility costs relative to the AMGI. For Tax-Exempt Bond Developments, as a general rule, an SADDA designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. Applicants must submit a copy of the SADDA map that clearly shows the proposed Development is located within the boundaries of a SADDA.

(3) The Development meets one of the criteria described in subparagraphs (A) - (E) of this paragraph pursuant to §42(d)(5) of the Code:

(A) the Development is located in a Rural Area;

(B) the Development is proposing entirely Supportive Housing and is expected to be debt free or have no foreclosable or non-cash flow debt;

(C) the Development meets the criteria for the Opportunity Index as defined in §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria);

(D) the Applicant elects to restrict an additional 10 percent of the proposed low income Units for households at or below 30 percent of AMGI. These Units must be in addition to Units required under any other provision of this chapter, or required under any other funding source from the Multifamily Direct Loan program; or

(E) the Development is not an Elderly Development and is not located in a QCT that is in an area covered by a concerted revitalization plan. A Development will be considered to be in an area covered by a concerted revitalization plan if it is eligible for and elects points under §11.9(d)(7) of this chapter.

§11.5.Competitive HTC Set-Asides. (§2306.111(d)) This section identifies the statutorily-mandated set-asides which the Department is required to administer. An Applicant may elect to compete in each of the set-asides for which the proposed Development qualifies. In order to be eligible to compete in the Set-Aside, the Application must meet the requirements of the Set-Aside as

of the Full Application Delivery Date. Election to compete in a Set-Aside does not constitute eligibility to compete in the Set-Aside, and Applicants who are ultimately deemed not to qualify to compete in the Set-Aside will be considered not to be participating in the Set-Aside for purposes of qualifying for points under §11.9(3) of this chapter (related to Pre-Application Participation).

(1) Nonprofit Set-Aside. (§2306.6729 and §2306.6706(b)) At least 10 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of §42(h)(5) of the Code and Tex Gov't Code, §2306.6729 and §2306.6706(b). Qualified Nonprofit Organizations must have the controlling interest in the Development Owner applying for this set-aside (*e.g.*, greater than 50 percent ownership in the General Partner). If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, for Qualified Nonprofit Development in the Nonprofit Set-Aside the nonprofit entity or its nonprofit Affiliate or subsidiary must be the Developer or a co-Developer as evidenced in the development agreement. An Applicant that meets the requirements to be in the Qualified Nonprofit Set-Aside is deemed to be applying under that set-aside unless their Application specifically includes an affirmative election to not be treated under that set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit. The Department reserves the right to request a change in this election and/or not recommend credits for those unwilling to change elections if insufficient Applications in the Nonprofit Set-Aside are received. Applicants may not use different organizations to satisfy the state and federal requirements of the set-aside.

(2) USDA Set-Aside. (§2306.111(d-2)) At least 5 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. If an Application in this set-aside involves Rehabilitation it will be attributed to and come from the At-Risk Development Set-Aside; if an Application in this set-aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region and will compete within the applicable sub-region unless the Application is receiving USDA Section 514 funding. Commitments of Competitive Housing Tax Credits issued by the Board in the current program year will be applied to each set-aside, Rural Regional Allocation, Urban Regional Allocation and/or USDA Set-Aside for the current Application Round as appropriate. Applications must also meet all requirements of Tex Gov't Code, §2306.111(d-2).

(3) At-Risk Set-Aside. (§2306.6714; §2306.6702)

(A) At least 15 percent of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-Aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional allocation formula required under §11.6 of this chapter (relating to Competitive HTC Allocation Process). Through this set-aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments identified as At-Risk Developments. (§2306.6714) Up to 5 percent of the State Housing Credit Ceiling associated with this set-aside may be given priority to Rehabilitation Developments under the USDA Set-Aside.

(B) An At-Risk Development must meet all the requirements of Tex Gov't Code, §2306.6702(a)(5). For purposes of this subparagraph, any stipulation to maintain affordability in

the contract granting the subsidy, or any HUD-insured or HUD-held mortgage will be considered to be nearing expiration or nearing the end of its term if expiration will occur or the term will end within two (2) years of July 31 of the year the Application is submitted. Developments with HUD-insured or HUD-held mortgages qualifying as At-Risk under §2306.6702(a)(5) may be eligible if the HUD-insured or HUD-held mortgage is eligible for prepayment without penalty. To the extent that an Application is eligible under §2306.6705(a)(5)(B)(ii)(b) and the units being reconstructed were demolished prior to the beginning of the Application Acceptance Period, the Application will be categorized as New Construction.

(C) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in Tex Gov't Code, §2306.6702(a)(5) will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of the same site. Alternatively, an Applicant may propose relocation of the existing units in an otherwise qualifying At-Risk Development if:

(i) the affordability restrictions and any At-Risk eligible subsidies are approved to be transferred to the Development Site (i.e. the site proposed in the tax credit Application) prior to the tax credit Carryover deadline;

(ii) the Applicant seeking tax credits must propose the same number of restricted units (*e.g.* the Applicant may add market rate units); and

(iii) the new Development Site must qualify for points on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria).

(D) If Developments at risk of losing affordability from the financial benefits available to the Development are able to retain or renew the existing financial benefits and affordability they must do so unless regulatory barriers necessitate elimination of a portion of that benefit for the Development.

(i) Evidence of the legal requirements that will unambiguously cause the loss of affordability must be included with the application.

~~(i)~~(ii)For Developments qualifying under §2306.6702(a)(5)(B), only a portion of the subsidy must be retained for the proposed Development, but no less than 25 percent of the proposed Units must be public housing units supported by public housing operating subsidy. (§2306.6714(a-1)). If less than 100 percent of the public housing benefits are transferred, an explanation of the disposition of the remaining public housing benefits must be included in the Application, as well as a copy of the HUD-approved plan for demolition and disposition.

(E) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a Qualified Contract under §42 of the Code. Evidence must be provided in the form of a copy of the recorded LURA, the first years' IRS Forms 8609 for all buildings showing Part II of the form completed and, if applicable, documentation from the original application regarding the right of first refusal.

(F) An amendment to any aspect of the existing tax credit property sought to enable the Development to qualify as an At-Risk Development, that is submitted to the Department after the Application has been filed and is under review will not be accepted.

§11.6.Competitive HTC Allocation Process. This section identifies the general allocation process and the methodology by which awards are made.

(1) Regional Allocation Formula. The Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region ("sub-region") Housing Tax Credits in an amount consistent with the Regional Allocation Formula developed in compliance with Tex Gov't Code, §2306.1115. The process of awarding the funds made available within each sub-region shall follow the process described in this section. Where a particular situation that is not contemplated and addressed explicitly by the process described herein, Department staff shall formulate a recommendation for the Board's consideration based on the objectives of regional allocation together with other policies and purposes set out in Tex Gov't Code, Chapter 2306 and the Department shall provide Applicants the opportunity to comment on and propose alternatives to such a recommendation. In general, such a recommendation shall not involve broad reductions in the funding request amounts solely to accommodate regional allocation and shall not involve rearranging the priority of Applications within a particular sub-region or set-aside except as described herein. If the Department determines that an allocation recommendation would cause a violation of the $3 million credit limit per Applicant, the Department will make its recommendation by selecting the Development(s) that most effectively satisfy the Department's goals in meeting set-aside and regional allocation goals. Where sufficient credit becomes available to award an application on the waiting list late in the calendar year, staff may allow flexibility in meeting the Carryover Allocation submission deadline to ensure to the fullest extent feasible that available resources are allocated by December 31.

(2) Credits Returned and National Pool Allocated After January 1. For any credits returned after January 1 and eligible for reallocation, the Department shall first return the credits to the sub-region or set-aside from which the original allocation was made. The credits will be treated in a manner consistent with the allocation process described in this section and may ultimately flow from the sub-region and be awarded in the collapse process to an Application in another region, sub-region or set-aside. For any credit received from the "national pool" after the initial approval of awards in late July, the credits will be added to and awarded to the next Application on the waiting list for the state collapse, if sufficient credits are available to meet the requirements of the Application after underwriting review.

(3) Award Recommendation Methodology. (§2306.6710(a) - (f); §2306.111) The Department will assign, as described herein, Developments for review by the program and underwriting divisions. In general, Applications will be prioritized for assignment, with highest priority given to those identified as most competitive based upon the Applicant self-score and an initial program review. The procedure identified in subparagraphs (A) - (F) of this paragraph will also be used in making recommendations to the Board.

(A) USDA Set-Aside Application Selection (Step 1). The first level of priority review will be those Applications with the highest scores in the USDA Set-Aside until the minimum requirements stated in §11.5(2) of this chapter (relating to Competitive HTC Set-Asides. (§2306.111(d))) are attained. The minimum requirement may be exceeded in order to award the

full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement;

(B) At-Risk Set-Aside Application Selection (Step 2). The second level of priority review will be those Applications with the highest scores in the At-Risk Set-Aside statewide until the minimum requirements stated in §11.5(3) of this chapter are attained. This may require the minimum requirement to be exceeded to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement. This step may leave less than originally anticipated in the 26 sub-regions to award under the remaining steps, but these funds would generally come from the statewide collapse;

(C) Initial Application Selection in Each Sub-Region (Step 3). The highest scoring Applications within each of the 26 sub-regions will then be selected provided there are sufficient funds within the sub-region to fully award the Application. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made generally available within each of the sub-regions. . The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex Gov't Code, §2306.6711(h) and will publish such percentages on its website.

(i) In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion

(ii) In accordance with Tex Gov't Code, §2306.6711(g), in Uniform State Service Regions containing a county with a population that exceeds 1.7 million, the Board shall allocate competitive tax credits to the highest scoring development, if any, that is part of a concerted revitalization plan that meets the requirements of §11.9(d)(7) (except for §11.9(d)(7)(A)(ii)(III) and §11.9(d)(7)(B)(iv)), is located in an urban subregion, and is within the boundaries of a municipality with a population that exceeds 500,000.

(D) Rural Collapse (Step 4). If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region ("Rural sub-region") that remain after award under subparagraph (C) of this paragraph, those tax credits shall be combined into one "pool" and then be made available in any other Rural Area in the state to the Application in the most underserved Rural sub-region as compared to the sub-region's allocation. This rural redistribution will continue until all of the tax credits in the "pool" are allocated to Rural Applications and at least 20 percent of the funds available to the State are allocated to Applications in Rural Areas. (§2306.111(d)(3)) In the event that more than one sub-region is underserved by the same percentage, the priorities described in clauses (i) - (ii) of this subparagraph will be used to select the next most underserved sub-region:

(i) the sub-region with no recommended At-Risk Applications from the same Application Round; and

(ii) the sub-region that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(E) Statewide Collapse (Step 5). Any credits remaining after the Rural Collapse, including those in any sub-region in the State, will be combined into one "pool." The funds will be used to

award the highest scoring Application (not selected in a prior step) in the most underserved sub-region in the State compared to the amount originally made available in each sub-region. In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex Gov't Code, §2306.6711(h) and will publish such percentages on its website. This process will continue until the funds remaining are insufficient to award the next highest scoring Application in the next most underserved sub-region. In the event that more than one sub-region is underserved by the same percentage, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved sub-region:

(i) the sub-region with no recommended At-Risk Applications from the same Application Round; and

(ii) the sub-region that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(F) Contingent Qualified Nonprofit Set-Aside Step (Step 6). If an insufficient number of Applications participating in the Nonprofit Set-Aside are selected after implementing the criteria described in subparagraphs (A) - (E) of this paragraph to meet the requirements of the 10 percent Nonprofit Set-Aside, action must be taken to modify the criteria described in subparagraphs (A) - (E) of this paragraph to ensure the set-aside requirements are met. Therefore, the criteria described in subparagraphs (C) - (E) of this paragraph will be repeated after selection of the highest scoring Application(s) under the Nonprofit Set-Aside statewide are selected to meet the minimum requirements of the Nonprofit Set-Aside. This step may cause some lower scoring Applications in a sub-region to be selected instead of a higher scoring Application not participating in the Nonprofit Set-Aside.

(4) Waiting List. The Applications that do not receive an award by July 31 and remain active and eligible will be recommended for placement on the waiting list. The waiting list is not static. The allocation process will be used in determining the Application to award. For example, if credits are returned, those credits will first be made available in the set-aside or sub-region from which they were originally awarded. This means that the first Application on the waiting list is in part contingent on the nature of the credits that became available for award. The Department shall hold all credit available after the late-July awards until September 30 in order to collect credit that may become available when tax credit Commitments are submitted. Credit confirmed to be available, as of September 30, may be awarded to Applications on the waiting list unless insufficient credits are available to fund the next Application on the waiting list. For credit returned after September 30, awards from the waiting list will be made when the remaining balance is sufficient to award the next Application on the waiting list based on the date(s) of returned credit. Notwithstanding the foregoing, if decisions related to any returns or rescissions of tax credits are under appeal or are otherwise contested, the Department may delay awards until resolution of such issues. (§2306.6710(a) - (f); §2306.111)

(5) Credit Returns Resulting from Force Majeure Events. In the event that the Department receives a return of Competitive HTCs during the current program year from an Application that received a Competitive Housing Tax Credit award during any of the preceding three years, such returned credit will, if the Board determines that all of the requirements of this paragraph are met to

its satisfaction, be allocated separately from the current year's tax credit allocation, and shall not be subject to the requirements of paragraph (2) of this section. Requests to separately allocate returned credit where all of the requirements of this paragraph have not been met or requests for waivers of any part of this paragraph will not be considered. For purposes of this paragraph, credits returned after September 30 of the preceding program year may be considered to have been returned on January 1 of the current year in accordance with the treatment described in §(b)(2)(C)(iii) of Treasury Regulation 1.42-14. The Department's Governing Board may approve the execution of a current program year Carryover Agreement regarding the returned credits with the Development Owner that returned such credits only if:

(A) The credits were returned as a result of "Force Majeure" events that occurred after the start of construction and before issuance of Forms 8609. Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner: acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. If a Force Majeure event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions. Force Majeure events must make construction activity impossible or materially impede its progress;

(B) Acts or events caused by the negligent or willful act or omission of the Development Owner, Affiliate or a Related Party shall under no circumstance be considered to be caused by Force Majeure;

(C) A Development Owner claiming Force Majeure must provide evidence of the type of event, as described in subparagraph (A) of this paragraph, when the event occurred, and that the loss was a direct result of the event;

(D) The Development Owner must prove that reasonable steps were taken to minimize or mitigate any delay or damages, that the Development Owner substantially fulfilled all obligations not impeded by the event, including timely closing of all financing and start of construction, that the Development and Development Owner was properly insured and that the Department was timely notified of the likelihood or actual occurrence of an event described in subparagraph (A) of this paragraph;

(E) The event prevents the Development Owner from meeting the placement in service requirements of the original allocation;

(F) The requested current year Carryover Agreement allocates the same amount of credit as that which was returned;

(G) The Department's Real Estate Analysis Division determines that the Development continues to be financially viable in accordance with the Department's underwriting rules after taking into account any insurance proceeds related to the event; and

(H) The Development Owner submits a signed written request for a new Carryover Agreement concurrently with the voluntary return of the HTCs.

§11.7. Tie Breaker Factors.

In the event there are Competitive HTC Applications that receive the same number of points in any given set-aside category, rural regional allocation or urban regional allocation, or rural or statewide collapse, the Department will utilize the factors in this section, in the order they are presented, to determine which Development will receive preference in consideration for an award. The tie breaker factors are not intended to specifically address a tie between equally underserved sub-regions in the rural or statewide collapse.

(1) Applications having achieved a score on Proximity to the Urban Core. This item does not apply to the At-Risk Set-Aside.

(2)Applications scoring higher on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.

(3) Applications having achieved the maximum Opportunity Index Score and the highest number of point items on the Opportunity Index menu that they were unable to claim because of the 7 point cap on that item.

~~(4) Applications having achieved the maximum Educational Quality score and the highest number of point items on the Educational Quality menu that they were unable to claim because of the 5 point cap on that item.~~

~~(5)~~ (4) The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site.

~~(6)~~ (5) Applications proposed to be located in a census tract with the lowest poverty rate as compared to another Application with the same score.

~~(7)~~ (6) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear measurement will be performed from closest boundary to closest boundary.

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

(a) General Submission Requirements. The pre-application process allows Applicants interested in pursuing an Application to assess potential competition across the thirteen (13) state service regions, sub-regions and set-asides. Based on an understanding of the potential competition they can make a more informed decision whether they wish to proceed to prepare and submit an Application. A complete pre-application is a pre-application that meets all of the Department's criteria, as outlined in subsections (a) and (b) of this section, with all required information and exhibits provided pursuant to the Multifamily Programs Procedures Manual.

(1) The pre-application must be submitted using the URL provided by the Department, as outlined in the Multifamily Programs Procedures Manual, along with the required pre-application fee as described in §10.901 of this title (relating to Fee Schedule), not later than the Pre-application Final Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits). If the pre-application and corresponding fee is not submitted on or before this deadline the Applicant will be deemed to have not made a pre-application.

(2) Only one pre-application may be submitted by an Applicant for each Development Site.

(3) Department review at this stage is limited, and not all issues of eligibility and threshold are reviewed or addressed at pre-application. Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. While the pre-application is more limited in scope than an Application, pre-applications are subject to the same limitations, restrictions, or causes for disqualification or termination as a full Application, and pre-applications will thus be subject to the same consequences for violation, including but not limited to loss of points and termination of the pre-application.

(b) Pre-Application Threshold Criteria. Pursuant to Tex Gov't Code, §2306.6704(c) pre-applications will be terminated unless they meet the threshold criteria described in subsection (a) of this section and paragraphs (1) and (2) of this subsection:

(1) Submission of the competitive HTC pre-application in the form prescribed by the Department which identifies at a minimum:

(A) Site Control meeting the requirements of §10.204(10) of this title (relating to Required Documentation for Application Submission). For purposes of meeting this specific requirement related to pre-application threshold criteria, proof of consideration and any documentation required for identity of interest transactions is not required at the time of pre-application submission but will be required at the time of full application submission;

(B) Funding request;

(C) Target Population;

(D) Requested set-asides (At-Risk, USDA, Nonprofit, and/or Rural);

(E) Total Number of Units proposed;

(F) Census tract number in which the Development Site is located;

(G) Expected score for each of the scoring items identified in the pre-application materials;

(H) Proposed name of ownership entity; and

(I) Disclosure of ~~any~~ the following Undesirable Neighborhood Characteristics under §10.101(a)(4)~~.~~:

(i) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(ii) The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met Standard rating by the Texas Education Agency.

(2) Evidence in the form of a certification provided in the pre-application, that all of the notifications required under this paragraph have been made. (§2306.6704)

(A) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as of the beginning of the Application Acceptance Period.

(B) Notification Recipients. No later than the date the pre-application is submitted, notification must be sent to all of the persons or entities prescribed in clauses (i) – (viii) of this subparagraph. Developments located in an ETJ of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with registered return receipt or similar tracking mechanism in the format required in the Pre-application Notification Template provided in the pre-application. The Applicant is encouraged to retain proof of delivery in the event the Department requires proof of notification. Acceptable evidence of such delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of delivery for fax and e-mail. Officials to be notified are those officials in office at the time the pre-application is submitted. Note that between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

(i) Neighborhood Organizations on record with the state or county as of the beginning of the Application Acceptance Period whose boundaries include the proposed Development Site;

(ii) Superintendent of the school district in which the Development Site is located;

(iii) Presiding officer of the board of trustees of the school district in which the Development Site is located;

(iv) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(v) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(vi) Presiding officer of the Governing Body of the county in which the Development Site is located;

(vii) All elected members of the Governing Body of the county in which the Development Site is located; and

(viii) State Senator and State Representative of the districts whose boundaries include the proposed Development Site;

(C) Contents of Notification.

(i) The notification must include, at a minimum, all of the information described in subclauses (I) – (VI) of this clause.

(I) the Applicant's name, address, an individual contact name and phone number;

(II) the Development name, address, city and county;

(III) a statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(IV) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse, or Rehabilitation;

(V) the physical type of Development being proposed (*e.g.* single family homes, duplex, apartments, high-rise etc.); and

(VI) the approximate total number of Units and approximate total number of low-income Units.

(ii) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve a Target Population exclusively unless such targeting or preference is documented in the Application and is in full compliance with all applicable state and federal laws, including state and federal fair housing laws.

(c) Pre-application Results. Only pre-applications which have satisfied all of the pre-application requirements, including those in §11.9(e)(3) of this chapter, will be eligible for pre-application points. The order and scores of those Developments released on the Pre-application Submission Log do not represent a Commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the Pre-application Submission Log. Inclusion of a pre-application on the Pre-application Submission Log does not ensure that an Applicant will receive points for a pre-application.

§11.9.Competitive HTC Selection Criteria.

(a) General Information. This section identifies the scoring criteria used in evaluating and ranking Applications. The criteria identified in subsections (b) - (e) of this section include those items required under Tex Gov't Code, Chapter 2306, §42 of the Code, and other criteria established in a manner consistent with Chapter 2306 and §42 of the Code. There is no rounding of numbers in this section for any of the calculations in order to achieve the desired requirement or limitation, unless rounding is explicitly stated as allowed for that particular calculation or criteria. Due to the highly competitive nature of the program, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency. However, Department staff may provide the Applicant an opportunity to explain how they believe the Application, as submitted, meets the requirements for points or otherwise satisfies the requirements. When providing a pre-application, Application or other materials to a state representative, local governmental body, Neighborhood Organization, or anyone else to secure support or approval that may affect the Applicant's competitive posture, an Applicant must disclose that in accordance with the Department's rules aspects of the Development may not yet have been determined or selected or may be subject to change, such as changes in the amenities ultimately selected and provided.

(b) Criteria promoting development of high quality housing.

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)) An Application may qualify for up to fifteen (15) points under subparagraphs (A) and (B) of this paragraph.

(A) Unit Sizes (8 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), for Developments receiving funding from USDA, or for Supportive Housing Developments without meeting these square footage minimums only if requested in the Self Scoring Form.

(i) five-hundred fifty (550) square feet for an Efficiency Unit;

(ii) six-hundred fifty (650) square feet for a one Bedroom Unit;

(iii) eight-hundred fifty (850) square feet for a two Bedroom Unit;

(iv) one-thousand fifty (1,050) square feet for a three Bedroom Unit; and

(v) one-thousand two-hundred fifty (1,250) square feet for a four Bedroom Unit.

(B) Unit and Development Features (7 points). Applicants that elect in an Application to provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in §10.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions) and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments will start with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. (§42(m)(1)(C)(iv)) An Application may qualify to receive one (1) point if the ownership structure contains a HUB certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date, or Qualified Nonprofit Organization provided the Application is under the Nonprofit Set-Aside.

(A) The HUB or Qualified Nonprofit Organization must have some combination of ownership interest in the General Partner of the Applicant, cash flow from operations, and developer fee which taken together equal at least 80 percent and no less than 5 percent for any category. For example, a HUB or Qualified Nonprofit Organization may have 20 percent ownership interest, 30 percent of the developer fee, and 30 percent of cash flow from operations.

(B) The HUB or Qualified Nonprofit Organization must also materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. A Principal of the HUB or Qualified Nonprofit Organization cannot be a Related Party to any other Principal of the Applicant or Developer (excluding another Principal of said HUB or Qualified Nonprofit Organization).

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

(1) Income Levels of Tenants. (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e); and §42(m)(1)(B)(ii)(I)) An Application may qualify for up to sixteen (16) points for rent and income restricting a Development for the entire Affordability Period at the levels identified in subparagraph (A) or (B) of this paragraph.

(A) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs:

(i) At least 40 percent of all low-income Units at 50 percent or less of AMGI (16 points);

(ii) At least 30 percent of all low income Units at 50 percent or less of AMGI (14 points); or

(iii) At least 20 percent of all low-income Units at 50 percent or less of AMGI (12 points).

(B) For Developments proposed to be located in areas other than those listed in subparagraph (A) of this paragraph:

(i) At least 20 percent of all low-income Units at 50 percent or less of AMGI (16 points);

(ii) At least 15 percent of all low-income Units at 50 percent or less of AMGI (14 points); or

(iii) At least 10 percent of all low-income Units at 50 percent or less of AMGI (12 points).

(2) Rent Levels of Tenants. (§2306.6710(b)(1)(E)) An Application may qualify to receive up to thirteen (13) points for rent and income restricting a Development for the entire Affordability Period. These levels are in addition to those committed under paragraph (1) of this subsection.

(A) At least 20 percent of all low-income Units at 30 percent or less of AMGI for Supportive Housing Developments proposed by a Qualified Nonprofit (13 points);

(B) At least 10 percent of all low-income Units at 30 percent or less of AMGI or, for a Development located in a Rural Area, 7.5 percent of all low-income Units at 30 percent or less of AMGI (11 points); or

(C) At least 5 percent of all low-income Units at 30 percent or less of AMGI (7 points).

(3) Tenant Services. (§2306.6710(b)(1)(G) and §2306.6725(a)(1)) A Supportive Housing Development proposed by a Qualified Nonprofit may qualify to receive up to eleven (11) points and all other Developments may receive up to ten (10) points.

(A) By electing points, the Applicant certifies that the Development will provide a combination of supportive services, which are listed in §10.101(b)(7) of this title, appropriate for the proposed tenants and that there is adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application will remain the same. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. (10 points for Supportive Housing, 9 points for all other Development)

(B) The Applicant certifies that the Development will contact local ~~service~~ nonprofit and governmental providers of services that would support the health and well-being of the Department's tenants, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. Applicants

may contact service providers on the Department list, or contact other providers that serve the general area in which the Development is located. (1 point)

(4) Opportunity Index. The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials.

(A) A ~~Proposed~~ proposed Development is eligible for ~~a maximum of seven (7)~~ up to two (2) opportunity index points if it is located in a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and meets the requirements in (i) or (ii) below.

(i)The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and an income rate in the two highest quartiles within the uniform service region. (2 points)

(ii) The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile, without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. For purposes of this scoring item, a highway is a limited-access road with a speed limit of 50 miles per hour or more; and, (1 points)

(B) An application that meets the foregoing criteria may qualify for five (5) additional points ~~up to~~ (for a maximum of seven (7) points) for any one or more of the following factors. Each facility or amenity may be used only once for scoring purposes, regardless of the number of categories it fits:

(i) For Developments located in an Urban Area, an Application may qualify to receive points through a combination of requirements in clauses (~~I~~I) through (~~15~~XIII) of this subparagraph.

(I) The Development site is located less than 1/2 mile on an accessible route from a public park with an accessible playground, both of which meet 2010 ADA standards (1 point)

(II) The Development Site is located less than ½ mile on an accessible route from Public Transportation with a route schedule that provides regular service to employment and basic services. For purposes of this scoring item, regular is defined as scheduled service beyond 8 a.m. to 5 p.m., plus weekend service (1 point)

(III) The Development site is located within 1 mile of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products

including cheeses, and a wide variety of household goods, paper goods and toiletry items (1 point)

(IV) ~~The Development is located within 3 miles of either an emergency room or an urgent care facility~~ The Development is located within 3 miles of a health-related facility, such a full service hospital, community health center, minor emergency center, emergency room or urgent care facility. Physician specialty offices are not considered in this category (1 point)

(V) The Development Site is within 2 miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten (1 point)

(VI) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less as defined by neighborhoodscout.com, or local data sources (1 point)

(VII) The development site is located within 1 mile of a public library (1 point)

(VIII) The Development Site is located within 5 miles of a University or Community College campus. To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered Community Colleges. Universities and Community Colleges must have a physical location within the required distance; online-only institutions do not qualify under this item (1 point)

~~(IX) The Development Site is located within 3 miles of a concentrated retail shopping center of at least 1 million square feet or that includes at least 4 big-box national retail stores (1 point)~~

(~~X~~IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher as tabulated by the 2010-2014 American Community Survey 5-year Estimate (1 point)

(~~XI~~X) Development site is within 2 miles of a ~~government-sponsored~~ museum that is a government-sponsored or non-profit, permanent institution open to the public and is not an ancillary part of an organization whose primary purpose is other than the acquisition, conservation, study, exhibition, and educational interpretation of objects having scientific, historical, or artistic value (1 point)

(~~XII~~XI) Development site is within 1 mile of an indoor recreation facility available to the public (1 point)

(~~XIII~~XII) Development site is within 1 mile of an outdoor recreation facility available to the public (1 point)

(~~XIV~~XIII) Development site is within 1 mile of community, civic or service organizations that provide regular and recurring services available to the entire

community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point)

(ii) For Developments located in a Rural Area, an Application may qualify to receive points through a combination of requirements in clauses (~~I~~I) through (~~13~~XII) of this subparagraph.

(I) The Development site is located within ~~2 miles~~ 4 miles of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items (1 point)

(II) The Development is located within 4 miles of health-related facility, such a full service hospital, community health center, or minor emergency center. Physician specialty offices are not considered in this category (1 point)

(III) The Development Site is within ~~3 miles~~ 4 miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten (1 point)

(IV) The Development Site is located in a census tract with a property crime rate 26 per 1,000 or less, as defined by neighborhoodscout.com, or local data sources (1 point)

(V) The development site is located within ~~3 miles~~ 4 miles of a public library (1 point)

(VI) The development site is located within ~~3 miles~~ 4 miles of a public park (1 point)

(VII) The Development Site is located within ~~7 miles~~ 15 miles of a University or Community College campus (1 point)

~~(VIII) The Development Site is located within 5 miles of a retail shopping center with XX square feet of stores (1point)~~

(~~IX~~VIII) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher as tabulated by the 2010-2014 American Community Survey 5-year Estimate (1 point)

(~~X~~IX) Development site is within ~~2 miles~~ 4 miles of a ~~government-sponsored~~ museum that is a government-sponsored or non-profit, permanent institution open to the public and is not an ancillary part of an organization whose primary purpose is other than the acquisition, conservation, study, exhibition, and educational interpretation of objects having scientific, historical, or artistic value (1 point)

(~~XI~~X) Development site is within ~~1 mile~~ 3 miles of an indoor recreation facility available to the public (1 point)

(~~XII~~XI) Development site is within ~~1 mile~~ 3 miles of an outdoor recreation facility available to the public (1 point)

(~~XIII~~XII) Development site is within ~~1 mile~~ 3 miles of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point)

(5) Educational Quality.

In order to qualify for points under Educational Quality, the elementary school and the middle school or high school within the attendance zone of the Development must have a TEA rating of Met Standard. Except for Supportive Housing Developments, an Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs (A) - (E) of this paragraph, as determined by the Texas Education Agency. A Supportive Housing Development may qualify to receive no more than two (2) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs (A) or (B) of this paragraph, as determined by the Texas Education Agency. For districts without attendance zones, the schools closest to the site which may possibly be attended by the tenants must be used for scoring. Choice districts with attendance zones will use the school zoned to the Development site. Schools with an application process for admittance, limited enrollment or other requirements that may prevent a tenant from attending will not be considered as the closest school or the school which attendance zone contains the site. The applicable ratings will be the 2016 accountability rating determined by the Texas Education Agency for the State, Education Service Center region, or individual campus. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating.

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score (~~5 points~~ 3 points);

(B) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (~~3 points~~ 2 points, or ~~2 points~~ 1 point for a Supportive Housing Development); or

(C) The Development Site is within the attendance zone of a middle school or a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. ~~Center~~.(1 point); or

(D) The Development Site is within the attendance zone of an elementary school with an Index 1 score in the first quartile of all elementary schools statewide.(1 point); or

(E) If the Development Site is able to score one or ~~three~~ two points under clauses (B) through- (D) above, ~~two~~ one additional ~~points~~ point ~~or 1 point for a Supportive Housing Development~~ may be added if one or more of the features described in subclause (1) - (4) is present:

(1) The Development Site is in the attendance zone of an elementary school that has Met Standard, and has earned at least one distinction designation by TEA (1 point);

(2) The Development Site is located in the attendance zone of a general admission high school with a four-year longitudinal graduation rate in excess of the statewide four-year longitudinal graduation rate for all schools for the latest year available, based on the TEA 2016 Index 4: Postsecondary Readiness Data table for the district found at http://tea.texas.gov/2016accountability.aspx. (1 point)

(3) The development is in the primary attendance zones for an elementary school that has met standard and offers an extended day Pre-K program. (1 point)

(4) The development site within the attendance zone of an elementary school, a middle school and a high school that all have a Met Standard rating for the three years prior to application. (1 point)

(6) Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive up to five (5) points if the Development Site is located in one of the areas described in subparagraphs (A) - (E) of this paragraph, and the Application contains evidence substantiating qualification for the points. If an Application qualifies for points under paragraph (4) of this subsection then the Application is not eligible for points under subparagraphs (A) and (B) of this paragraph.

(A) The Development Site is located wholly or partially within the boundaries of a colonia as such boundaries are determined by the Office of the Attorney General and within 150 miles of the Rio Grande River border. For purposes of this scoring item, the colonia must lack water, wastewater, or electricity provided to all residents of the colonia at a level commensurate with the quality and quantity expected of a municipality and the proposed Development must make available any such missing water, wastewater, and electricity supply infrastructure physically within the borders of the colonia in a manner that would enable the current dwellings within the colonia to connect to such infrastructure (2 points);

(B) An Economically Distressed Area (1 point);

(C) A census tract within the boundaries of an incorporated area that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development within the past 15 years and continues to appear on the Department's inventory (3 points);
(D) For areas not scoring points for (C) above, a census tract that does not have a Development subject to an active tax credit LURA; (2 points);
(E) A census tract within the boundaries of an incorporated area and all contiguous census tracts for which neither the census tract in which the Development is located nor the contiguous census tracts have received an award or HTC allocation within the past 15 years and continues to appear on the Department's inventory. This item will apply in cities with a population of ~~500,000~~ 300,000 or more, and will not apply in the At-Risk Set-Aside (5 points).

(7) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive up to two (2) points by serving Tenants with Special Housing Needs.

In order to qualify for points, Applicants must agree to set-aside at least 5 percent of the total Units for Persons with Special Needs. The units identified for this scoring item may not be the same units identified for Section 811 Project Rental Assistance Demonstration program. For purposes of this subparagraph, Persons with Special Needs is defined as households where one individual has alcohol and/or drug addictions, Colonia resident, Persons with Disabilities, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), persons with HIV/AIDS, homeless populations, veterans, wounded warriors (as defined by the Caring for Wounded Warriors Act of 2008), and farmworkers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant, unless the units receive HOME funds from any source. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for Persons with Special Needs, but will be required to continue to affirmatively market Units to Persons with Special Needs.

(8) Proximity to the Urban Core. ~~A development in a County with a population over 1 million and~~A Development in a City with a population over ~~500,000~~ 300,000 may qualify for points under this item. ~~if the~~ The Development Site ~~is~~ must be located within 4 miles of the main City Hall facility if the population of the city is more than 500,000, or within 2 miles of the main City Hall facility if the population of the city is 300,000 - 500,000. The main City Hall facility will be determined by the location of regularly scheduled City Council, City Commission, or similar governing body meetings. Distances are measured from the nearest property boundaries, not inclusive of non-contiguous parking areas. This scoring item will not apply to the At-Risk Set-Aside. (5 points)

(d) Criteria promoting community support and engagement.

(1) Local Government Support. (§2306.6710(b)(1)(B)) An Application may qualify for up to seventeen (17) points for a resolution or resolutions voted on and adopted by the bodies reflected in subparagraphs (A) - (C) of this paragraph, as applicable. The resolution(s) must be dated prior to Final Input from Elected Officials Delivery Date and must be submitted to the Department no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. In providing a resolution a municipality or county should consult its own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas ("FHAST") form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds. Once a resolution is submitted to the Department it may not be changed or withdrawn. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

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

(i) seventeen (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

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

(B) Within the extraterritorial jurisdiction of a municipality, the Application may receive points under clause (i) or (ii) of this subparagraph and under clause (iii) or (iv) of this subparagraph:

(i) eight and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(ii) seven (7) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; and

(iii) eight and one-half (8.5) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(iv) seven (7) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(C) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:

(i) seventeen (17) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

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

(2) Commitment of Development Funding by Local Political Subdivision. (§2306.6725(a)(5)) An Application may receive one (1) point for a commitment of Development funding from the city (if located in a city) or county in which the Development Site is located. The commitment of development funding must be reflected in the Application as a financial benefit to the Development, i.e. reported as a source of funds on the Sources and Uses Form and/or reflected in a lower cost in the Development Cost Schedule, such as notation of a reduction in building permits and related costs. Documentation must include a letter from an official of the municipality, county, or other instrumentality with jurisdiction over the proposed Development stating they will provide a loan, grant, reduced fees or contribution of other value for the benefit of the Development. ~~The letter must include the amount of support and the terms under which it will be provided~~ The letter must describe value of the contribution, the form of the contribution, e.g. reduced fees or gap funding, and any caveats to delivering the contribution. Once a letter is submitted to the Department it may not be changed or withdrawn.

(3) Declared Disaster Area. (§2306.6710(b)(1)(H)) An Application may receive ten (10) points if at the time of Application submission or at any time within the two-year period preceding the date of submission, the Development Site is located in an area declared to be a disaster area under the Tex Gov't Code, §418.014.

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(J); §2306.6725(a)(2)) An Application may qualify for up to nine (9) points for written statements from a Neighborhood Organization. In order for the statement to qualify for review, the Neighborhood Organization must have been in existence prior to the Pre-Application Final Delivery Date and its boundaries must contain the entire Development Site. In addition, the Neighborhood Organization must be on record with the Secretary of State or county in which the Development Site is located. Once a letter is submitted to the Department it may not be changed or withdrawn. The written statement must meet all of the requirements in subparagraph (A) of this paragraph.

(A) Statement Requirements. If an organization cannot make the following affirmative certifications or statements then the organization will not be considered a Neighborhood Organization for purposes of this paragraph.

(i) the Neighborhood Organization's name, a written description and map of the organization's boundaries, signatures and contact information (phone, email and mailing address) of at least two individual members with authority to sign on behalf of the organization;

(ii) certification that the boundaries of the Neighborhood Organization contain the Development Site and that the Neighborhood Organization meets the definition pursuant to Tex Gov't Code, §2306.004(23-a) and includes at least two separate residential households;

(iii) certification that no person required to be listed in accordance with Tex Gov't Code §2306.6707 with respect to the Development to which the Application requiring their listing relates participated in any way in the deliberations of the Neighborhood Organization, including any votes taken;

(iv) certification that at least 80 percent of the current membership of the Neighborhood Organization consists of homeowners and/or tenants living within the boundaries, of the Neighborhood Organization; and

(v) an explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason forming the basis of that opposition. A Neighborhood Organization is encouraged to be prepared to provide additional information with regard to opposition.

(B) Technical Assistance. For purposes of this section, if and only if there is no Neighborhood Organization already in existence or on record, the Applicant, Development Owner, or Developer is allowed to provide technical assistance in the creation of and/or placing on record of a Neighborhood Organization. Technical assistance is limited to:

(i) the use of a facsimile, copy machine/copying, email and accommodations at public meetings;

(ii) assistance in completing the QCP Neighborhood Information Packet, providing boundary maps and assisting in the Administrative Deficiency process; and

(iii) presentation of information and response to questions at duly held meetings where such matter is considered.

(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in clauses (i) - (vi) of this subparagraph. Points will not be cumulative. Where more than one written statement is received for an Application, the average of all statements received in accordance with this subparagraph will be assessed and awarded.

(i) nine (9) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(ii) eight (8) points for explicitly stated support from a Neighborhood Organization;

(iii) six (6) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds provided a written statement, that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(iv) four (4) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood

Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection;

(v) four (4) points for areas where no Neighborhood Organization is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit requirements of this section; or

(vi) zero (0) points for statements of opposition meeting the requirements of this subsection.

(D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such statement is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date May 1, 2017. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

(5) Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2)) Applications may receive up to eight (8) points or have deducted up to eight (8) points for this scoring item. To qualify under this paragraph letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development and clearly state support for or opposition to the specific Development. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative and must be submitted no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Once a letter is submitted to the Department it may not be changed or withdrawn except in the instance where a representative who has provided a letter then provides an additional letter to the Department, on or before April 3, 2017, ~~stating that in their estimation the factual representations made to them to secure their original letter have proven to have been inaccurate, misleading, or otherwise insufficient to form a basis for their support, neutrality or opposition and, accordingly, their letter is withdrawn. A change in this manner is final and will result in a score of zero (0) points.~~ supported by substantiating or corroborating evidence such as copies of communications or contemporaneous notes about verbal communications, stating that in their estimation a material factual representation made to them to secure their original letter has proven to have been inaccurate or misleading and therefore insufficient to serve as a basis for their support, neutrality, or opposition and, accordingly, their letter is withdrawn. A change in this manner is final and will result in a score of zero (0) points for this scoring item. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State

Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. A letter expressly stating opposition is scored – 8 points. A letter expressly stating neutrality is scored 0 points. Any other letter conveying a sense of support is scored 8 points. If a tone of support cannot be discerned in a letter that does not expressly state support, neutrality or opposition, the representative will be contacted and given five (5) business days to indicate in writing if they wish to have the letter scored as support or neutral. If clarification is not timely provided, the letter will be scored as neutral.

(6) Input from Community Organizations. (§2306.6725(a)(2)) Where, at the time of Application, the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization, then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters must be submitted within the Application. Once a letter is submitted to the Department it may not be changed or withdrawn. Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item.

(A) An Application may receive two (2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide evidence of its tax exempt status and its existence and participation in the community in which the Development Site is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts), or taxing entities.

(B) An Application may receive two (2) points for a letter of support from a property owners association created for a master planned community whose boundaries include the Development Site and that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (4) of this subsection.

(C) An Application may receive two (2) points for a letter of support from a Special Management District whose boundaries, as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site.

(D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, standing alone, cause staff or the Department to terminate the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(7) Concerted Revitalization Plan. An Application may qualify for points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.

(A) For Developments located in an Urban Area~~;, and in a city with a population of 100,000 or more.~~

(i) An Application may qualify to receive ~~up to six (6)~~ points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed and executed. The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems. The concerted revitalization plan that meets the criteria described in subclauses (I) - (IV) of this clause:

(I) The concerted revitalization plan must have been adopted by the municipality or county in which the Development Site is located. The resolution adopting the plan, or if development of the plan and budget were delegated the resolution of delegation and other evidence in the form of certifications by authorized persons confirming the adoption of the plan and budget, must be submitted with the application.

(II) The problems in the revitalization area must be identified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. These problems ~~must include the limited availability of safe, decent, affordable housing and~~ may include the following:

(-a-) long-term disinvestment, such as significant presence of residential and/or commercial blight, streets infrastructure neglect such as inadequate drainage, and/or sidewalks in significant disrepair;

(-b-) declining quality of life for area residents, such as high levels of violent crime, property crime, gang activity, or other significant criminal matters such as the manufacture or distribution of illegal substances or overt illegal activities;

(III) Staff will review the target area for presence of the problems identified in the plan and for targeted efforts within the plan to address those problems. In addition, but not in lieu of, such a plan may be augmented with targeted efforts to promote a

more vital local economy and a more desirable neighborhood, including but not limited to:

(-a-) creation of needed affordable housing by improvement of existing affordable housing that is in need of replacement or major renovation;

(-b-)attracting private sector development of housing and/or business;

(-c-) developing health care facilities;

(-d-) providing public transportation;

(-e-) developing significant recreational facilities; and/or

(-f-) improving under-performing schools.

(IV) The adopted plan must have sufficient, documented and committed funding to accomplish its purposes on its established timetable. This funding must have been flowing in accordance with the plan, such that the problems identified within the plan will have been sufficiently mitigated and addressed prior to the Development being placed into service.

(ii) Up to seven (7) points will be awarded based on:

(I) Applications will receive four (4) points for a letter from the appropriate local official providing documentation of measurable improvements within the revitalization area based on the target efforts outlined in the plan~~; and~~. The letter must also discuss how the improvements will result in the area being appropriate for the development of safe, decent, affordable housing; and

(II) Applications may receive (2) points in addition to those under subclause (I) of this clause if the Development is explicitly identified in a resolution by the city or county as contributing more than any other to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause. The resolution from the Governing Body of the city or county that approved the plan is required to be submitted in the Application. If multiple Applications submit resolutions under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points~~.~~; and

(III) Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4)(B), except for the criteria found in §11.9(c)(4)(A) and subparagraphs §11.9(c)(4)(A)(i) and §11.9(c)(4)(A)(ii).

(B) For Developments located in a Rural Area.

(i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction ~~in an location meeting the threshold requirements of the Opportunity Index, §11.9(c)(4)(A)~~ of a development in a rural area that is currently leased at ~~90%~~ 85% or greater by low income households and which was initially constructed prior to ~~1980~~ U as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program. Demolition and relocation of units must be determined locally to be necessary to comply with the Affirmatively Furthering Fair Housing Rule, or if necessary to create an acceptable distance form Undesirable Site Features or Undesirable Neighborhood Characteristics.

(ii) Applications will receive 3 points for the rehabilitation of a development in a rural area that is currently leased at ~~90%~~ 85% or greater by low income households and which was initially constructed prior to ~~1980~~ 1985 as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program if the proposed location requires no disclosure of Undesirable Neighborhood Features under Section §10.101(a)(4) or required such disclosure but the disclosed items were found acceptable.

(iii) Applications may receive (2) points in addition to those under subclause (i) or (ii) of this clause if the Development is explicitly identified in a letter by the city or county as contributing more than any other Development to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause. The letter from the Governing Body of the city or county that approved the plan is required to be submitted in the Application. If multiple Applications submit valid letters under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application as contributing more than any other Development to concerted revitalization efforts.

(iv) Applications may receive (1) additional point if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4)(B).

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) An Application may qualify to receive a maximum of eighteen (18) points for this item. To qualify for points, a 15-year pro forma itemizing all projected income including Unit rental rate assumptions, operating expenses and debt service, and specifying the underlying growth assumptions and reflecting a minimum must-pay debt coverage ratio of 1.15 for each year must be submitted. The pro forma must include the signature and contact information evidencing that it has been reviewed and found to be acceptable by an authorized representative of a proposed Third Party construction or permanent lender. In addition to the signed pro forma, a lender approval letter must be submitted. An acceptable form of lender approval letter may be obtained in the Uniform Multifamily Application Templates. If the letter evidences review of the Development alone it will receive sixteen (16) points. If the letter evidences review of the Development and the Principals, it will receive eighteen (18) points.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii)) An Application may qualify to receive up to twelve (12) points based on either the Eligible Building Cost or the Eligible Hard Costs per square foot of the proposed Development voluntarily included in eligible basis ~~("Eligible Hard Cost"),~~ as originally submitted in the Application. For purposes of this ~~paragraph~~ scoring item, Eligible Building Costs will be defined as Building Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation. Eligible Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Eligible Hard Costs will include general contractor overhead, profit, and general requirements. Structured parking or commercial space costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking or commercial construction, as applicable. The square footage used will be the Net Rentable Area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule. If the proposed Development is a Supportive Housing Development, the NRA will include common area up to 50 square feet per Unit.

(A) A high cost development is a Development that meets one of the following conditions:

(i) the Development is elevator served, meaning it is either a Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors;

(ii) the Development is more than 75 percent single family design;

(iii) the Development is Supportive Housing; or

(iv) the Development Site qualifies for a minimum of five (5) points under subsection (c)(4) of this section, related to Opportunity Index, and is located in an Urban Area.

(B) Applications proposing New Construction or Reconstruction will be eligible for twelve (12) points if one of the following conditions is met:

(i) The voluntary Eligible Building Cost per square foot is less than $72.80 per square foot;

(ii) The voluntary Eligible Building Cost per square foot is less than $78 per square foot, and the Development meets the definition of a high cost development;

(iii) The voluntary Eligible Hard Cost per square foot is less than $93.60 per square foot; or

(iv) The voluntary Eligible Hard Cost per square foot is less than $104 per square foot, and the Development meets the definition of high cost development.

(C) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:

(i) The voluntary Eligible Building Cost per square foot is less than $78 per square foot;

(ii) The voluntary Eligible Building Cost per square foot is less than $83.20 per square foot, and the Development meets the definition of a high cost development;

(iii) The voluntary Eligible Hard Cost per square foot is less than $98.80 per square foot; or

(iv) The voluntary Eligible Hard Cost per square foot is less than $109.20 per square foot, and the Development meets the definition of high cost development.

(D) Applications proposing New Construction or Reconstruction will be eligible for ten (10) points if one of the following conditions is met:

(i) The voluntary Eligible Building Cost is less than $93.60 per square foot; or

(ii) The voluntary Eligible Hard Cost is less than $114.40 per square foot.

(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than $104 per square foot;

(ii) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than $135.20 per square foot, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than $135.20 per square foot.

(3) Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted during the Pre-Application Acceptance Period. Applications that meet the requirements described in subparagraphs (A) - (G) of this paragraph will qualify for six (6) points:

(A) The total number of Units does not increase by more than ten (10) percent from pre-application to Application;

(B) The designation of the proposed Development as Rural or Urban remains the same;

(C) The proposed Development serves the same Target Population;

(D) The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, and/or Rural);

(E) The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than six (6) points from what was reflected in the pre-application self score;

(F) The Development Site at Pre-Application and full Application are the same or have contiguous borders of at least 10% with the site at full application, and the site at both pre-application and at full application are entirely within the same census tract. The site at full Application may not require notification to any person or entity not required to have been notified at pre-application;

(G) The Development Site does not have the following Undesirable Neighborhood Characteristics as described in 10 TAC §10.101(a)(4) that were not disclosed with the pre-application:

(i) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.
(ii) The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met Standard rating by the Texas Education Agency.

(H) The pre-application met all applicable requirements.

(4) Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3))

(A) An Application may qualify to receive up to three (3) points if at least five (5) percent of the total Units are restricted to serve households at or below 30 percent of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) - (iv) of this subparagraph:

(i) the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 9 percent of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or

(ii) If the Housing Tax Credit funding request is less than ~~seven (7)~~ eight (8) percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than ~~eight (8)~~ nine (9) percent of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than ~~nine (9)~~ ten (10) percent of the Total Housing Development Cost (1 point).

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50 percent of the developer fee can be deferred. Where costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to

an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

(5) Extended Affordability. (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) In accordance with the Code, each Development is required to maintain its affordability for a 15-year Compliance Period and, subject to certain exceptions, an additional 15-year Extended Use Period. Development Owners that agree to extend the Affordability Period for a Development to thirty-five (35) years total may receive two (2) points.

(6) Historic Preservation. (§2306.6725(a)(5)) At least seventy-five percent of the residential units shall reside within the Certified Historic Structure and the Development must reasonably be expected to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609. The Application must include either documentation from the Texas Historical Commission that the property is currently a Certified Historic Structure, or documentation determining preliminary eligibility for Certified Historic Structure status (5 points).

(7) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) An Application may qualify to receive (1 point) for Development Owners that will agree to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period in accordance with Tex Gov't Code, §2306.6726 and the Department's rules including §10.407 of this title (relating to Right of First Refusal) and §10.408 of this title (relating to Qualified Contract Requirements).

(8) Funding Request Amount. An Application may qualify to receive one (1) point if the Application reflects a Funding Request of Housing Tax Credits, as identified in the original Application submission, of no more than 100% of the amount available within the sub-region or set-aside as determined by the application of the regional allocation formula on or before December 1, 2015.

(f) Point Adjustments.

Staff will recommend to the Board and the Board may make a deduction of up to five (5) points for any of the items listed in paragraph (1) of this subsection, unless the person approving the extension (the Board or Executive Director, as applicable) makes an affirmative finding setting forth that the facts which gave rise to the need for the extension were beyond the reasonable control of the Applicant and could not have been reasonably anticipated. Any such matter to be presented for final determination of deduction by the Board must include notice from the Department to the affected party not less than fourteen (14) days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point deductions. (§2306.6710(b)(2))

(1) If the Applicant or Affiliate failed to meet the original Carryover submission or 10 percent Test deadline(s) or has requested an extension of the Carryover submission deadline, the 10 percent Test deadline (relating to either submission or expenditure).

(2) If the Applicant or Affiliate failed to meet the commitment or expenditure requirements of a HOME or National Housing Trust Fund award from the Department.

~~(2)~~(3) If the Developer or Principal of the Applicant violates the Adherence to Obligations.

~~(3)~~(4) Any deductions assessed by the Board for paragraph (1) or (2) of this subsection based on a Housing Tax Credit Commitment from the preceding Application Round will be attributable to the Applicant or Affiliate of an Application submitted in the current Application Round.

§11.10. Third Party Request for Administrative Deficiency for Competitive HTC Applications.

The purpose of the Third Party Request for Administrative Deficiency ("RFAD") process is to allow an unrelated person or entity to bring new, material information about an Application to staff's attention. Such Person may request the staff to consider whether a matter in an Application in which the Person has no involvement should be the subject of an Administrative Deficiency. Staff will consider the request and proceed as it deems appropriate under the applicable rules including, if the Application in question is determined by staff to not be a priority Application, not reviewing the matter further. ~~Staff actions are not subject to RFAD, as the request does not bring new information to staff's attention.~~ Requestors must provide, at the time of filing the challenge, all briefings, documentation, and other information that the requestor offers in support of the deficiency. A copy of the request and supporting information must be provided directly to the Applicant at the same time it is provided to the Department. Requestors must provide sufficient credible evidence that, if confirmed, would substantiate the deficiency request. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered. Staff shall provide to the Board a written report summarizing each third party request for administrative deficiency and the manner in which it was addressed. Interested persons may provide testimony on this report before the Board's takes any formal action to accept the report. The results of a RFAD may not be appealed by the Requestor.

Public Comment

(1) Senator Eddie Lucio, Jr.

THE SENATE OF TEXAS

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7 NORTH PARK PLAZA
BROWNSVILLE, TEXAS 78521
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700 FM 3168
RAYMONDVILLE, TEXAS 78580
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SENATOR
EDDIE LUCIO, JR.

October 13, 2016

Ms. Sharon Gamble
Administrator, 9% Competitive Housing Tax Credit Program
Texas Department of Housing and Community Affairs
221 East 11th St.
Austin, TX 78701

RE: Comments on proposed 2017 Qualified Allocation Plan

Dear Ms. Gamble:

I write to you with great concern regarding what appears to be unintended consequences on the communities I represent stemming from the proposed 2017 Qualified Allocation Plan (QAP) for the Texas Department of Housing and Community Affairs' (TDHCA) affordable housing tax credits program.

It is my understanding from the correspondence submitted to TDHCA by the Mayor of the City of Harlingen, the Honorable Chris Boswell, that the latest QAP would make it virtually impossible for historic revitalitization affordable housing development projects in Texas to successfully compete for any affordable housing tax credits.

Mayor Boswell's comments shed light on how the proposed QAP may inhibit affordable housing for communities striving to revitalize central historic buildings that they believe are well-suited for affordable housing development. As a Senator who cares deeply about the quality of life for our most vulnerable Texans, it is distressing to be informed that the proposed QAP for this upcoming year may not put every development competing for affordable housing tax credits for their communities on a fair and equal playing field.

I hope you can agree both that Harlingen is being proactive and engaged in addressing the affordable needs of their community, and Texas is deserving of a QAP which aknowledges each community's unique circumstances and needs. That is why I respectfully ask you to take into full consideration the concerns outlined in Mayor Boswell's submitted public comments.

Sincerely,

Eddie Lucio, Jr.
State Senator

ELJ/de

(2) Representative Eddie Lucio, III

Texas House of Representatives

EDDIE LUCIO III
DISTRICT 38
CAMERON COUNTY

Ms. Sharon Gamble
9% Competitive Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
221 East 11 Street
Austin, Tx 78701

In re: Comments on proposed 2017 QAP

Dear Ms. Gamble:

I have reviewed and I support the comments on the proposed 2017 QAP previously submitted to you by Harlingen Mayor Chris Boswell.

Harlingen has a tremendous need for affordable housing and has had a difficult time competing for these projects in the past.

Harlingen also is doing an amazing job of renewing and rehabilitating its downtown buildings and community. Rehabilitating an abandoned historic building in the heart of Harlingen to provide affordable housing to the working poor makes perfect sense and would be of great benefit to the community as a whole as well as the future residents of the building.

As written, the proposed 2017 QAP would make it impossible for such a project to compete. If you adopt the mayor's modest recommendations, such a project would at least have a chance.

Thank you the opportunity to comment. Please contact my office if you have further questions or there is anything else I can do to further promote these changes.

Sincerely,

Eddie Lucio III

State Representative Eddie Lucio III
District 38

Committees: Calendars, Vice Chair • Natural Resources • Land and Resource Management

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(3) Representative Marisa Márquez

MARISA MÁRQUEZ

STATE REPRESENTATIVE • DISTRICT 77

October 14, 2016

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

Dear TDHCA Board Members:

I am writing to express concern and strong opposition, to the proposed amendments to the Qualified Allocation Plan (QAP) that would exclude El Paso from the benefit of a "Proximity to the Urban Core" preference, in the At-Risk Set-Aside allocation of low income housing tax credits.

The proposed 'Urban Core' preference is only available to five of Texas' most populous counties. As drafted, urban areas need to have both (1) a county-wide population in excess of one million and (2) a city population with over 500,000 in order to qualify for the Urban Core preference. El Paso is an urban area under the proposed QAP definition, as it meets the 500,000 population threshold. However, the proposed QAP's one million population threshold for the County disqualifies El Paso from eligibility. Due to the level of competition, the county-wide 'one million' population requirement would effectively disqualify El Paso, and its qualified nonprofit developers, from participating in the At-Risk Set-Aside.

El Paso has an Urban Core in dire need of tax credits, and I respectfully request that the proposed 'Urban Core' preference be exempted from the At-Risk Set-Aside scoring criteria. The proposed amendment would exclude all but the top five most populous cities in the State of Texas, and in so doing, effectively exclude El Paso from At-Risk Set-Aside tax credits. As a matter of fairness, five urban areas should not be granted a scoring advantage in a state-wide competition.

If the Urban Core proposed preference will be applied to the At-Risk Set-Aside in next year's tax credit allocation cycle, then I urge you to modify the proposed amendment to allow for an impartial statewide competition.

Thank you for your attention and consideration of this request. If you have any questions, please feel free to contact my office at (915) 532-2755.

Sincerely,

Marisa Márquez

Marisa Márquez
State Representative, District 77

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(4) Senator José Menéndez

The Senate of The State of Texas

Senator José Menéndez

District 26

October 14, 2016

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

Dear Director Irvine,

Thank you for your continued leadership at the Texas Department of Housing and Community Affairs (TDHCA). Under your watch, Texas has put more families in affordable housing. I'm proud of the work you and your agency accomplish. Last legislative session I authored the historic preservation amendment to Senate 1316 and helped pass the bill that is now a part of Texas Government Code 2306.6725. This statute provides the allocation of housing tax credits by TDHCA, which has a responsibility to assign points based on the ability of the proposed project to include the rehabilitation of historic structures. We have found that there are items in the proposed 2017 Qualified Application Plan (QAP) and other rules which hamper the success of revitalization projects in many parts of the state, notably proximity to railroads and concerted revitalization plans.

First, Texas communities were settled on the railroad, and as such, our historic structures tend to be near them. Rail yards were the center of commerce and towns sprang up around them. These historical structures are part of a city's identity and should be repurposed for affordable housing. I'm worried that requiring all tax credit properties to be 500 feet away from railroads would have a chilling effect on revitalization efforts. Therefore, I am encouraging TDHCA to remove this unnecessary barrier in the QAP by exempting historic properties from this requirement.

Second, the proposed 2017 proposed rules arbitrarily limit a downtown revitalization area to only cities with a population of 100,000 or more. This immediately disqualifies any rural or mid-sized Texas city. It concerns me that this requirement would limit tax credits to only 37 cities. Our goal should be to provide the most resources in areas of the state that needs it the most. Therefore, I propose TDHA amend this section by allowing qualified census tracts (QCT) in concerted revitalization plans (CRP) to compete, regardless of population size. By utilizing QCT and CRP, Texas is more in line with Chapter 42 of the Internal Revenue Code. Using QCT and CRP we are able to target our limited tax credits to maximize developments.

The QAP is a complicated process. Moreover, no system will ever be perfect and there will always be unintended negative consequences to implementation. In this case, however, I hope you will reassess the selection criteria and rules to better aid Texas cities and towns to preserve our past through preservation of historical structures. This was my goal when I added the historical preservation amendment to Senate Bill 1316. Thank you again for your hard and important work. If I can ever be of service, please don't hesitate to contact my office.

Sincerely,

Senator José Menéndez
The 26th District of Texas

Cc: Sharon Gamble, 9% Competitive Housing Tax Credit Program Administrator
Marni Holloway, Director of Multfamily Finance
Michael Lyttle, Chief of External Affairs

(5) Representative Joe Moody

TEXAS HOUSE *of* REPRESENTATIVES

Joe Moody

STATE REPRESENTATIVE

DISTRICT 78 • EL PASO COUNTY

Mr. J Paul Oxer, PE, Chair
Ms. Leslie Bingham Escareno
Mr. T. Tolbert Chisum

Dr. Juan Sanchez Munoz, Vice Chair
Mr. Tom H. Gann
Mr. J.B. Goodwin

Commissioners
Texas Department of Housing and Community Affairs
PO Box 13941
Austin, Texas 78711-3941
221 East 11th Street
Austin, Texas 78701-2410

RE: Proposed Amendment to the Qualified Allocation Plan (QAP) Regarding "Proximity to the Urban Core" Preference for Only Five Texas Cities

Dear TDHCA Board Members:

I am writing to you today to express concern and strong opposition to the proposed amendments to the QAP that would exclude El Paso from the benefit of a "Proximity to the Urban Core" preference in the At-Risk Set-Aside allocation of low income housing tax credits.

The proposed amendment to the QAP includes: (1) the benefit of five bonus points and (2) a tie-breaker advantage for a proposed HTC development that are located in "Proximity to the Urban Core." See §11.9(c)(8) [bonus points] and §11.7(1) [tie-breaker advantage]. To qualify for this preference, a proposed development must be located within four miles of the urban area's main city hall building. §11.9(c)(8). Our delegation supports the concept of granting a preference in allocating tax credits to 'Urban Core' areas, as these zones are often in dire need of new affordable housing that will help energize and redevelop urban areas across the State of Texas.

However, as drafted, the proposed 'Urban Core' preference is only available to five very large cities located in Texas' most populous counties. Specifically, under the terms of the current proposed QAP draft only urban areas need to have both (1) a county-wide population in excess of one million and (2) a city population with over 500,000 in order to receive benefit of the Urban Core preference. §11.9(c) (8).

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As you are aware in your role as Commissioners of TDHCA, the At-Risk Set-Aside is a pool of tax credits that are set aside for nonprofit organizations dedicated to serve, among others, lower income tenants, economically distressed areas, and tenant populations with special housing needs.

El Paso has an Urban Core in dire need of tax credits. El Paso is an urban area under the proposed QAP definition, as it meets the 500,000 population threshold to quality as a city under the 'Urban Core' preference. However, the proposed QAP's one million population threshold for the County disqualifies El Paso from eligibility for the Urban Core preference. Due to the level of competition, the County-wide 'one million' population requirement would effectively disqualify El Paso and its qualified nonprofit developers from participating in the At-Risk Set-Aside.

El Paso is the sixth largest urban center in the State of Texas, as reported by the Texas State Library and Archives Commission for Texas City population estimates from 2010-2015 ("State Population Estimates"). The State Population Estimates for 2010-2015 lists the top five most populous counties wherein the same top five most populous cities are located. The proposed 'Urban Core' preference would simply create a round robin award cycle restricted to these five urban centers.

I respectfully request that the proposed 'Urban Core' preference be exempted from the At-Risk Set-Aside scoring criteria since it would exclude all but the top five most populous cities in the State of Texas, and in so doing, effectively exclude El Paso from At-Risk Set-Aside tax credits. Put simply, we do not believe it is lawful or equitable for this preference to be a material scoring factor within the At-Risk Set-Aside. As a matter of fairness, five urban areas should not be granted an insurmountable scoring advantage in at state-wide competition. We also question whether this preference is in direct conflict with the legislative purpose of the Regional Allocation Formula, which requires the General Set-Aside funds be allocated appropriately to the regions which contain the five urban areas afforded a preference under the current draft of the QAP. In the past, TDHCA staff has removed scoring items from consideration in At-Risk Set-Aside because of a disproportionate regional impact, and this sets a precedent from the removal of the Urban Core preference at this time.

Alternatively, if the Urban Core proposed preference will be applied to the At-Risk Set-Aside in the next year's tax credit allocation cycle, then we urge the component of the proposed amendment calling for a county with a population of over one million be eliminated to allow for statewide competition.

Thank you for your attention and consideration.

Respectfully,

Representative Joe Moody

District 78 | El Paso County

(6) Representative Joseph C. Pickett

The State of Texas
House of Representatives

Joseph C. Pickett
El Paso • District 79

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Chairman J. Paul Oxer, PE, and Commissioners
Texas Department of Housing and Community Affairs
PO Box 13941
Austin, Texas 78711-3941
221 East 11th Street
Austin, Texas 78701-2410

RE: Proposed Amendment to the Qualified Allocation Plan (QAP) Regarding "Proximity to the Urban Core" Preference for Only Five Texas Cities

Dear TDHCA Board Members:

I am writing to express my deep concern and strong opposition to the proposed amendments to the QAP that would exclude El Paso from the benefit of a "Proximity to the Urban Core" preference in the At-Risk Set-Aside allocation of low income housing tax credits.

The proposed amendment to the QAP includes: (1) the benefit of five bonus points and (2) a tie-breaker advantage for a proposed HTC development that are located in "Proximity to the Urban Core." See §11.9(c)(8) [bonus points] and §11.7(1) [tie-breaker advantage]. To qualify for this preference, a proposed development must be located within four miles of the urban area's main city hall building. §11.9(c)(8). I support the concept of granting a preference in allocating tax credits to 'Urban Core' areas, as these zones are often in dire need of new affordable housing that will help energize and redevelop urban areas across the State of Texas.

However, as drafted, the proposed 'Urban Core' preference is only available to five very large cities located in Texas' most populous counties. Specifically, under the terms of the current proposed QAP draft only urban areas need to have both (1) a county-wide population in excess of one million and (2) a city population with over 500,000 in order to receive benefit of the Urban Core preference. §11.9(c) (8).

As you are aware in your role as Commissioners of TDHCA, the At-Risk Set-Aside is a pool of tax credits that are set aside for nonprofit organizations dedicated to serve, among others, lower income tenants, economically distressed areas, and tenant populations with special housing needs. As you are also aware, competition is fierce among developers seeking to access the At-Risk Set-Aside pool each year. This makes every single point in the QAP vital to a developer seeking At-Risk Set-Aside tax credit allocation.

El Paso has an Urban Core in dire need of tax credits. El Paso is an urban area under the proposed QAP definition, as it meets the 500,000 population threshold to quality as a city under the 'Urban Core' preference. However, the proposed QAP's one million population threshold for the County disqualifies El Paso from eligibility for the Urban Core preference. Due to the level of competition, the County-wide 'one million' population requirement would effectively disqualify El Paso and its qualified nonprofit developers from participating in the At-Risk Set-Aside.

El Paso is the sixth largest urban center in the State of Texas, as reported by the Texas State Library and Archives Commission for Texas City population estimates from 2010-2015 ("State Population Estimates"). The State Population Estimates for 2010-2015 lists the top five most populous counties wherein the same top five most populous cities are located. The proposed 'Urban Core' preference would simply create a round robin award cycle restricted to these five urban centers. This proposed preference would be applicable to the At-Risk Set Aside category of which is a statewide tax credit competition but, with the 'Urban Core' preference become a restricted category only applicable to five cities in the entire state.

I, along with other members of the El Paso State Delegation, respectfully request that the proposed 'Urban Core' preference be exempted from the At-Risk Set-Aside scoring criteria since it would exclude all but the top five most populous cities in the State of Texas, and in so doing, effectively exclude El Paso from At-Risk Set-Aside tax credits. As a matter of fairness, five urban areas should not be granted an insurmountable scoring advantage in a state-wide competition. I also question whether this preference is in direct conflict with the legislative purpose of the Regional Allocation Formula, which requires the General Set-Aside funds be allocated appropriately to the regions which contain the five urban areas afforded a preference under the current draft of the QAP. In the past, TDHCA staff have removed scoring items from consideration in At-Risk Set-Aside because of a disproportionate regional impact, and this sets a precedent from the removal of the Urban Core preference at this time.

Alternatively, if the Urban Core proposed preference will be applied to the At-Risk Set-Aside in the next year's tax credit allocation cycle, then I urge the component of the proposed amendment calling for a county with a population of over one million be eliminated to allow for statewide competition.

Thank you for your attention and consideration.

Very truly yours,

Joe C. Pickett

Joe C. Pickett

(7) Senator José Rodríguez

JOSÉ RODRÍGUEZ
STATE SENATOR
SENATE DISTRICT 29
EL PASO, CULBERSON, HUDSPETH, PRESIDIO & JEFF DAVIS COUNTIES

October 14, 2016

Mr. J. Paul Oxer, PE, Chair
Dr. Juan Sanchez Muñoz, Vice-Chair
Ms. Leslie Bingham Escareño
Mr. Tom H. Gann
Mr. T. Tolbert Chisum
Mr. J.B. Goodwin

Governing Board
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941
Attn: Sharon Gamble
Email: htc.public-comment @tdhca.state.tx.us

RE: proposed "Proximity to the Urban Core" preference

Dear TDHCA Board Members:

As the State Senator for El Paso County, I'm writing to express my deep concern and strong opposition to the proposed amendments to the Qualified Allocation Plan (QAP), which would exclude El Paso from the benefit of a "Proximity to the Urban Core" preference in the At-Risk Set-Aside allocation of low-income housing tax credits.

The proposed amendment to the QAP includes: (1) the benefit of five bonus points and (2) a tie-breaker advantage for a proposed HTC development that are located in "Proximity to the Urban Core." *See* §11.9(c)(8) [bonus points] and §11.7(1) [tie-breaker advantage]. To qualify for this preference, a proposed development must be located within four miles of the urban area's main city hall building. I support the concept of granting a preference in allocating tax credits to "urban core: areas, as these zones are often in dire need of new affordable housing that would help energize and redevelop urban areas across the State of Texas.

However, as drafted, the proposed "Urban Core" preference is only available to five large cities located in Texas' most populous counties. Specifically, under the terms of the current proposed QAP draft, only urban areas with both (1) a countywide population in excess of one million and (2) a city population with over 500,000 will be eligible to benefit from the Urban Core preference.

As you're likely aware, the At-Risk Set-Aside is a pool of tax credits that are set aside for non-profit organizations dedicated to serve, among others, lower income tenants, economically distressed areas, and tenant populations with special housing needs. Competition is fierce among developers seeking to

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P.O. BOX 1105
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access the At-Risk Set-Aside pool each year. This makes every single point in the QAP vital to a developer seeking At-Risk Set-Aside tax credit allocation.

El Paso has an urban core in dire need of affordable housing. With a population of over 700,000, El Paso meets the 500,000 population threshold to quality as a city under the "urban core" preference. However, El Paso does not meet the one million population threshold for the county. This countywide population requirement effectively disqualifies El Paso and its qualified non-profit developers from participating in the At-Risk Set-Aside.

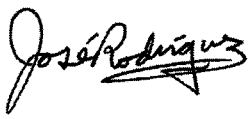
El Paso is the sixth largest urban center in Texas, as reported by the Texas State Library and Archives Commission for Texas city population estimates from 2010-2015 ("State Population Estimates"). The State Population Estimates for 2010-2015 lists the top five most populous counties wherein the same top five most populous cities are located. The proposed preference would simply create a round robin award cycle restricted to these five urban centers. This proposed preference would be applicable to the At-Risk Set Aside category of which is a statewide tax credit competition but, with the urban core preference become a restricted category only applicable to five cities in the entire state.

I respectfully request that the proposed "urban core" preference be exempted from the At-Risk Set-Aside scoring criteria since it would exclude all but the top five most populous cities in the State of Texas, and in so doing, effectively exclude El Paso from At-Risk Set-Aside tax credits. Put simply, I do not believe it is lawful or equitable for this preference to be a material scoring factor within the At-Risk Set-Aside. As a matter of fairness, five urban areas should not be granted an insurmountable scoring advantage in a statewide competition. There is also a question of whether this preference is in direct conflict with the legislative purpose of the Regional Allocation Formula, which requires the General Set-Aside funds be allocated appropriately to the regions which contain the five urban areas afforded a preference under the current draft of the QAP. In the past, TDHCA staff has removed scoring items from consideration in At-Risk Set-Aside because of a disproportionate regional impact, and this sets a precedent for the removal of the Urban Core preference at this time.

Alternatively, if the proposed Urban Core preference will be applied to the At-Risk Set-Aside in the next year's tax credit allocation cycle, then we urge the component of the proposed amendment calling for a county with a population of over one million be eliminated to allow for statewide competition.

Thank you in advance for your attention and consideration of these issues. Please do not hesitate to contact my Chief of Staff, Sushma Smith, at (512) 463-0129 should you have any questions or need additional information.

Sincerely,



José Rodríguez

(8) City of Fort Worth

FORT WORTH®

October 7, 2016

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

By fax: (512) 475-0764, attn: Teresa Morales.

Re: 2017 Qualified Allocation Plan – Comments and Suggested Changes

Dear Ms. Morales:

The City of Fort Worth appreciates the opportunity to submit these comments regarding the proposed 2017 Qualified Allocation Plan (QAP).

Our comments are in relation to two sections in the QAP: Section 11.9(d)(7) – Concerted Revitalization Plan, and Section 11.9(c)(5) – Educational Quality.

11.9(d)(7) – Concerted Revitalization Plan

We support this section and the intent for developments which are part of concerted revitalization plans to be able to achieve up to seven (7) points, but want to amend a typo in the 2017 QAP. We suggest that the first sentence in section 11.9(d)(7)(A)(i), which currently reads...

> "an Application may qualify to receive up to six (6) points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed and executed."

Be amended to read...

> "an Application may qualify to receive up to **seven (7)** points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed and executed."

Amending this sentence to seven points would be consistent with the number of points available further down in section 11.9(d)(7)(A)(ii), which reads...

> "up to seven (7) points will be awarded based on:"

We would also like to suggest that the sentence in section 11.9(d)(7)(A)(ii)(III) which reads...

Fort Worth
All-America City
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KELLY ALLEN GRAY
COUNCILMEMBER – DISTRICT 8

CITY OF FORT WORTH ★ 1000 THROCKMORTON STREET ★ FORT WORTH, TEXAS 76102
817-392-6118 ★ Fax 817-392-6187

"Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, 11.9(c)(4)"

Be amended to...

"Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, 11.9(c)(4)**(B) but for the criteria found in 11.9(c)(4)(A) and subparagraphs 11.9(c)(4)(A)(i) and 11.9(c)(4)(A)(ii)"**

Revitalization of once vital neighborhoods improves quality of life and makes our communities and the State stronger. However, achieving true revitalization is not easy and is accomplished with sustained effort over a number of years. Successful revitalization initiatives must consider the full range of factors that impact resident quality of life. This definitely includes housing – as a neighborhood is being revitalized, and becomes more attractive to a range of incomes, housing can become more expensive and ultimately inaccessible to lower income children, families, and individuals. Ideally, concerted neighborhood revitalization includes housing accessible to a range of incomes so that all, especially those most in need, benefit from the investment. These worthy initiatives cannot adequately navigate this challenge without 9% tax credits.

Clarifying Language to 11.9(c)(5) – Educational Quality

We agree with the importance Educational Quality, and we support that a goal of the QAP is to consider the schools that will be accessible to tenants. However, we believe that the language in the 2017 QAP is potentially problematic, and should be clarified, because almost all, if not all, schools have some registration/application process and capacity or enrollment limit. We therefore suggest that the fourth sentence of Section 11.9(c)(5) Educational Quality which currently reads...

"Schools with an application process for admittance, limited enrollment or other requirements that may prevent a tenant from attending will not be considered as the closest school or the school which attendance zone contains the site."

Be amended to read...

"Schools with an application process for admittance **that include academic achievement or other potentially restrictive requirements** that may prevent a tenant from attending will not be considered as the closest school or the school which attendance zone contains the site."

Amending the QAP in this manner better aligns with the TDHCA objective of considering only those schools which are accessible to tenants of the proposed housing development.

Additional Components to 11.9(c)(5) – Educational Quality

We believe that the QAP should award points for schools that (1) serve students living in an area that is a part of a concerted revitalization plan and (2) have shown sustained multi-year progress. The reality is that, even with vigorous focus on improvement for schools in underserved areas coupled with concerted revitalization efforts, educational improvement is incremental. Improved scholastic performance is impacted by a number of factors outside of the classroom – such as having enough to eat, having a safe home life, having before- and after-school activities, living in a healthy environment, etc. Affordable housing should not be the last component of a concerted revitalization effort, but unfortunately, that is currently the likely outcome based on existing QAP provisions.

We therefore suggest Section 11.9(c)(5)(A)-(E) be amended to read:

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score (5 points); **or**

(B) **The Development Site is part of a concerted revitalization plan that meets the requirements in section 11.9(d)(7) and is within the attendance zone of an elementary school, a middle school and a high school with an Index 1 score that has improved for three consecutive years prior to application (5 points); or**

(C) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (3 points, or 2 points for a Supportive Housing Development); or

(D) **The Development Site is part of a concerted revitalization plan that meets the requirements in section 11.9(d)(7) and is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with an Index 1 score that has improved for three consecutive years prior to application (3 points, or 2 points for a Supportive Housing Development); or**

(E) The Development Site is within the attendance zone of a middle school or a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (1 point); or

(F) The Development Site is within the attendance zone of an elementary school with an Index 1 score in the first quartile of all elementary schools statewide.(1 point); or

(G) If the Development Site is able to score one or three points under clauses (B) - **(F)** above, two additional points or 1 point for a Supportive Housing Development may be added if one or more of the features described in subclause (1) - (4) is present:

In Summary

We applaud TDHCA for Section 11.9(d)(7) which appreciates the importance and the urgent need for thoughtful, well executed revitalization efforts. High-quality mixed-income affordable housing, made possible by 9% tax credits, helps these worthy initiatives accelerate progress while ensuring the neighborhood remains accessible to a range of incomes.

Additionally, we encourage TDHCA to amend and expand Section 11.9(c)(5). We share the belief that quality neighborhood schools are a critical factor achieving measurable improvements in the quality of life for residents within an undergoing neighborhood revitalization. We also believe that affordable housing is also a critical component toward driving successful outcomes. We therefore recommend that additional recognition of the need for affordable housing should be given for concerted revitalization programs where educational improvements are being realized on a year-by-year basis.

We thank you for your consideration.

Sincerely,

Kelly Allen Gray
Fort WorthCity Councilmember, District 8
cc: TDHCA Board of Directors

(9) City of Harlingen

CITY OF
HARLINGEN
TEXAS

CAPITAL OF THE LOWER RIO GRANDE VALLEY

Mission Statement:
"Ensure a business-friendly climate focused on economic growth, quality of life and efficient delivery of excellent services to our community."

October 10, 2016

Ms. Sharon Gamble
9% Competitive Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Tx 78701

In re: Comments on Proposed 2017 QAP

Dear Ms. Gamble:

Thank you for the opportunity to comment on the proposed 2017 QAP.

As the mayor of the City of Harlingen I represent approximately 75, 000 people in the Rio Grande Valley of Texas. Harlingen is proud of the role it has played in the history of Texas. It is important to us that we preserve our past and the buildings that help tell our story.

Many fine people in Harlingen and a number of businesses have invested in downtown Harlingen in recent years to restore the historic downtown area. Key to moving forward will be our ability to access the tax credit program. I believe this program can be used to preserve historic buildings in Harlingen as well as provide sorely needed housing for low income families.

The 84th Legislature made the rehabilitation and adaptive reuse of certified historic structures a priority for Texas through the Low Income Housing Tax Credit process. That cannot happen if the QAP makes it unlikely that those who wish to provide housing in historical buildings will be able to successfully compete for funding.

Your proposed rules would undermine the legislature's desires by making a typical historic project uncompetitive in the following ways.

(1) As written, the school achievement points awarded in the QAP would effectively disqualify any site in Harlingen, historical or not. My understanding is that a total of 5 points can be obtained if all of the schools a child would attend exceed the mean score in the Region.

The mean score in Region 11 has been determined to be 73. None of the high schools in Harlingen meet that score. In the downtown area, where our most important and significant historic buildings are located, the school scores are 72, 70 and 69. I suspect

that the general rule in Texas is that historic buildings are located in or close to downtown areas where the school achievement scores are below the median of their Region. Ironically, under last year's QAP, a Harlingen project would have received 3 points. Despite significant improvement in Harlingen schools achievement scores this year, the proposed rules would now result in a Harlingen project receiving 0 points. Moving the goal posts in this fashion is not only disheartening, it is discriminatory.

Responding to the legislature's instruction to encourage the rehabilitation of historic buildings, the QAP awards 5 points for the rehabilitation of an historic building. But since the QAP awards the same number of points for educational achievement, the effect of which is to push housing to suburban areas, the points for historic rehabilitation are effectively neutralized.

It would be more equitable to allow the development the opportunity to achieve the additional 2 Educational Quality points (described in i through iv) without scoring 1 or 3 points first. These 2 points symbolize positive characteristics deemed worthy of points. Furthermore, the points are capped at a modest 2. Thus, this modification would be consistent with your educational quality goals and be limited to only 2 points.

In short, I request that you find some way to amend the QAP so that the points awarded for educational achievement, a worthy goal, do not have the effect of wiping out the points you award for the rehabilitation of an historical building.

(2) As written, the QAP expands the buffer zone from railroad tracks from 100' to 500'.

I appreciate that this is an attempt to protect residents from the noise of trains and the hazards of a train accident. Putting aside the legitimate question of whether a train track is more dangerous or noisy than some city streets, I would point out this provision would be an absolute disqualifier for the rehab of many historical sites. Most of the great buildings built in the early years of this country were located near railroads. Under this provision no historic building located within 500' from a track would be eligible to be rehabbed into residences, no matter how appropriate and desirable. I wager that there are very expensive and desirable condos in many of our great cities that are within 500' of railroad tracks. There is no evidence that this has been a problem in Texas. This change in the QAP is a solution looking for a problem.

I understand that the 500' number comes from a Federal Agency policy or best practice. Just because the federal government does something does not mean we need to follow its lead. That regulation may be outdated, it may not be based on good facts and we do not really know how it came into existence. It may be a good regulation for a city but not for a small or mid sized town. We should have more information before we make this change.

If there is real evidence to justify widening the buffer from 100' to 500', I request that you exempt historical buildings from the provision. There is a difference between a

building that has been sitting near a railroad track for 50 or 100 years and allowing someone to build new living quarters within 500' of a railroad track.

3. As written, the City of Harlingen (pop. 75,000) would no longer be eligible for Community Rehabilitation Project points because the proposed QAP disallows them for cities under 100,000.

I am told that this change is being proposed because some developers took advantage of the provision in smaller towns. I have no information about that and do not know if it was one incident or more, but I can assure you that the City of Harlingen has a comprehensive and long term Community Rehabilitation Project in downtown Harlingen and the rehabilitation of several historical buildings is a major part of the project. The clean-up and renewal of downtown is one of the reasons I ran for re-election as mayor.

Harlingen should not be punished just because a developer somewhere in a mid-size city did not act properly. Surely there must be some way to change this provision where legitimate projects in mid-size cities can receive these points. Otherwise, larger cities get the points and small towns have a program that gives them CRP points but cities the size of Harlingen are unfairly left in the cold.

Section 42 of the Internal Revenue Code specifically gives preference to projects which are located in qualified census tracts and the development of which contributes to a concerted community revitalization plan. That being the case I request that this bracket provision be amended to award full CRP points for a development in a Qualified Census Tract regardless of population or in a Qualified Census Tract in a jurisdiction of at least 50,000.

I appreciate your work on the QAP and your efforts to be fair to all parties and provide the best housing at the least cost for those who need assistance. I share that goal and believe there is a way to do that in a way that also allows us to preserve the historic buildings that mean so much to our communities.

I believe these suggested changes to the proposed QAP will further that goal.

Respectfully submitted,

Chris Boswell, Mayor

(10) City of San Angelo

The City Of
San Angelo, Texas
72 West College Avenue, San Angelo, Texas 76903

October 10, 2016

Sharon Gamble
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941

RE: 2017 Draft Qualified Allocation Plan

Dear Ms. Gamble:

Thank you for the opportunity to comment on the 2017 Draft Qualified Allocation Plan. This comment concerns the draft language under Section 11.9(d)(7) Concerted Revitalization Plan.

The current draft proposes that points under Section 11.9(d)(7) Concerted Revitalization Plan only be available for Developments located in an Urban Area in a city with a population of 100,000 or more *or* Rural Areas. As proposed, urban cities with a population of less than 100,000 are ineligible for revitalization points.

The City of San Angelo has a population just under 100,000. Under the proposed language, the City's revitalization area would not be eligible for Concerted Revitalization Plan points, even though TDHCA granted such points to our city in 2016. There is no change to our revitalization area that could consider it less relevant than revitalization areas in cities with a population of 100,000 or more.

The federal Office of Management and Budget defines a Metropolitan Statistical Area (MSA) as an area that has at least one core urbanized area of 50,000 or more population plus adjacent territory that has a high degree of social and economic integration with that core as measured by commuting ties. San Angelo is the urbanized core for the San Angelo MSA.

We ask that TDHCA consider lowering the Section 11.9(d)(7) Concerted Revitalization Plan Urban Area population requirement to 50,000 to coincide with the MSA definition.

Thank you for your consideration.

Robert Salas, Director
Neighborhood & Family Services Department

(11) City of San Saba

City of San Saba

October 14, 2016

Mr. Tim Irvine, Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941
tim.irvine@tdhca.state.tx.us

Re: Proposed Rule Revisions and Changes to 10 Texas Administrative Code ("TAC") - Public Comment

Dear Mr. Irvine,

I have become aware of some proposed changes to the 10 TAC that may impact our community's ability to provide necessary workforce housing to our citizens. Please accept these comments as evidence of our interest in preserving and enhancing access to programs and capital through the TDHCA. Thank you for the opportunity to provide this feedback.

CHAPTER 11

RULE: **§11.9(c)(4) Opportunity Index:**
(A)Threshold: A Proposed Development is eligible for a maximum of seven (7) opportunity index points if it is located in a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and meets the requirements in (i) or (ii) below.

(i) The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and an income rate in the two highest quartiles within the uniform service region. (2 points)

(ii) The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile, without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. and, (1 point)"

COMMENT: San Saba, a Rural Community, has been fortunate to see a flurry of growth in employers, and our workforce over the last few years. Because of this we had

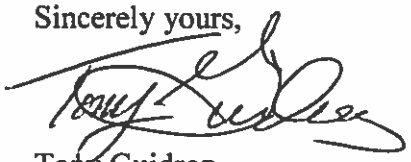
sought out help in providing additional affordable housing for our community. We submitted a Tax Credit Application during the 2016 acceptance period with the help of a well-known Developer and non-profit organization. Because of a clerical error we were unable to receive an award. However, our efforts are now focused in applying again in 2017.

Given the disparity between our relatively dense economic and social service amenities and our inconsistent population and socioeconomic patterns. San Saba contains some substandard structures, modest suburban-style developments, ranches, and farm property—meaning that any application of ranking criteria according to quartiles is going to yield uneven results.

REQUEST: **Our understanding is that the existing criteria related to high opportunity in rural areas is adequate, and we would ask that any broad application of quartile and poverty rankings in rural areas be reconsidered.**

Please let me know if you have any questions or concerns. Thank you again for your time and consideration.

Sincerely yours,



Tony Guidroz
Director of Economic Development
City of San Saba

cc: Marni Holloway
Sharon Gamble

(12) Travis County

Travis County Housing Finance Corporation/Travis County Development Authority
700 Lavaca, Suite 1560
Austin, Texas 78701
(512) 854-9116
www.traviscountytx.gov/corporations/

October 14, 2016

Marni Holloway
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, TX 78701

Re: 2017 Qualified Allocation Plan and Uniform Multifamily Rules Comments

Dear Ms. Holloway:

The comments below are presented on behalf of the Travis County Housing Finance Corporation and Travis County Development Authority (collectively, "The Corporations"). The proposed language changes are relative to the Draft 2017 Qualified Allocation Plan (QAP).

Section 11.7 Tie Breaker Factors

The Corporations supports TAAHP's comments and supports TDHCA placing Urban Core as the first tie breaker factor. Having an educational quality factor as two of the seven tie breakers seems unnecessary. Poverty rate should be deleted so that linear distance is the last tie breaker should all others fail to break the tie. The Corporations supports eliminating tie breaker factors #4 related educational quality and #6 related to census tracts with lowest poverty rate.

Section 11.9 (c)(8) Proximity to the Urban Core
The Corporations support the new Proximity to Urban Core scoring item.

Section 11.9(d)(7) Concerted Revitalization Plan.
The Corporations support TAAHP's comments for revised language as noted below:

(7) Concerted Revitalization Plan. An Application may qualify for points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.

~~(A)For Developments located in an Urban Area, and in a city with a population of 100,000 or more.~~

(i) an Application may qualify to receive up to six (6) points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed ~~and executed~~. The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems. The concerted revitalization plan that meets the criteria described in subclauses (I) - (IV) of this clause:

~~(I) The concerted revitalization plan must have been adopted by the municipality or county in which the Development Site is located. The resolution adopting the plan or other acceptable evidence that the plan has been duly adopted must be submitted with the application.~~

(II) The problems in the revitalization area must be identified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. These problems must include the limited availability of safe, decent, affordable housing and may include the following:

a. long-term disinvestment, such as significant presence of residential and/or commercial blight, streets infrastructure neglect such as inadequate drainage, and/or sidewalks in significant disrepair;

b. declining quality of life for area residents, such as high levels of violent crime, property crime, gang activity, or other significant criminal matters such as the manufacture or distribution of illegal substances or overt illegal activities;

(III) Staff will review the target area for presence of the problems identified in the plan and for targeted efforts within the plan to address those problems. In addition, but not in lieu of, such a plan may be augmented with targeted efforts to promote a more vital local economy and a more desirable neighborhood, including but not limited to:

a. creation of needed affordable housing by improvement of existing affordable housing that is in need of replacement or major renovation;

b. attracting private sector development of housing and/or business;

c. developing health care facilities;

d. providing public transportation;

e. developing significant recreational facilities; and/or

f. improving under-performing schools.

(IV) The adopted plan must have a sufficient, documented and committed budget to accomplish its purposes on its established timetable. The~~is~~ funding for the budgeted expenses must either be identified in the plan or have already been spent in full or in part, such that the problems identified within the plan will have been sufficiently mitigated and addressed within 5 years of being placed in service.

(ii)up to seven (7) points will be awarded based on:

(I) Applications will receive four (4) points for a letter from the appropriate local official providing documentation of measurable improvements within the revitalization area based on the target efforts outlined in the plan; and

(II) Applications may receive (2) points in addition to those under subclause (I) of this clause if the Development is explicitly identified in a ~~resolution by~~ letter from the the city or county as contributing more than any other to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause.. If multiple Applications submit letters ~~resolutions~~ under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points.

(III) Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4)

Thank you for your consideration of our comments. Please contact me at karen.thigpen@traviscountytx.gov or (512) 854-4743 with any questions.

Sincerely,

Karen Thigpen, HDFP
Project and Program Manager
Travis County Corporations

(13) Fort Worth Housing Solutions

October 14, 2016

Ms. Sharon Gamble
Mr. Brent Stewart
TDHCA
221 East 11th Street
Austin, Texas 78701

Re: 2017 Uniform Multifamily Rules and QAP

Dear Ms. Gamble and Mr. Stewart:

Please accept these comments on the draft Uniform Multifamily Rule, Qualified Allocation Plan, and Real Estate Analysis Rules on behalf of the state's 28 leading public housing authorities.

Abilene
Arlington
Austin
Baytown
Beeville
Bowie County
Central Texas Council of Governments
Central Texas Housing Consortium
Dallas
Denton
Edinburgh
El Paso
Fort Worth
Georgetown
Granbury
Gregory
Hidalgo County
Houston
Kenedy
Mount Pleasant
New Boston
Pecos
Plano
Port Arthur
San Antonio
Tarrant County
Taylor
Travis County

These housing authorities span the entire state, including large cities, towns, and counties all over Texas.

1. Revise Undesirable Neighborhood Characteristics Rule

Legacy public housing sites house tens of thousands of children in Texas. Unfortunately, HUD cost-containment rules resulted in housing that was obsolete the day it was built many decades ago. For example, HUD considered air conditioning a "luxury amenity" and prohibited it in public housing design.

The Rental Assistance Demonstration (RAD) program provides a unique opportunity to undo the mistakes of the past. As you know, the low-income housing tax credit program is a critical component of RAD financing. Through RAD and in partnership with TDHCA, we have the opportunity right now to redevelop public housing.

We are truly appreciative of the Department's efforts in recent years to balance revitalization with high opportunity, and especially in the 2017 draft rules to make adjustments so that our large cities are still eligible to participate. The undesirable neighborhood characteristics rule is one part of the rules where further work is needed.

Attached to this letter is a mark-up of the rule, and all of these changes are logical extensions of the proposed rule. The Department should allow for flexibility in its rule so that the board of TDHCA will have the information pursuant to the disclosure rule, but then can decide whether redevelopment of a site is good housing policy for the State of Texas. Because this provision of the rules is so interwoven with fair housing, a letter from HUD that a site is consistent with site and neighborhood standards regulations should also be allowed as mitigating evidence.

On the subject of crime and neighborhoodscout.com, we have several concerns. First, this website requires a paid subscription. Second, the data is not transparent. We understand that the Department attempted to purchase the data a few years ago, and that this was not possible. It is very difficult to refute a statistic when the geographic boundaries of the beat or neighborhood are unknown and the underlying crime data is not provided. Third, some of the most successful public housing redevelopment efforts nationwide have involved high-crime areas. Cabrini-Green redevelopment, which has not been perfect but has certainly been better than the high-rise towers that existed before, is a prominent example. The reality is that children, unfortunately, are living in high-crime neighborhoods all over Texas and will continue to do so regardless of the 2017 TDHCA rules. The question for the Department is whether it wants to be part of the solution, or whether it wants to redline neighborhoods—the Fifth Ward in Houston, East Austin, downtown Fort Worth – with some of the greatest housing need in the State from participating in housing programs.

On schools, the reality is that many kids attend charter schools. In Austin, as many as 15% of kids attend charter school, and more are being built every day. The argument that a child will not have an opportunity for a good education if affordable housing is constructed in certain neighborhoods is not based in reality. Moreover, huge swaths of our largest cities are ineligible from participating in housing programs with the draft rule as it currently stands. We urge the Department to focus on elementary schools only, which are often neighborhood schools. The vast majority of children in affordable housing attend elementary schools.

As for remediation, the proposed 2017 rule is much stricter and severely constrains the board of TDHCA in exercising discretion. We urge the board to restore the discretion that was already in the rule *before* the federal court dismissed the Dallas lawsuit.

2. Revise Community Revitalization Points So HUD Revitalizing Areas Qualify

These points have become almost impossible to win. Opening this scoring item to HUD-approved plans such as a demolition/disposition approval or the Choice Neighborhoods program should qualify. We also urge the Department to limit these points to qualified census tracts as is required by Section 42(m)(1)(B)(ii)(III) of the Internal Revenue Code.

The requirement of a city resolution is unnecessary and should be removed. If HUD approves a revitalization plan, why would the Department not accept that approval?

The requirement that funding must have been committed to the plan already is also too restrictive. This section needs to be revised to allow redevelopment where HUD has found that a site is part of a "revitalizing area" under HUD regulations. HUD has always carved out an exception to fair housing for revitalizing areas in the site and neighborhood standards. Examples of revitalizing areas at 24 CFR 983.57(e)(3)(vi) include "sites that are an integral part of the overall local strategy for the preservation or restoration of the immediate neighborhood and sites in a neighborhood experiencing significant private investment that is demonstrably improving the economic character of the area (a '**revitalizing area**')."

A letter from a city official or HUD should that a site is a revitalizing area should suffice for these points.

3. Cost Per Square Foot Points Should Focus on Eligible Hard Cost, Not Building Cost

One of the most helpful changes in the 2017 proposed QAP is the term "Eligible Hard Cost" which allows developers voluntarily to include costs in eligible basis to qualify for points. We applaud the Department for this change, which will lead to more transparency and due diligence regarding costs at application.

We do recommend clarifying that the Building Cost limits only apply to Eligible Building Costs so that the first sentences read:

"An Application may qualify to receive up to twelve (12) points based on either the Building Cost per square foot of the proposed Development voluntarily included in eligible basis ("Eligible Building Cost") or the Hard Costs per square foot of the proposed Development voluntarily included in eligible basis ("Eligible Hard Cost"), as originally submitted in the Application. For purposes of this paragraph, Eligible Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Eligible Hard Cost will include general contractor overhead, profit, and general requirements."

Real Estate Analysis Rules

Two changes to the REA rules would be very helpful in RAD transactions: developer fee and property valuation in determining acquisition credits.

The first is allowing 15% developer fee on acquisition costs in 4% tax credit transaction if financed through the RAD program. This would be a carve-out to the general rule that no developer fee is allowed on related-party acquisitions, and would reflect the work that is required in seeking the necessary HUD approval, such as for demolition/disposition and RAD. Also, because the 4% program is not competitive, this change would not harm other developments' feasibility.

The second change to REA rules is to allow the appraisal determining acquisition value in a RAD transaction to reflect market value of the property rather than restricted value. As discussed and approved by the board at the October 13 meeting, this approach to valuation is consistent with HUD guidance and with state agency underwriting practices of RAD transactions throughout the country, including Colorado, Florida, Georgia, New Jersey, Pennsylvania, South Carolina, and

Virginia. Nationwide a number of closed RAD transactions have been awarded acquisition credits based on building values derived using market rents under the income approach. Tax counsel for these transactions have opined that this approach is reasonable, as have national accounting and appraisal firms. The reason this approach has been accepted nationwide is that in the "As Is" condition public housing developments operate on a breakeven basis, preventing an accurate valuation under the income approach. There are several ways in which HUD may allow the release of public housing restrictions. For public housing converting to Section 8 assistance, at the closing of RAD transactions, the existing public housing restrictions are removed and the property is unencumbered. This release of public housing restrictions supports the use of a market-rent derived value. The additional resources generated by this approach can be significant in markets with strong rental markets, where affordability crises often exist. For example, in Austin the differential between appraised value based on market rents versus RAD rents represented approximately $5 million in additional tax credit equity generated from acquisition tax credits.

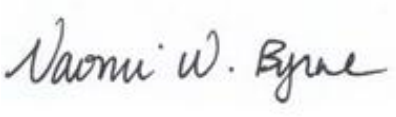
Below is the requested revision:

" §10.304(d)(10)(B) Appraisal Rules and Guidelines: Value Estimates, Developments with Project-Based Rental Assistance.

(B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value". For public housing converting to project-based rental assistance or project-based vouchers under the Rental Assistance Demonstration (RAD) program, the value must be based on the unrestricted market rents. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates and/or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter."

Thank you for the opportunity to provide comments. We look forward to continuing to work with TDHCA so that important redevelopment opportunities can be appropriately pursued with the 4% and 9% low-income housing tax credit programs.

Sincerelv.



Digitally signed by Naomi W. Byrne
DN: cn=Naomi W. Byrne, o=Fort Worth Housing Authority, ou, email=nbyrne@ftwha.org, c=US
Date: 2016.10.14 15:22:45 -05'00'

Naomi W. Byrne
President, Fort Worth Housing Solutions
PHA QAP Committee Chair

Supporting Public Housing Authorities:

Abilene
Arlington
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Baytown
Beeville
Bowie County
Central Texas Council of Governments
Central Texas Housing Consortium
Dallas
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Granbury
Gregory
Hidalgo County
Houston
Kenedy
Mount Pleasant
New Boston
Pecos
Plano
Port Arthur
San Antonio
Tarrant County
Taylor
Travis County

(3) Undesirable Neighborhood Characteristics.

(A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. An Applicant may choose to disclose the presence of such characteristics at the time the pre-application (if applicable) is submitted to the Department. Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit the documentation described under subparagraphs (C) and (D) of this paragraph at pre- application and staff may perform an assessment of the Development Site to determine Site eligibility. The Applicant understands that any determination made by staff or the Board at the time of bond inducement regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the undesirable neighborhood characteristics become available while the full Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board. Should staff determine that the Development Site has any of the characteristics described in subparagraph (B) of this paragraph and such characteristics were not disclosed, the Application may be subject to termination. Termination due to non-disclosure may be appealed pursuant to §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)). The presence of any characteristics listed in subparagraph (B) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit, and include, where applicable, a review as described in subparagraph (C) of this paragraph. The assessment of the Development Site and neighborhood will be presented to the Board with a recommendation with respect to the eligibility of the Development Site. Factors to be considered by the Board, despite the existence of the undesirable neighborhood characteristics are identified in subparagraph (E) of this paragraph. Should the Board make a determination that a Development Site is ineligible, the termination of the Application resulting from such Board action is not subject to appeal.

(B) The undesirable neighborhood characteristics include those noted in clauses (i) - (iv) of this subparagraph and additional information as provided in subparagraphs (C) and (D) must be submitted in the Application. If an Application for a Development Site involves three or more undesirable neighborhood characteristics, in order to be found eligible it will be expected that, in addition to demonstrating satisfactory mitigation for each characteristic disclosed, the Development Site must be located within an area in which there is a concerted plan of revitalization already in place or that private sector economic forces, such as those referred to as gentrification are already underway and indicate a strong likelihood of a reasonably rapid transformation of the area to a more economically vibrant area. In order to be considered as an eligible Site despite the presence of such undesirable neighborhood characteristic, an Applicant must demonstrate actions being taken that would lead a reader to conclude that there is a high probability the undesirable characteristic will be sufficiently mitigated within a reasonable time, typically prior to placement in service, and that the undesirable

characteristic will either no longer be present or will have been sufficiently mitigated such that it would not have required disclosure.

a. The Development Site is located within a census tract that has a poverty rate above ~~40~~30 40 percent for individuals

~~b. The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.~~

c. The Development Site is located within 1,000 feet (measured from nearest boundary of blighted structure) of ~~multiple~~ at least 5 vacant structures visible from the street, which that have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.

d. The Development Site is ~~l~~located within the attendance zones of an elementary school~~, a middle school or a high school~~ that does not have a Met Standard rating by the Texas Education Agency. ~~Any school in the attendance zone that has not achieved Met Standard for three consecutive years and has failed by at least one point in the most recent year, unless there is a clear trend indicating imminent compliance, shall be unable to mitigate due to the potential for school closure as an administrative remedy pursuant to Chapter 39 of the Texas Education Code.~~ In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary~~, middle and high school, respectively,~~ which may possibly be attended by the tenants in determining whether or not disclosure is required. The applicable school rating will be the 2016~~5~~ accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K- 6), ~~middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12)~~, the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. ~~Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating.~~ Development Sites subject to an Elderly Limitation or Single Room Occupancy is considered exempt and does not have to disclose the presence of this characteristic.

(C) Should any of the undesirable neighborhood characteristics described in subparagraph (B) of this paragraph exist, the Applicant must submit the Undesirable Neighborhood Characteristics Report that contains the information described in clauses (i)-(viii) of this subparagraph and subparagraph (D) of this paragraph so that staff may conduct a further Development Site and neighborhood review.

(i) A determination regarding neighborhood boundaries, which will be based on the review of a combination of natural and manmade physical features (rivers, highways, etc.), apparent changes in land use, the Primary Market Area as defined in the Market Analysis, census tract or municipal boundaries, and information obtained from any Site visits;

(ii) An assessment of general land use in the neighborhood, including comment on the prevalence of residential uses;

(iii) An assessment concerning any of the features reflected in paragraph (3) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (3);

(iv) An assessment of the number of existing affordable rental units (generally includes rental properties subject to TDHCA, HUD, or USDA restrictions) in the Primary Market Area, including comment on concentration based on the size of the Primary Market Area;

(v) An assessment of the percentage of households residing in the census tract that have household incomes equal to or greater than the median household income for the MSA or county where the Development Site is located; ~~and~~

An assessment of the number of market rate multifamily units in the neighborhood and their current rents and levels of occupancy;

(vii) An assessment of school performance for each of the schools in the attendance zone containing the Development that did not achieve the Met Standard rating, for the previous two academic years (regardless of whether the school Met Standard in those years), that includes the TEA Accountability Rating Report, a discussion of performance indicators and what progress has been made over the prior year, and progress relating to the goals and objectives identified in the campus improvement plan in effect; and

(viii) Any additional information necessary to complete an assessment of the Development Site, as requested by staff.

(D) Information regarding mitigation of undesirable neighborhood characteristics should be relevant to the undesirable characteristics that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application and may include, but is not limited to, the measures described in clauses (i)-(iv) of this subparagraph. In addition to those measures described herein, documentation from the local municipality may also be submitted stating the Development is consistent with their obligation to affirmatively further fair housing. The mitigation must be accompanied by a report summarizing the data and to support the conclusion of a reasonable expectation by staff and the Board that the issues will be resolved or significantly improved by the time the Development is placed into service. Conclusions for such reasonable expectation must be affirmed by an industry professional, as appropriate.

(i) Evidence that the poverty rate within the census tract has decreased over the five-year period preceding the date of Application, or that the census tract is contiguous to a census tract with a poverty rate below ~~20%~~ 40% and there are no physical barriers between them such as highways or rivers which would be reasonably considered as separating or dividing the neighborhood containing the proposed Development from the low poverty area must be submitted. Other mitigation may include, but is not limited to, evidence of the availability of adult education and job training that will lead to full-time permanent employment for tenants, a description of additional tenant services to be provided at the development that address root causes of poverty, evidence of gentrification in the area (which may include contiguous census tracts) and a clear and compelling reason that the Development should be located at the Site. ~~Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility.~~

(ii) Evidence that crime rates are ~~substantially~~ decreasing, based on violent crime data from the city's police department or county sheriff's department, for the police beat or patrol area within which the Development Site is located, based on the population of the police beat or patrol area that would yield a crime rate below the threshold indicated in this section. The instances of violent crimes within the police beat or patrol area that encompass the census tract, calculated based on the population of the census tract, may also be used. A map plotting all instances of violent crimes within a one-half mile radius of the Development Site may also be provided that reflects that the crimes identified are not at a level that would warrant an ongoing concern. The data must include incidents reported during the entire 2015 and 2016 calendar year. Violent crimes reported through the date of Application submission may be requested by staff as part of the assessment performed under subparagraph (C) of this paragraph. A written statement from the local police department or local law enforcement agency, including a description of efforts by such enforcement agency addressing issues of crime and the results of their efforts may be provided, and depending on the data provided by the Applicant, such written statement may be required, as determined by staff. For Rehabilitation or Reconstruction Developments, to the extent that the high level of criminal activity is concentrated at the Development Site, documentation may be submitted to indicate such issue(s) could be remedied by the proposed Development. Evidence of such remediation should go beyond what would be considered a typical scope of work and should include a security plan, partnerships with external agencies, or other efforts to be implemented that would deter criminal activity. Information on whether such security features have been successful at any of the Applicant's existing properties should also be submitted, if applicable.

(iii) Evidence of mitigation efforts to address blight or abandonment may include new construction in the area already underway that evidences public and/or private investment. ~~Acceptable mitigation to address extensive blight should go beyond the acquisition or demolition of the blighted property and identify the efforts and timeline associated with the completion of a desirable permanent use of the site(s) such as new or rehabilitated housing, new business, development and completion of dedicated municipal or county-owned park space.~~ In instances where blight exists but may only include a few properties, mitigation efforts could include partnerships with

local agencies to engage in community-wide clean-up efforts, or other efforts to address the overall condition of the neighborhood.

(iv) Evidence of mitigation for all of the schools in the attendance zone that have not achieved Met Standard will include documentation from a school official with oversight of the school in question that indicates current progress towards meeting the goals and performance objectives identified in the Campus Improvement Plan. For schools that have not achieved Met Standard for two consecutive years, a letter from the superintendent, member of the school board or a member of the transformation team that has direct experience, knowledge and oversight of the specific school must also be submitted. The letter should, at a minimum and to the extent applicable, identify the efforts that have been undertaken to increase student performance, decrease mobility rate, benchmarks for re-evaluation, increased parental involvement, plans for school expansion, and long-term trends that would point toward their achieving Met Standard by the time the Development is placed in service. ~~The letter from such education professional should also speak to why they believe the staff tasked with carrying out the plan will be successful at making progress towards acceptable student performance considering that prior Campus Improvement Plans were unable to do so.~~ Such assessment could include whether the team involved has employed similar strategies at prior schools and were successful. In addition to the aforementioned letter from the school official, information should also be provided that addresses the types of services and activities offered at the Development or external partnerships that will facilitate and augment classroom performance.

(E) In order for the Development Site to be found eligible by the Board, despite the existence of undesirable neighborhood characteristics, the Board must find that the use of Department funds at the Development Site must be consistent with achieving at least one of the goals in clauses (i) – (iii) of this subparagraph.

(i) Preservation of existing occupied affordable housing units, subject to federal or state income restrictions and mitigating evidence supports a conclusion that the characteristic will be remedied in an appropriate time period, which may be after placement in service; or ~~to ensure they are safe and suitable, or development of new high quality affordable housing units that are subject to federal rent or income restrictions; and~~

(ii) Factual determination that the undesirable characteristic(s) that has been disclosed are not of such a nature or severity that ~~they~~ should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph. Such information sufficiently supports a conclusion that the characteristic(s) will be remedied by the time the Development places into service; Or

(iii) The Development satisfies HUD Site and Neighborhood Standards or is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order.

(14) San Antonio Housing Authority

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October 14, 2016

Texas Department of Housing and Community Affairs
Sharon Gamble, Rule Comments
P.O. Box 13941, Austin, Texas 78711-3941

Ref: Urban Core Points - QAP

Dear Ms. Gamble,

Please consider these my comments on the Urban Core points. I am in favor of the proposed language as it is currently written. I have heard that others are recommending material changes to what is proposed by the TDHCA. I am against those proposed changes.

As you know, this new scoring item provides five points for developments within four miles of City Hall in the five largest cities in Texas. According to the TDHCA's board memo with the proposed 2017 QAP, it seeks to support development in gentrifying areas in close proximity to employment and other benefits.

Urban core points should be accessible to at risk deals. Looking at last year, most deals went to rural areas with small populations because it was easier to be at risk and high Opportunity in those areas. Moreover the at-risk funding comes after the USDA preference (so lots of rural deals get funded) and is a limited pool - its not unlimited, there will only be a few deals done, they need to be able to compete.

In looking at the 2016 awards in the At Risk Set-aside, 10 were Rural and 6 were Urban. None were in San Antonio where I am located. At Risk provides mixed income housing and opportunities for revitalization near job centers for families between 30% and 60% AMI, who need more affordable housing closer to their places of employment. It also promotes shorter commutes and greater use of public transportation, reducing car trips, cost of parking, etc. This, then, meets the purpose of the new proposed rule.

Moreover, At-Risk Deals *are already at a disadvantage* by being excluded from achieving the maximum 5 underserved points. It is unfair and unjustifiable to penalize At-Risk deals twice by not allowing either proximity to urban core points and full underserved points that are available to other projects in large cities.

Please keep the language as it is currently written. Feel free to call me if you have any questions at 210-477-6633.

Sincerely,

Timothy Alcott with permission Doug Rieland

Timothy Alcott
Development Services & Neighborhood Revitalization Officer

Cc: Marni Holloway
Tim Irvine

(15) Housing Authority of the City of El Paso

Housing Authority of the City of El Paso

Mr. J Paul Oxer, PE, Chair
Ms. Leslie Bingham Escareno
Mr. T. Tolbert Chisum
Dr. Juan Sanchez Munoz, Vice Chair
Mr. Tom H. Gann
Mr. J.B. Goodwin

Commissioners
Texas Department of Housing and Community Affairs
PO Box 13941
Austin, Texas 78711-3941
221 East 11th Street
Austin, Texas 78701-2410

RE: Proposed Amendment to the Qualified Allocation Plan (QAP) Regarding "Proximity to the Urban Core" Preference for Only Five Texas Cities

Dear TDHCA Board Members:

We are writing as the official elected delegation representing El Paso County, Texas to express our deep concern and strong opposition to the proposed amendments to the QAP that would exclude El Paso from the benefit of a "Proximity to the Urban Core" preference in the At-Risk Set-Aside allocation of low income housing tax credits.

The proposed amendment to the QAP includes: (1) the benefit of five bonus points and (2) a tie-breaker advantage for a proposed HTC development that are located in "Proximity to the Urban Core." See §11.9(c)(8) [bonus points] and §11.7(1) [tie-breaker advantage]. To qualify for this preference, a proposed development must be located within four miles of the urban area's main city hall building. §11.9(c)(8). Our delegation supports the concept of granting a preference in allocating tax credits to 'Urban Core' areas, as these zones are often in dire need of new affordable housing that will help energize and redevelop urban areas across the State of Texas.

However, as drafted, the proposed 'Urban Core' preference is only available to five very large cities located in Texas' most populous counties. Specifically, under the terms of the current proposed QAP draft only urban areas need to have both (1) a county-wide population in excess of one million and (2) a city population with over 500,000 in order to receive benefit of the Urban Core preference. §11.9(c) (8).

As you are aware in your role as Commissioners of TDHCA, the At-Risk Set-Aside is a pool of tax credits that are set aside for nonprofit organizations dedicated to serve, among others, lower income tenants, economically distressed areas, and tenant populations with special housing needs. As you are also aware, competition is fierce among developers seeking to access the At-Risk Set-Aside pool each year. This makes every single point in the QAP vital to a developer seeking At-Risk Set-Aside tax credit allocation.

El Paso has an Urban Core in dire need of tax credits. El Paso is an urban area under the proposed QAP definition, as it meets the 500,000 population threshold to quality as a city under the 'Urban Core' preference. However, the proposed QAP's one million population threshold for the County disqualifies El Paso from eligibility for the Urban Core preference. Due to the level of competition, the County-wide 'one million' population requirement would effectively disqualify El Paso and its qualified nonprofit developers from participating in the At-Risk Set-Aside.

El Paso is the sixth largest urban center in the State of Texas, as reported by the Texas State Library and Archives Commission for Texas City population estimates from 2010-2015 ("State Population Estimates"). The State Population Estimates for 2010-2015 lists the top five most populous counties wherein the same top five most populous cities are located. The proposed 'Urban Core' preference would simply create a round robin award cycle restricted to these five urban centers. This proposed preference would be applicable to the At-Risk Set Aside category of which is a statewide tax credit competition but, with the 'Urban Core' preference become a restricted category only applicable to five cities in the entire state.

The Housing Authority of the City of El Paso, Texas respectfully requests that the proposed 'Urban Core' preference be exempted from the At-Risk Set-Aside scoring criteria since it would exclude all but the top five most populous cities in the State of Texas, and in so doing, effectively exclude El Paso from At-Risk Set-Aside tax credits. Put simply, we do not believe it is lawful or equitable for this preference to be a material scoring factor within the At-Risk Set-Aside. As a matter of fairness, five urban areas should not be granted an insurmountable scoring advantage in at state-wide competition. We also question whether this preference is in direct conflict with the legislative purpose of the Regional Allocation Formula, which requires the General Set-Aside funds be allocated appropriately to the regions which contain the five urban areas afforded a preference under the current draft of the QAP. In the past, TDHCA staff has removed scoring items from consideration in At-Risk Set-Aside because of a disproportionate regional impact, and this sets a precedent from the removal of the Urban Core preference at this time.

Alternatively, if the Urban Core proposed preference will be applied to the At-Risk Set-Aside in the next year's tax credit allocation cycle, then we urge the component of the proposed amendment calling for a county with a population of over one million be eliminated to allow for statewide competition.

Thank you for your attention and consideration.

Very truly yours,

Arthur Provenghi
Legal Counsel

(16) Marble Falls Economic Development Corporation

Marble Falls
ECONOMIC DEVELOPMENT CORPORATION

October 14, 2016

Mr. Tim Irvine, Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941
tim.irvine@tdhca.state.tx.us

Re: New Proposed Rule at 10 Texas Administrative Code ("TAC") - Public Comment

Dear Mr. Irvine,

I was informed today about some proposed changes to the 10 TAC that may impact our community's ability to provide necessary workforce housing to our constituents. Please accept these comments as evidence of our interest in preserving and enhancing access to programs and capital through the TDHCA. Thank you for the opportunity to provide this feedback.

CHAPTER 11

RULE: **§11.9(c)(4) Opportunity Index:**
(A)Threshold: A Proposed Development is eligible for a maximum of seven (7) opportunity index points if it is located in a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and meets the requirements in (i) or (ii) below.

(i)The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and an income rate in the two highest quartiles within the uniform service region. (2 points)

(ii) The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile, without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. and, (1 point)"

COMMENT: Marble Falls, in particular, has been labeled an "agurb" or "exurb," meaning that our city has suburban, rural, and independent characteristics. In other words, we don't identify with explicit labels very well, and attempts to evaluate the needs of

our area are often futile, given the disparity between our relatively dense economic and social service amenities and our inconsistent population and socioeconomic patterns. Each of the census tracts in and around Marble Falls simultaneously contains substandard structures, modest suburban-style developments, multi-million-ranchettes, and lakefront property—meaning that any application of ranking criteria according to quartiles is going to yield uneven results.

REQUEST: **Our understanding is that the existing criteria related to high opportunity in rural areas is adequate, and we would ask that any broad application of quartile and poverty rankings in rural areas be reconsidered.**

Please let me know if you have any questions or concerns. Thank you again for your time and consideration.

Sincerely yours,

Christian Fletcher
Executive Director

Cc: Marni Holloway
Sharon Gamble

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(17) 5th Ward Community Redevelopment Corporation

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77226-1502

Main 713-674-0175
Fax: 713-674-0176
http:www.fifthwardcrc.org

October 12, 2016

Via Email – tim.irvine@tdhca.state.tx.us
Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, Texas 78701

Re: Comments - Draft 2017 Qualified Allocation Plan and Multifamily Rule

Dear Mr. Irvine,

Thank you to you and your staff for taking the time to meet with me regarding concerns with the proposed 2017 Qualified Allocation Plan (QAP) and Multifamily Rules (Rules) that impact the production of quality affordable housing in our inner city neighborhoods. Please accept the following comments and suggested changes.

§11.9. Competitive HTC Selection Criteria

(d) Criteria promoting community support and engagement.

(7) Concerted Revitalization Plan. This scoring category provides points to those Applicant's that has Development Site that is located in an area targeted for revitalization. We are concerned that the language required to be in the plan is too prescriptive. Not all revitalization plans will include specific language on affordable housing which is now required language in an eligible plan. We encourage staff to look at each plan and/or problems on an individual basis and respectfully recommend the following changes to this scoring category:

> "(7) Concerted Revitalization Plan. An Application may qualify for points under this paragraph only if no points are elected under ~~subsection (c)(4)~~ subsection (c)(4)(A) of this section related to Opportunity Index.
>
> (A) (II) The problems in the revitalization area must be identified through a process in which affected local residents had an opportunity to express their views….and prioritized. These problems ~~must include the limited availability of safe, decent, affordable housing and~~ may include the following:"

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Additionally, since we now have a set-aside requiring the Department to award tax credits to the highest scoring revitalization development, its seems duplicative to grant 2-points to a Development that is explicitly identified by a city or county as contributing more than any other to the concerted revitalization effort. We therefore recommend that these 2-additional points under this scoring category be added to the 4-points under subparagraph (ii)*(I)* for a total of 6-points if the Applicant provides a letter from the appropriate local official providing documentation of measurable improvements within the revitalization area based on the target efforts outlined in the plan.

Lastly, we recommend the following change to subparagraph (ii) *(III)* so that developments proposed to be located in inner city revitalization areas receive the benefits of an additional point if the targeted area is also rich in amenities.

> "Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4)(B) ~~§11.9(c)(4)~~."

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(6) Historic Preservation. We recommend the following changes that will incentivize historic preservation and the use of historic tax credit leveraging in the production of affordable housing:

> "…At least 10 percent ~~seventy-five percent~~ of the residential units shall reside within the Certified Historic Structure and the Development must reasonably be expected to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609…"

Subchapter B. Site and Development Requirements and Restrictions
§10.101. Site Requirements and Restrictions

(2) Undesirable Site Features. A Development Site that is within a certain distance from one or more undesirable **site** features will be deemed ineligible for consideration unless otherwise determined by the Board. Several of the changes add significant barriers to site selection and inner city development and re-development activities. We understand that the Board may determine that the described feature is acceptable but Applicants will not spend their money, time

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and effort to pursue a site that might not receive Board approval because of the site's proximity to an ineligible site feature as described in Staff's draft. We request that this provision remain as written in 2016.

(3) Undesirable Neighborhood Characteristics. A Development Site that is within a certain distance from one or more undesirable **area** features described in this provision will be deemed ineligible for consideration unless the Applicant can "*demonstrate satisfactory mitigation for each characteristic disclosed*". As currently drafted if the Development Site is part of a revitalization effort, the Applicant must also prove that there is a *"strong likelihood of a reasonable rapid transformation of the area to a more economically vibrant area"*.

Several of the ineligible features including the performance of the area schools and the proximity of the Development Site to blighted structures are not within the control of an Applicant to solve and therefore it would not be possible for the Applicant to demonstrate "*satisfactory mitigation"* or the likelihood of *"reasonable rapid transformation of the area"*.

Furthermore, deeming a Development Site that is located in a census tract with a poverty rate above 30% as ineligible will significantly impact the production of affordable housing in our inner city neighborhoods that are gentrifying and undergoing active revitalization and in particular those transactions financed with 4% tax credits. Currently bond project are feasible if they are located in QCT census tracts that qualify the proposed development for the QCT basis boost. QCT census tracts are by definition in higher poverty areas.

We suggest delete this provision in its entirety from the Rules. Alternatively, we suggest going back to the 2016 rules with respect to ineligible poverty rates and our other requested change are as follows:

Paragraph (B) should be revised such that if undesirable neighborhood characteristics exist in order for the proposed development to be found eligible the Applicant should only be required to provide evidence that the Development Site is in an area covered by a concerted plan of revitalization to demonstrate satisfactory mitigation for each characteristic disclosed. This evidence will demonstrate that the city is focused on the area and is targeting the area for investment and improvement.

Paragraph (B) (i) The Development Site is located with a census tract that has a poverty rate above <u>40 percent</u> ~~30 percent~~ for individuals <u>(or 55 percent for Developments in Region 11 and 13)</u>.

FIFTH WARD COMMUNITY REDEVELOPMENT CORPORATION
4300 Lyons Ave., Suite 300
P.O. Box 21502
Houston, TX
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Fax: 713-674-0176
http:www.fifthwardcrc.org

Paragraph (B) (iv) The performance of the applicable schools should be striken from consideration of ineligibility since the Applicant has no control over the decision making process regarding school performance. Additionally, as stated in testimony to the Board, stable, quality and affordable housing which the housing tax credit program is designed to provide is a factor in improving school performance.

Subchapter C. Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules or Pre-Clearance for Applications

§10.204. Required Documentation for Application Submission

(16) Section 811 Project Rental Assistance Program. We believe that the Section 811 program should not be a threshold item. We believe this should remain a scoring item, where an applicant has the choice of participation.

We respectfully submit these suggested changes for staff's consideration and inclusion in the final 2017 QAP and Rules. Please do not hesitate to contact me with any questions.

Sincerely,

Harvey Clemons Jr.

Cc: Marni Holloway, TDHCA – marni.holloway@tdhca.state.tx.us
Sharon Gamble, TDHCA – Sharon.gamble@tdhca.state.tx.us

(18) City Wide Community Development Corporation

From:	sherman roberts
To:	Sharon Gamble
Cc:	Sherman Roberts; Bernadette Mitchell
Subject:	Subject: TDHCA QAP Comments
Date:	Tuesday, October 11, 2016 10:45:52 AM
Attachments:	TDHCA QAP Comments.docx

Sharon D. Gamble MSW,PMP
Competitive Housing Tax Credit Program Administrator
Texas Department of Housing and community Affairs
Dear Ms. Gamble:
City Wide Community Development Corporation is a nonprofit developer that is working in the Lancaster Corridor in southern Dallas, a CRP area. Please consider the QAP Comments that are attached.
Sincerely,

Sherman Roberts, President & CEO
City Wide Community Development Corporation
www.citywidecdc.org
214-371-0888P

TDHCA QAP Comments

We propose that the Urban Core points criteria be amended to reflect that a City with a population over 500,000 in a County with a population over 1 million has a vast land footprint with a broader range of transportation options. For example, access to light rail service provides easy access to the Urban Core, and the development of light rail service is central to Urban planning. Therefore, we propose to add a provision that a site's proximity to light rail service is consistent with the QAP's criteria for Development Site access points under §11.9(c) criteria to serve and support Texans most in need. To that end, we propose the following language:

Proximity to the Urban Core: A development in a County with a population of greater than 1 million and in a City with a population of greater than 500,000 if the Development Site is located within 4 miles of the Main City Hall facility *OR if the Development Site is located less than 1/2 mile from a Light Rail station and is located within 8 miles of the Main City Hall.*

Proposed amendment to §11.9(d)(7)(A)(ii)(III); Applications will receive 1 point in addition to those under subclass (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index *§11.9(c)(4)(B)(i)(I)-(VX).*

This is currently written for 1 point under §11.9(c)(4), and this language directly conflicts with the provision that CRP "Applications may qualify for points under this section only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index." We suggest that §11.9(c)(4)(B) be further clarified so that an Application can take points regardless of whether it meets Opportunity Index points criteria in §11.9(c)(4)(A).

Proposed amendment to §11.9(c)(5): Development sites subject to an Elderly Limitation are considered exempt from schools as an undesirable neighborhood characteristics. Therefore, these sites should not be subject to Educational Quality rating and should be awarded 5 points.

Proposed amendment to §11.9(c)(6)(C): A census tract within the boundaries of the an incorporated are that has not received a competitive tax credit allocation or a 4 percent noncompetitive tax credit allocation *serving the same type of household* for a Development within the past 15 years (3 points).

Proposed amendment to §11.9(c)(6)(E): A census tract within the boundaries of an incorporated area an all continuous census tracts for which neither the census tract in which the Development is located nor the continuous census tracts have received an award or HTC allocation *serving the same type of household* within the past 15 years and continues to appear on the Department's inventory."

(19) Texas Association of Community Development Corporations

TACDC
ENHANCING COMMUNITIES THROUGHOUT TEXAS

October 14, 2016

Ms. Sharon Gamble
Tax Credit Program Manager
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Thank you for the opportunity to comment on the Draft 2017 Housing Tax Credit Qualified Allocation Plan and Multifamily Rules. On behalf of TACDC's members, we want to thank staff for undertaking a longer, more thorough review of the QAP and rules and soliciting input from developers and trade associations.

Our comments represent a consensus of our member's input on the draft plans.

QUALIFIED ALLOCATION PLAN

11.2 Program Calendar for Competitive Housing Tax Credits.
We strongly urge the Department to not shorten the Administrative Deficiency Response Deadline from 5 days to 3 days. While we can understand the importance of speeding up the application review process, shortening the window for addressing deficiencies places undue burden on applicants and ultimately could prevent high quality deals from getting credits.

11.9(c)(3) Tenant Services
We encourage TDHCA to add details to the following requirement in order to ensure value for the tenants.

(B) The Applicant certifies that the Development will have a dedicated Service Coordinator or Case Manager to contact local service providers, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. The Service Coordinator will pro-actively engage and assess residents' needs through direct communication and tailor services appropriately. A Development selecting these points will also provide:
☐Minimum of 1 monthly program on-site provided by a local service provider; AND
☐Minimum of 3 local service providers engaged to provide services to residents; OR
☐The applicant is a non-profit and is a self-providing services to residents of the Development.

11.9(c)(4) Opportunity Index.
We strongly support TDHCA increasing the poverty rate to 20% and allowing second and third quartile census tracts to score on the Opportunity Index. These changes alone open up new areas that are excellent places to locate housing while also avoiding the consequence of all developers going for the few highest income and lowest poverty census tracts in the Region and driving up land prices.

TACDC
ENHANCING COMMUNITIES
THROUGHOUT TEXAS

11.9(c)(8) Proximity to Urban Core.
We strongly support the creation of Proximity to Urban Core as a scoring item in the 2017 Draft QAP. We feel that this point category will provide an opportunity to balance exurban and suburban housing siting with housing located in the Urban Core.

11.9(d)(5) Community Support from State Representative.
If a state rep seat is vacated, allow developers an extension to request a letter after the seat is filled.

11.9(e)(2) Cost of Development per Square Foot.
We are very supportive of the re-write of this section allowing excess development costs to be taken out of basis and essentially be fundraised for by other sources.

2017 Multi-Family Rules –Subchapter B

10.101(a)(2) Undesirable Site Features
We support the inclusion of the following language that was added to the 2017 Draft that was posted for public comment: "Sites within the applicable distance of any undesirable features identified in subparagraphs (A) – (K) may be considered ineligible….." We think it is important that Staff and Board have the flexibility to waive the presence of Undesirable Site Features if the Developer can prove that the feature would not negatively impact residents.

10.101(a)(3) Undesirable Neighborhood Characteristics
In general, TACDC recommends that

10.101(a)(3)(B)(i) The Development Site is located within a census tract that has a poverty rate of 30 percent for individuals.
We request TDHCA increase the poverty trigger from 30 to 40 percent.

10.101(a)(3)(B)(iv) Met Standard for three consecutive years and has failed by at least one point…
TACDC recommends the three consecutive year Met Standard requirement for schools be deleted from this section. The TEA ratings do not provide sufficient reason for directing affordable housing away from large numbers of neighborhoods and communities. After discussing the presence of high quality, safe, and secure housing options with educators, our members are reporting that safe, affordable housing options are increasingly viewed by educators as an important element in reducing school transfers and absenteeism and improving grades among low income students. Building safe, quality affordable housing in areas without other quality housing options assists in improving schools by providing stability for students and help them to be successful in their schools

TACDC
ENHANCING COMMUNITIES THROUGHOUT TEXAS

"Development Sites subject to an Elderly Limitation or Single Room Occupancy are considered exempt and do not have to disclose the presence of this characteristic.
We support including Single Room Occupancy to this section. Single Room Occupancy developments have similar, if not more restrictive, occupancy standards as Elderly Limitation projects.

10.101(a)(3)(C) "Should any 3 or more of the undesirable neighborhood characteristics described in subparagraph (B) of this paragraph exist, the Applicant must submit the Undesirable Neighborhood Characteristics Report…."
TACDC encourages increasing the threshold for requiring an Undesirable Neighborhood Characteristics Report from any one characteristic to three characteristics.

Multi-Family Rules –Subchapter C

10.201(7)(B) Administrative Deficiencies for Competitive Applications
We recommend returning to a 5-day deficiency timeframe.

(20) Rural Rental Housing Association of Texas, Inc.

RURAL RENTAL HOUSING ASSOCIATION OF TEXAS, INC.
417-C West Central | Temple, Texas 76501 | 254.778.6111 | Fax 254.778.6110 | e-mail: office@rrhatx.com

October 11, 2016

Revised

Timothy K. Irvine
Executive Director
Texas Department of Housing
and Community Affairs
Austin, Texas

Dear Mr. Irvine,

Thank you for the opportunity to provide comments to the TDHCA 2017 Rules and Qualified Allocation Plan (QAP). I am writing on behalf of the Rural Rental Housing Association of Texas (RRHA), and representing more than 700 rural properties in Texas with our comments.

Staff has given the tax credit community a lot of opportunity to express priorities and opinions on changes for the 2017 QAP, and we want to thank the Department for the many hours dedicated to conversation on this subject. Our interests lie primarily in the preservation of existing rural properties, but our members are also interested in new rural construction. Without adequate efforts, and funding, to preserve the USDA portfolio, we may begin to lose many of these existing properties currently serving rural residents, due to lack of resources for maintenance and modernization.

Overall, we find our greatest challenges in the published 2017 QAP is with the poverty rates, the quartiles (and therefore the so called donut holes), and the high opportunity requirements including educational quality. Existing properties need preservation solutions and we find several of the 2017 changes challenging to that effort. We hope to work with staff to make the suggested changes we've identified in this comment letter.

Our comments follow: Green print suggests to "strike the language". Red print suggests to "add the language" or to emphasize/recommend a change .

Subchapter B—Site and Development Requirements and Restrictions.

We support the exception under 10.101 (2) permitting properties with existing financing from HUD, VA and USDA to be granted an exemption by the Board from these requirements. We have additional comments to this section. The ability to use tax exempt bond cap to revitalize multiple properties at one time, could be a major solution to our preservation efforts. In the interest of large-volume impact for preservation, we recommend the following changes to this section.

10.101(6) (B) Tax exempt bond developments must meet 7 points with amenities, unless the application is preserving multiple (3 or more) USDA rural properties under one bond transaction.

(7) Tenant Support Services: Tax exempt bonds must select at least 8 points, unless the application is preserving multiple (3 or more) USDA rural properties under one bond transaction.

RRHA OF TEXAS

Revised

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Subchapter C—Submission and Ineligibility

10.203(7)(iii)—For developments proposing to refinance USDA section 515 loan, a letter from USDA confirming it has been provided with a complete loan transfer application at the time of application. within 60 days of tax credit award. (strike application, add within 60 days of tax credit award). This requirement places an unnecessary burden on both the applicant and the USDA staff. At application, it is not known if an award will be received. RD will not likely process the application until it's known the project will receive an award, and it requires a lot from the owners to focus on both applications simultaneously. By June, the list of awardees begins to take shape, and the applicant will have a better idea whether or not they may receive credits. We request the Department delay receipt of the letter from USDA until 60 days after award of tax credits.

QAP Comments
1*1.4 Tax Credit Request and Award Limits*.

(c)Increase in Eligible Basis (30 percent Boost). (Add) Rural preservation of more than 3 properties under one bond structure will receive a 30% increase in eligible basis for 4% credits in rural designated properties. One of the difficulties the RRHA faces, individually and as a group, is the ability to preserve the portfolio of USDA 515 properties in Texas. We would welcome working with the TDHCA to make the 4% credits and bond cap a viable financing solution, and adding the 30% boost for existing rural properties would help begin that effort.

11.7 Tie Breaker Factors.

(4) (strike) Applications having achieved the maximum Educational Quality score and the highest number of point items on the Educational Quality menu that they were unable to claim because of the 5 point cap on that item. RRHA has recommended removal of Educational Quality as a section of the QAP, and we therefore recommend removal of Tie Breaker (4). We believe Tie Breaker (3) regarding Opportunity Index Scoring is sufficient to capture the Department's preference for high opportunity without repeating a selection for Educational Quality. We additionally ask that tie breaker number (6) becomes last. Applications proposed to be located in a census tract with the lowest poverty rate, as compared to another application with the same score, is requested to be the last tie breaker.

11.8 (b)(1)(I) Pre-application Disclosure of any Undesirable Neighborhood Characteristic under 10.101(a)(4). Move this disclosure requirement to full application. Property sites, and particularly new construction sites, will not know all of the undesirable neighborhood characteristics at pre-application and we ask that requirement be moved to full application, and the penalty points (the loss of pre-application points for failing to disclose one undesirable characteristic) be removed.

11.9 (c)(4) Opportunity Index

RRHA OF TEXAS

Revised

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A. RRHA requests that the poverty rate of less than the greater of 20% or the median poverty rate for the region meet the requirements in (i) or (ii), does not apply to USDA set-aside or At-Risk set-aside (add). Rural poverty rates are higher than urban areas of the State of Texas. The Bowen Statewide Rural Housing Analysis commissioned by TDHCA, states that in rural Texas overall, 19.2% of the population is living below the poverty level, compared with 16.4% in the urban areas of Texas. Additionally, the percentage of persons age 65+ living in poverty in rural regions, is nearly double the 1.1% and 1.2% living in urban areas and Texas, respectively. We therefore, request that set-aside's be exempt from the poverty rate requirement. We additionally request that all rural properties are not required to meet 1st-4th Quartile requirements.

(i) The Development Site is located in an urban census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and an income rate in the highest quartiles within the uniform service region. (2 points)

(ii) The Development Site is located in an urban census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile, ….(1 point)

(B)(i) (XV) (add) The Development site is located within 1 mile of an elementary, middle and high school that meets 77 or higher on the 2016 TEA Index 1 score, or the average of the regional subregion score (1 point for each school up to 3 points). RRHA has recommended the deletion of section (5) Educational Excellence, and added a new criteria under urban areas to recognize the

We further request that all 1 mile limitations in rural areas be changed to no less than 3 miles. Rural communities are often more spread out because of the availability of land, and people are accustomed to driving greater distances. Additionally, rural communities are often served by one census tract in the 3rd or 4th quartile, and surrounded by farm or ranch land in the 1st or 2nd quartile.

(B) An application that meets the foregoing criteria, (add) and USDA and At-Risk set-aside properties, may qualify for up to (7) points for any one or more of the following factors.

(ii) For Developments located in a Rural Area an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIV) of this subparagraph.

(VI) The development site is located within 3 miles of a public park (add) or outdoor recreation facility (1 point). How is a public park different from (XII) an outdoor recreation facility? We recommend they both be put under the same item selection.

(VII) The development site is located within (strike) 7 miles (add)15 miles of a University or Community College campus (1 point). It is unlikely that many Community College Campuses will be identified in a large percentage of rural areas, but in locations where they can be found, 15 miles is still a reasonable distance for faculty, staff and students to drive and will provide a greater likelihood of finding locations to qualify for this criteria.

RRHA OF TEXAS

Revised

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(VIII) The development site is located within 5 miles of a retail shopping (strike) center with XX square feet of stores, (add) with speciality stores, around a central plaza or a main street with 10 or more distinctly identifiable and separate businesses (add 3 points), or a retail shopping center containing 5 or more stores (add 1 point). This would be extremely difficult to verify the square footage of retail shopping, and store size is not an attraction; the items for sale are the opportunity and draw to shopping. Additionally, the charm of rural Texas is often in it's central plaza or 'core' of the community. This is what attracts people to many rural Texas communities and should be recognized and credited in a higher score than 1 point.
(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is (strike) 27% (add) 20% or higher. (1 point). The average percentage of adults achieving an Associates Degree in rural areas is 23.23%. The Bowen Statewide Rural Housing Analysis finds that, in aggregate, 20.9% of people in all rural regions are college graduates or hold advanced degrees. RRHA requests that the percentage in this menu item be lowered to 20% of adults with an Associates Degree or higher.

(X) Development site is within (strike) 2 (add) 3 miles of a government-sponsored, (add) non-profit sponsored, or privately-sponsored museum (1point). There is no apparent reason to exclude other types of sponsorship for museums, therefore RRHA recommends adding non-profit sponsored and privately sponsored to the government sponsored choice. In fact, it is often the non-profit and privately sponsored museums that offer free, or reduced admissions.

(XI) Development site is within (Strike) 1 mile (add) 3 miles of an indoor recreation facility available to the public (1 point).

(XII) (strike) Development site is within 1 mile of an outdoor recreation facility available to the public (1 point). (add) Development site is within 3 miles of a high school (1 point), elementary (1 point) or middle school (1 point) with a rating of MET STANDARD rating. RRHA is recommending 1 point for each school within the 3 miles, for a possible total of 3 points, to recognize desirability of, and close proximity to schools.

(XIII) This selection appears to be a duplicate of (VI) a public park, and we therefore recommend a different criteria. We have combined this selection with menu item (VI).

(XIII) Development site is within (strike) 1 miles (add) 3 miles of community, civic or service organizations that provide regular and recurring services available tot he entire community….(1 point)

(XIV) (add) Development Site is within 3 miles of a movie theater, and at least 3 restaurants open to the public (1 point). This selection is added to provide an additional choice, and to give rural a similar number of options as given to urban.

(5) Educational Quality. RRHA agrees with TAAHP's comments that Educational Excellence should be stricken entirely as a result of the Supreme Courts decision on ICP v TDHCA. Furthermore, the preceding section (c)(4) Opportunity Index is going to provide sufficient location criteria to locate properties where residents will be served with amenities offered by the

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community. RRHA has suggested an additional menu option under opportunity index for both rural and urban to recognize educational quality and proximity to schools.

(6) Underserved Area.

(C) A census tract (strike) within the boundaries of an incorporated area that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development within the past 15 years (3 points). There are many rural properties that are not in an incorporated area, and we therefore, suggest that the language, 'within the boundaries of an incorporated area' be removed.

(D) For areas not scoring points for (C) above, a census tract that does not have a Development subject to an active tax credit LURA, (add) or that has not received a competitive tax credit allocation for a property serving the same population as the proposed development in the past 15 years (2 points). RRHA recommends adding the population services for a lesser point than (C) above.

(7) Concerted Revitalization Plan.

We appreciate staff's efforts to provide revitalization incentives, and options. However linking the high opportunity threshold to this section as published in the Register, doesn't address the properties that need the rehab the most. Many of those properties could be impacted by natural disasters, or other easily explained and reasonable vacancy triggers, such as the end of a school year. We have several recommendations under this section, and hope the staff will remain open to more viable preservation solutions than the ones recommended. Texas developers didn't get fully engaged in USDA 515 new construction until the 1980's, and the recent survey by RRHA members shows that only about 18% of the entire state's portfolio was constructed prior to 1980, giving very little choice in properties that would qualify. Additionally, the tax credit program did not actually become operational until 1987 and later.

(B) For Developments located in a Rural Area.

(i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction in a location meeting the threshold requirements of the Opportunity Index 11.9(c)(4)(A) as changed in RRHA recommendations above, or strike the language entirely, (add) of a development of 50 or more units, in a rural area that is currently leased at (strike) 90% (add) 85% or greater by low income households and which was initially constructed prior to (strike) 1980 (add) 1985; or for a development of less than 50 units in a rural area that is currently leased at 80% or greater by low income households and which was initially constructed prior to 1985, as public housing or as affordable housing with support from USDA, HUD, the HOME program, or CDBG program.

(ii) conform the number of units and placed in service date to (i) above. (add) Any property that has less than 85% occupancy for a property of 50 or more units, or 80% occupancy for a property of less than 50 units, may petition the TDHCA Board for a waiver of this rule in order to rehab an existing property(s).

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(iii) Applications may receive 2 points in addition to those under sub-clause (i) or (ii) if the development is explicitly identified in a letter by the city or county as contributing (strike) more than any other development to the concerted revitalization efforts oft he city or county. City officials are not likely to make the statement that any one development effort contributes more than any other development effort to their plan, particularly in a small community. If the development contributes to revitalization efforts, we believe that should be sufficient, and request that the language "more than any other development" is removed.

(Iv) Applications may receive (1) additional point if the development is in a location that would score at least 4 points under Opportunity Index 11.9(c)(4), as amended in this letter. Otherwise, this should be removed entirely. we do not believe many of the existing rural properties will meet the threshold criteria under Opportunity Index.

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(3) Pre-application Participation
(G) The Development Site does not have Undesirable Neighborhood Characteristics as described in 1-TAC 10.101(a)(4) that were not disclosed with the (strike) pre-application (add) application.

Thank you for the opportunity to provide these comments. Members of our Association welcome, and will seek, the further opportunity to talk with TDHCA staff about these changes.

Sincerely,

Paul Farmer
President
Rural Rental Housing Association of Texas
(512) 756-6809 Ext.203

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October 11, 2016

Timothy K. Irvine
Executive Director
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and Community Affairs
Austin, Texas

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~~pre-selected~~ Rural site + development requirements and restrictions ~~with~~ of this Subchapter. ~~for 10.101~~

10.101(6) (B) Tax exempt bond developments must meet 7 points with amenities, unless the application is ~~preserving~~ multiple (3 or more) USDA rural properties under one bond transaction.

(7) Tenant Support Services: Tax exempt bonds must select at least 8 points, unless the application is ~~preserving~~ multiple (3 or more) USDA rural properties under one bond transaction.

rehabilitation rehabilitation

~~greater than 25yrs since construction/placed in service~~ ~~with more~~ preserving than 3 properties

Rehabs will be exempt, ~~subject to acceptable proof provided to TDHCA, from that the properties will replace existing systems w/ energy efficient amenities and continue to serve the community and current resident population, from~~

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Subchapter C—Submission and Ineligibility

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QAP Comments

1*1.4 Tax Credit Request and Award Limits.*

(c)~~Increase in Eligible Basis (30 percent Boost). (Add) Rural preservation of more than 3 properties under one bond structure will receive a 30% increase in eligible basis for 4% credits in rural designated properties.~~ One of the difficulties the RRHA faces, individually and as a group, is the ability to preserve the portfolio of USDA 515 properties in Texas. We would welcome working with the TDHCA to make the 4% credits and bond cap a viable financing solution, and adding the 30% boost for existing rural properties would help begin that effort.

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(4) (strike) Applications having achieved the maximum Educational Quality score and the highest number of point items on the Educational Quality menu that they were unable to claim because of the 5 point cap on that item. RRHA has recommended removal of Educational Quality as a section of the QAP, and we therefore recommend removal of Tie Breaker (4). We believe Tie Breaker (3) regarding Opportunity Index Scoring is sufficient to capture the Department's preference for high opportunity without repeating a selection for Educational Quality. We additionally ask that tie breaker number (6) becomes last. Applications proposed to be located in a census tract with the lowest poverty rate, as compared to another application with the same score, is requested to be the last tie breaker.

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11.9 (c)(4) Opportunity Index

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A. RRHA requests that the poverty rate of less than the greater of 20% or the median poverty rate for the region meet the requirements in (i) or (ii), does not apply to USDA set-aside or At-Risk set-aside (add). Rural poverty rates are higher than urban areas of the State of Texas. The Bowen Statewide Rural Housing Analysis commissioned by TDHCA, states that in rural Texas overall, 19.2% of the population is living below the poverty level, compared with 16.4% in the urban areas of Texas. Additionally, the percentage of persons age 65+ living in poverty in rural regions, is nearly double the 1.1% and 1.2% living in urban areas and Texas, respectively. We therefore, request that set-aside's be exempt from the poverty rate requirement. We additionally request that all rural properties are not required to meet 1st-4th Quartile requirements.

(i) The Development Site is located in an urban census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and an income rate in the highest quartiles within the uniform service region. (2 points)

(ii) The Development Site is located in an urban census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile, ...(1 point)

(B)(i) (XV) (add) The Development site is located within 1 mile of an elementary, middle and high school that meets 77 or higher on the 2016 TEA Index 1 score, or the average of the regional subregion score (1 point for each school up to 3 points). RRHA has recommended the deletion of section (5) Educational Excellence, and added a new criteria under urban areas to recognize the

For ~~at-risk~~ properties ~~only~~ in the at-risk or USDA set-aside

We further request that all 1 mile limitations in rural areas be changed to no less than 3 miles. Rural communities are often more spread out because of the availability of land, and people are accustomed to driving greater distances. Additionally, rural communities are often served by one census tract in the 3rd or 4th quartile, and surrounded by farm or ranch land in the 1st or 2nd quartile.

(B) An application that meets the foregoing criteria, (add) and USDA and At-Risk set-aside properties, may qualify for up to (7) points for any one or more of the following factors.

(ii) For Developments located in a Rural Area an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIV) of this subparagraph.

(VI) The development site is located within 3 miles of a public park (add) or outdoor recreation facility (1 point). How is a public park different from (XII) an outdoor recreation facility? We recommend they both be put under the same item selection.

(VII) The development site is located within (strike) 7 miles (add)15 miles of a University or Community College campus (1 point). It is unlikely that many Community College Campuses will be identified in a large percentage of rural areas, but in locations where they can be found, 15 miles is still a reasonable distance for faculty, staff and students to drive and will provide a greater likelihood of finding locations to qualify for this criteria.

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(VIII) The development site is located within 5 miles of a retail shopping (strike) center with XX square feet of stores, (add) with speciality stores, around a central plaza or a main street with 10 or more distinctly identifiable and separate businesses (add 3 points), or a retail shopping center containing 5 or more stores (add 1 point). This would be extremely difficult to verify the square footage of retail shopping, and store size is not an attraction; the items for sale are the opportunity and draw to shopping. Additionally, the charm of rural Texas is often in it's central plaza or 'core' of the community. This is what attracts people to many rural Texas communities and should be recognized and credited in a higher score than 1 point.
(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is (strike) 27% (add) 20% or higher. (1 point). The average percentage of adults achieving an Associates Degree in rural areas is 23.23%. The Bowen Statewide Rural Housing Analysis finds that, in aggregate, 20.9% of people in all rural regions are college graduates or hold advanced degrees. RRHA requests that the percentage in this menu item be lowered to 20% of adults with an Associates Degree or higher.

(X) Development site is within (strike) 2 (add) 3 miles of a government-sponsored, (add) non-profit sponsored, or privately-sponsored museum (1point). There is no apparent reason to exclude other types of sponsorship for museums, therefore RRHA recommends adding non-profit sponsored and privately sponsored to the government sponsored choice. In fact, it is often the non-profit and privately sponsored museums that offer free, or reduced admissions.

(XI) Development site is within (Strike) 1 mile (add) 3 miles of an indoor recreation facility available to the public (1 point). For existing properties ~~only~~ in the at-risk or USDA set-aside

(XII) (strike) Development site is within 1 mile of an outdoor recreation facility available to the public (1 point). (add) Development site is within 3 miles of a high school (1 point), elementary (1 point) or middle school (1 point) with a rating of MET STANDARD rating. RRHA is recommending 1 point for each school within the 3 miles, for a possible total of 3 points, to recognize desirability of, and close proximity to schools.

(XIII) This selection appears to be a duplicate of (VI) a public park, and we therefore recommend a different criteria. We have combined this selection with menu item (VI).

(XIII) Development site is within (strike) 1 miles (add) 3 miles of community, civic or service organizations that provide regular and recurring services available tot he entire community....(1 point)

(XIV) (add) Development Site is within 3 miles of a movie theater, and at least 3 restaurants open to the public (1 point). This selection is added to provide an additional choice, and to give rural a similar number of options as given to urban.

(5) Educational Quality. RRHA agrees with TAAHP's comments that Educational Excellence should be stricken entirely as a result of the Supreme Courts decision on ICP v TDHCA. Furthermore, the preceding section (c)(4) Opportunity Index is going to provide sufficient location criteria to ~~locate~~ for existing properties where residents will be served with amenities offered by the

from the USDA and at-risk set-asides

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community. RRHA has suggested an additional menu option under opportunity index for both rural and urban to recognize educational quality and proximity to schools.

(6) Underserved Area.

(C) A census tract (strike) within the boundaries of an incorporated area that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development within the past 15 years (3 points). There are many rural properties that are not in an incorporated area, and we therefore, suggest that the language, 'within the boundaries of an incorporated area' be removed.

(D) For areas not scoring points for (C) above, a census tract that does not have a Development subject to an active tax credit LURA, (add) or that has not received a competitive tax credit allocation for a property serving the same population as the proposed development in the past 15 years (2 points). RRHA recommends adding the population services for a lesser point than (C) above.

(7) Concerted Revitalization Plan.

We appreciate staff's efforts to provide revitalization incentives, and options. However linking the high opportunity threshold to this section as published in the Register, doesn't address the properties that need the rehab the most. Many of those properties could be impacted by natural disasters, or other easily explained and reasonable vacancy triggers, such as the end of a school year. We have several recommendations under this section, and hope the staff will remain open to more viable preservation solutions than the ones recommended. Texas developers didn't get fully engaged in USDA 515 new construction until the 1980's, and the recent survey by RRHA members shows that only about 18% of the entire state's portfolio was constructed prior to 1980, giving very little choice in properties that would qualify. Additionally, the tax credit program did not actually become operational until 1987 and later.

(B) For Developments located in a Rural Area.

(i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction in a location meeting the threshold requirements of the Opportunity Index 11.9(c)(4)(A) as changed in RRHA recommendations above, or strike the language entirely, (add) of a development of 50 or more units, in a rural area that is currently leased at (strike) 90% (add) 85% or greater by low income households and which was initially constructed prior to (strike) 1980 (add) 1985; or for a development of less than 50 units in a rural area that is currently leased at 80% or greater by low income households and which was initially constructed prior to 1985, as public housing or as affordable housing with support from USDA, HUD, the HOME program, or CDBG program.

(ii) conform the number of units and placed in service date to (i) above. (add) Any property that has less than 85% occupancy for a property of 50 or more units, or 80% occupancy for a property of less than 50 units, may petition the TDHCA Board for a waiver of this rule in order to rehab an existing property(s).

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(iii) Applications may receive 2 points in addition to those under sub-clause (i) or (ii) if the development is explicitly identified in a letter by the city or county as contributing (strike) more than any other development to the concerted revitalization efforts oft he city or county. City officials are not likely to make the statement that any one development effort contributes more than any other development effort to their plan, particularly in a small community. If the development contributes to revitalization efforts, we believe that should be sufficient, and request that the language "more than any other development" is removed.

(Iv) Applications may receive (1) additional point if the development is in a location that would score at least 4 points under Opportunity Index 11.9(c)(4), as amended in this letter. Otherwise, this should be removed entirely. we do not believe many of the existing rural properties will meet the threshold criteria under Opportunity Index.

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(3) Pre-application Participation
(G) The Development Site does not have Undesirable Neighborhood Characteristics as described in 1-TAC 10.101(a)(4) that were not disclosed with the (strike) pre-application (add) application.

Thank you for the opportunity to provide these comments. Members of our Association welcome, and will seek, the further opportunity to talk with TDHCA staff about these changes.

Sincerely,

Paul Farmer

Paul Farmer
President
Rural Rental Housing Association of Texas
(512) 756-6809 Ext.203

October 13, 2016
Timothy K. Irvine
Executive Director
Texas Department of Housing
and Community Affairs
Austin, Texas

Dear Mr. Irvine,
Thank you for the opportunity to provide comments to the TDHCA 2017 Rules and Qualified Allocation Plan (QAP). I am writing on behalf of the Rural Rental Housing Association of Texas (RRHA), and representing more than 700 rural properties in Texas with our comments.
Staff has given the tax credit community a lot of opportunity to express priorities and opinions on changes for the 2017 QAP, and we want to thank the Department for the many hours dedicated to conversation on this subject. Our interests lie primarily in the preservation of existing rural properties, but our members are also interested in new rural construction. Without adequate efforts, and funding, to preserve the USDA portfolio, we may begin to lose many of these existing properties currently serving rural residents, due to lack of resources for maintenance and modernization.
Overall, we find our greatest challenges in the published 2017 QAP is with the poverty rates, the quartiles (and therefore the so called donut holes), and the high opportunity requirements including educational quality. Existing properties need preservation solutions and we find several of the 2017 changes challenging to that effort. We hope to work with staff to make the suggested changes we've identified in this comment letter.
Our comments follow: Green print suggests to "strike the language". Red print suggests to "add the language" or to emphasize/recommend a change .
Subchapter B—Site and Development Requirements and Restrictions.
We support the exception under 10.101 (2) permitting properties with existing financing from HUD, VA and USDA to be granted an exemption by the Board from these requirements. We have additional comments to this section. The ability to use tax exempt bond cap to revitalize multiple properties at one time, could be a major solution to our preservation efforts. In the interest of large-volume impact for preservation, we recommend the following changes to this section.
10.101(6) (B) Tax exempt bond developments must meet 7 points with amenities, unless the application is preserving multiple (3 or more) USDA rural properties under one bond transaction.
(7) Tenant Support Services: Tax exempt bonds must select at least 8 points,
unless the application is preserving multiple (3 or more) USDA rural properties under one bond transaction.
Subchapter C—Submission and Ineligibility

10.203(7)(iii)—For developments proposing to refinance USDA section 515 loan, a letter from USDA confirming it has been provided with a complete loan transfer application at the time of application. within 60 days of tax credit award. (strike application, add within 60 days of tax credit award). This requirement places an unnecessary burden on both the applicant and the USDA staff. At application, it is not known if an award will be received. RD will not likely

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process the application until it's known the project will receive an award, and it requires a lot from the owners to focus on both applications simultaneously. By June, the list of awardees begins to take shape, and the applicant will have a better idea whether or not they may receive credits. We request the Department delay receipt of the letter from USDA until 60 days after award of tax credits.

QAP Comments

11.4 Tax Credit Request and Award Limits.

(c)Increase in Eligible Basis (30 percent Boost). (Add) Rural preservation of more than 3 properties under one bond structure will receive a 30% increase in eligible basis for 4% credits in rural designated properties. One of the difficulties the RRHA faces, individually and as a group, is the ability to preserve the portfolio of USDA 515 properties in Texas. We would welcome working with the TDHCA to make the 4% credits and bond cap a viable financing solution, and adding the 30% boost for existing rural properties would help begin that effort.

11.7 Tie Breaker Factors.

(4) (strike) Applications having achieved the maximum Educational Quality score and the highest number of point items on the Educational Quality menu that they were unable to claim because of the 5 point cap on that item. RRHA has recommended removal of Educational Quality as a section of the QAP, and we therefore recommend removal of Tie Breaker (4). We believe Tie Breaker (3) regarding Opportunity Index Scoring is sufficient to capture the Department's preference for high opportunity without repeating a selection for Educational Quality. We additionally ask that tie breaker number (6) becomes last. Applications proposed to be located in a census tract with the lowest poverty rate, as compared to another application with the same score, is requested to be the last tie breaker.

11.8 (b)(1)(I) Pre-application Disclosure of any Undesirable Neighborhood Characteristic under 10.101(a)(4). Move this disclosure requirement to full application. Property sites, and particularly new construction sites, will not know all of the undesirable neighborhood characteristics at pre-application and we ask that requirement be moved to full application, and the penalty points (the loss of pre-application points for failing to disclose one undesirable characteristic) be removed.

11.9 (c)(4) Opportunity Index

A. RRHA requests that the poverty rate of less than the greater of 20% or the median poverty rate for the region meet the requirements in (i) or (ii), does not apply to USDA set-aside or At-Risk set-aside (add). Rural poverty rates are higher than urban areas of the State of Texas. The Bowen Statewide Rural Housing Analysis commissioned by TDHCA, states that in rural Texas overall, 19.2% of the population is living below the poverty level, compared with 16.4% in the urban areas of Texas. Additionally, the percentage of persons age 65+ living in poverty in rural regions, is nearly double the 1.1% and 1.2% living in urban areas and Texas, respectively. We therefore, request that set-aside's be exempt from the poverty rate requirement. We additionally request that all rural properties are not required to meet 1st-4th Quartile requirements.

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(B)(i) (XV) (add) The Development site is located within 1 mile of an elementary, middle and high school that meets 77 or higher on the 2016 TEA Index 1 score, or the average of the regional subregion score (1 point for each school up to 3 points). RRHA has recommended the deletion of section (5) Educational Excellence, and added a new criteria under urban areas to recognize the

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(B) An application that meets the foregoing criteria, (add) and USDA and At-Risk set-aside properties, may qualify for up to (7) points for any one or more of the following factors.

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(5) Educational Quality. RRHA agrees with TAAHP's comments that Educational Excellence

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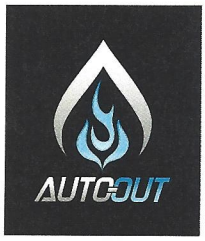

should be stricken entirely as a result of the Supreme Courts decision on ICP v TDHCA. Furthermore, the preceding section (c)(4) Opportunity Index is going to provide sufficient location criteria to locate properties where residents will be served with amenities offered by the community. RRHA has suggested an additional menu option under opportunity index for both rural and urban to recognize educational quality and proximity to schools.

(6) Underserved Area.

(C) A census tract (strike) within the boundaries of an incorporated area that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development within the past 15 years (3 points). There are many rural properties that are not in an incorporated area, and we therefore, suggest that the language, 'within the boundaries of an incorporated area' be removed.

(D) For areas not scoring points for (C) above, a census tract that does not have a Development subject to an active tax credit LURA, (add) or that has not received a competitive

tax credit allocation for a property serving the same population as the proposed development in the past 15 years (2 points). RRHA recommends adding the population services for a lesser point than (C) above.

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(B) For Developments located in a Rural Area.

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(ii) conform the number of units and placed in service date to (i) above. (add) Any property that has less than 85% occupancy for a property of 50 or more units, or 80% occupancy for a property of less than 50 units, may petition the TDHCA Board for a waiver of this rule in order to rehab an existing property(s).

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meet the threshold criteria under Opportunity Index.
(e) Criteria promoting the efficient use of limited resources and applicant accountability.
(3) Pre-application Participation
RURAL RENTAL HOUSING ASSOCIATION OF TEXAS
(G) The Development Site does not have Undesirable Neighborhood Characteristics as described in 1-TAC 10.101(a)(4) that were not disclosed with the (strike) pre-application (add) application.

Thank you for the opportunity to provide these comments. Members of our Association welcome, and will seek, the further opportunity to talk with TDHCA staff about these changes.

Sincerely,

Robin Williams, CAS & BoD - RRHA

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(21) Trinity University

From: Christine Drennon
To: Sharon Gamble
Subject: At risk, urban core proposal
Date: Friday, October 14, 2016 4:36:22 PM
Attachments: ATT00001.htm
Jobs within 4 Miles of City Hall 10-13-16.pdf

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forgot the attachment!

Dear Ms. Gamble:

I write to support the proposed policy change that extends an urban core qualification to the pool of at-risk developments supported with TDHCA issued tax credits. I am the Director of the Urban Studies Program at Trinity University and am a Professor of Urban Sociology there as well.

17.7% of all Texans live below the federal poverty line, and they are not distributed randomly over the Texas landscape. Instead our inner cities are surrounded by neighborhoods in which often 50-70% of families live in poverty. They live there for a variety of reasons, most important among them the access to the resources necessary to fulfill basic needs, including access togrocery stores, medical care, and child care. Their social networks are geographically accessible as well, and families in these income brackets rely heavily on social networks to fulfill basic needs (that wealthier families fulfill through the market). In addition, their jobs are located in these areas:

	Total Jobs	**% of Jobs under $3,333/month**
San Antonio	125,538	60.9
Dallas	317,537	40.6
Austin	277,958	46.4
Houston	353,556	39.8
Fort Worth	153,786	48.2

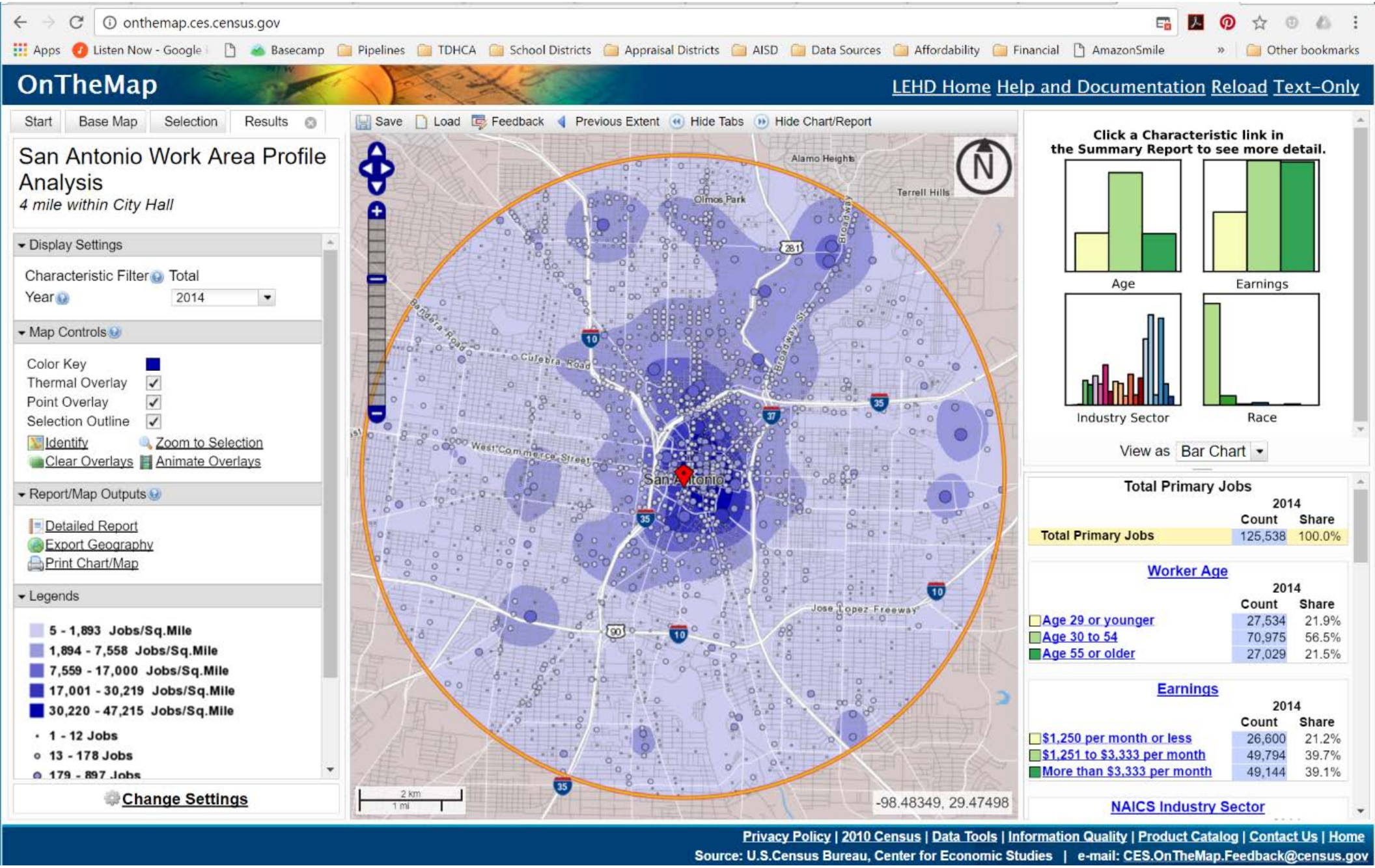
For the foreseeable future, our inner-cities will be dominated by jobs paying less than $25,000/year as our inner-cities are becoming increasingly associated with growth in hospitality industries that rarely pay over a basic living wage. In addition, in all of the cities mentioned here, real estate values in the inner-city neighborhoods are escalating quickly as the neighborhoods are considered more desirable by a new demographic, thus driving up rents and pressuring families to relocate further from the urban core and thus away from the resources and networks they rely on.

Recent studies have shown that there is a crisis in affordable housing in the United States. In San Antonio alone 14% of households spend at least half of their income on housing. Renters are more likely to be severely housing cost burdened, with 23% of renters spending at least half their income on housing. This is compounded by the increase in land values that make it increasingly difficult to build affordable housing in neighborhoods close to the (newly desirable) inner-city.

To conclude, a spatial mismatch has emerged recently, as land prices have made it

increasingly difficult to build affordable housing in neighborhoods close to the urban core, yet those employed in our revitalizing urban core cannot afford to live in the very neighborhoods they serve. It is imperative that we continue to provide subsidized housing near our urban core and thus stabilize the lives of our most vulnerable citizens.

Christine Drennon, Ph.D.
Director, Urban Studies Program
Trinity University
San Antonio, TX 78212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TDHCA
School Districts
Appraisal Districts
AISD
Data Sources
Affordability
Financial
AmazonSmile
Other bookmarks
OnTheMap
LEHD Home
Help and Documentation
Reload
Text-Only
Start
Base Map
Selection
Results
San Antonio Work Area Profile Analysis
4 mile within City Hall
Display Settings
Characteristic Filter
Total
Year
2014
Map Controls
Color Key
Thermal Overlay
Point Overlay
Selection Outline
Identify
Zoom to Selection
Clear Overlays
Animate Overlays
Report/Map Outputs
Detailed Report
Export Geography
Print Chart/Map
Legends
5 - 1,893 Jobs/Sq.Mile
1,894 - 7,558 Jobs/Sq.Mile
7,559 - 17,000 Jobs/Sq.Mile
17,001 - 30,219 Jobs/Sq.Mile
30,220 - 47,215 Jobs/Sq.Mile
1 - 12 Jobs
13 - 178 Jobs
179 - 897 Jobs
Change Settings
Save
Load
Feedback
Previous Extent
Hide Tabs
Hide Chart/Report
Alamo Heights
Olmos Park
Terrell Hills
Broadway
281
Broadway St
Bandera Road
Culebra Road
10
35
37
West Commerce Street
San Antonio
90
Jose Lopez Freeway
2 km
1 mi
-98.48349, 29.47498
Click a Characteristic link in the Summary Report to see more detail.
Age
Earnings
Industry Sector
Race
View as
Bar Chart
Total Primary Jobs
2014
Count
Share
Total Primary Jobs
125,538
100.0%
Worker Age
2014
Count
Share
Age 29 or younger
27,534
21.9%
Age 30 to 54
70,975
56.5%
Age 55 or older
27,029
21.5%
Earnings
2014
Count
Share
$1,250 per month or less
26,600
21.2%
$1,251 to $3,333 per month
49,794
39.7%
More than $3,333 per month
49,144
39.1%
NAICS Industry Sector
Privacy Policy | 2010 Census | Data Tools | Information Quality | Product Catalog | Contact Us | Home
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Apps | Listen Now - Google | Basecamp | Pipelines | TDHCA | School Districts | Appraisal Districts | AISD | Data Sources | Affordability | Financial | AmazonSmile | Other bookmarks

OnTheMap

LEHD Home | Help and Documentation | Reload | Text-Only

Start | Base Map | Selection | Results

Dallas Work Area Profile Analysis

4 miles from City Hall

▾ Display Settings

Characteristic Filter: Total

Year: 2014

▾ Map Controls

Color Key

Thermal Overlay ☑

Point Overlay ☑

Selection Outline ☑

Identify | Zoom to Selection

Clear Overlays | Animate Overlays

▾ Report/Map Outputs

Detailed Report

Export Geography

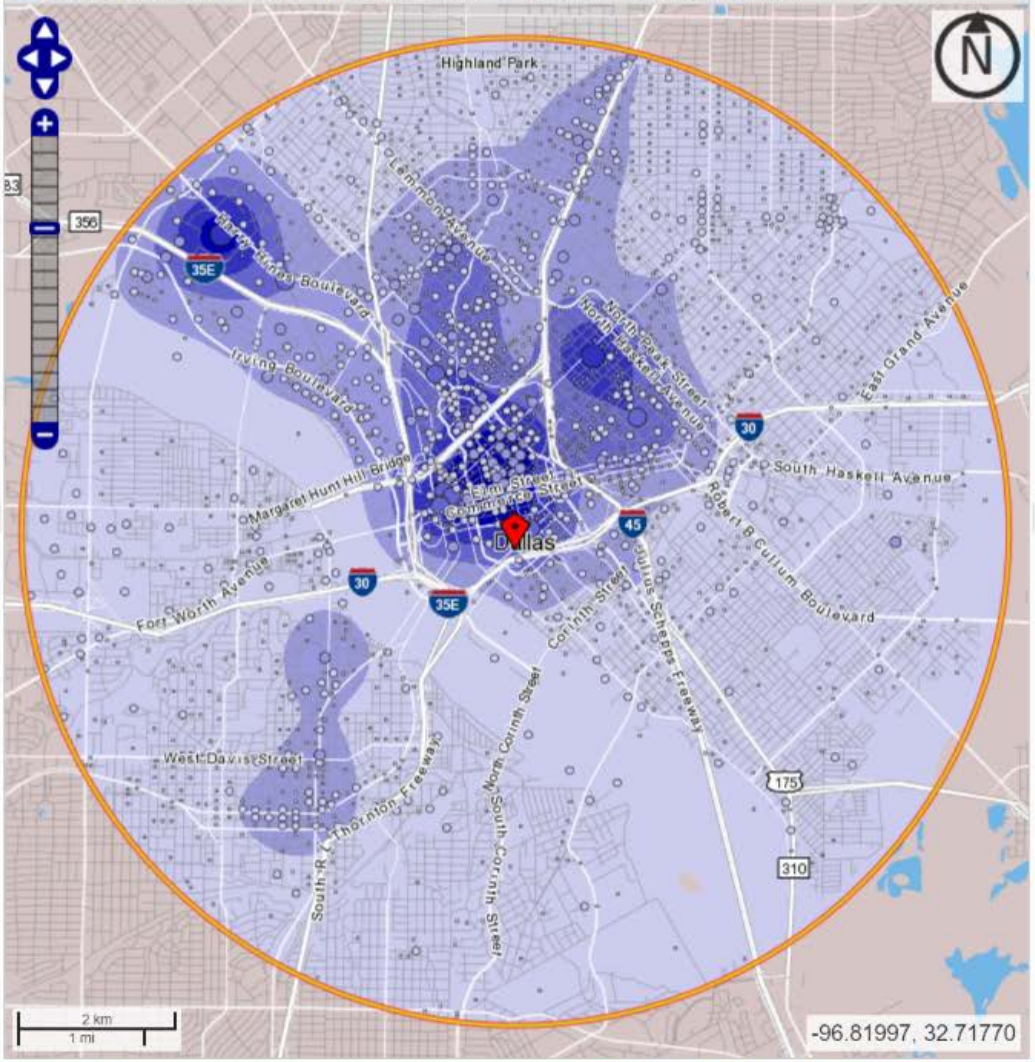
Print Chart/Map

▾ Legends

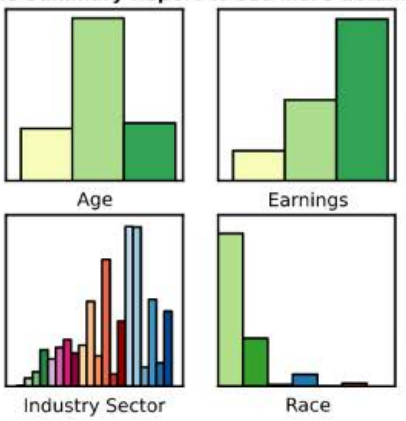
- 5 - 4,438 Jobs/Sq.Mile
- 4,439 - 17,740 Jobs/Sq.Mile
- 17,741 - 39,909 Jobs/Sq.Mile
- 39,910 - 70,947 Jobs/Sq.Mile
- 70,948 - 110,852 Jobs/Sq.Mile
- 1 - 50 Jobs
- 51 - 798 Jobs
- 799 - 4,040 Jobs

Change Settings

Save | Load | Feedback | Previous Extent | Hide Tabs | Hide Chart/Report



Click a Characteristic link in the Summary Report to see more detail.



View as Bar Chart

Total Primary Jobs

	2014 Count	2014 Share
Total Primary Jobs	317,537	100.0%

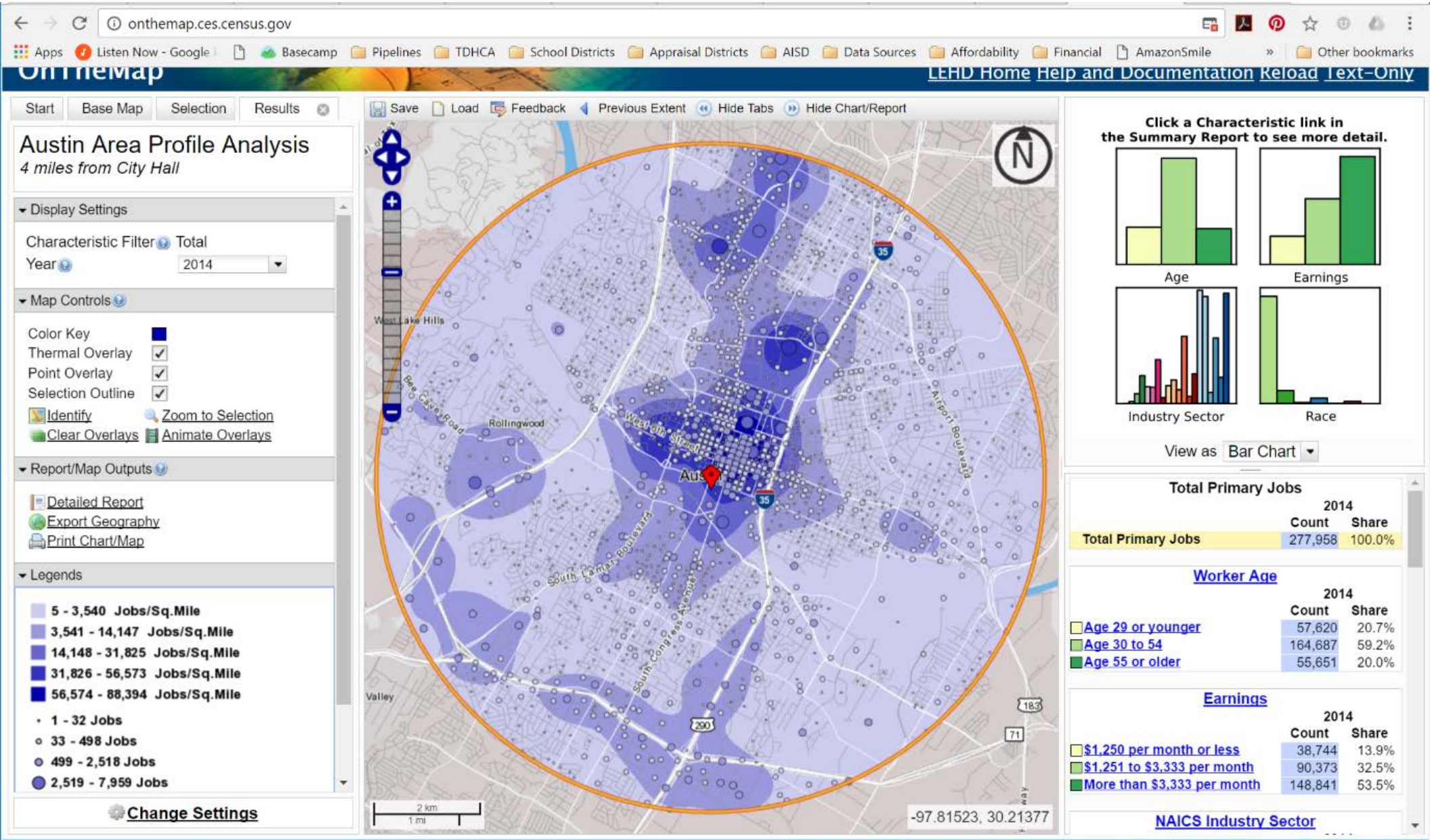
Worker Age

	2014 Count	2014 Share
Age 29 or younger	60,963	19.2%
Age 30 to 54	189,504	59.7%
Age 55 or older	67,070	21.1%

Earnings

	2014 Count	2014 Share
$1,250 per month or less	34,935	11.0%
$1,251 to $3,333 per month	94,090	29.6%
More than $3,333 per month	188,512	59.4%

NAICS Industry Sector


onthemap.ces.census.gov
Apps
Listen Now - Google
Basecamp
Pipelines
TDHCA
School Districts
Appraisal Districts
AISD
Data Sources
Affordability
Financial
AmazonSmile
Other bookmarks
OnTheMap
LEHD Home
Help and Documentation
Reload
Text-Only
Start
Base Map
Selection
Results
Austin Area Profile Analysis
4 miles from City Hall
Display Settings
Characteristic Filter
Total
Year
2014
Map Controls
Color Key
Thermal Overlay
Point Overlay
Selection Outline
Identify
Zoom to Selection
Clear Overlays
Animate Overlays
Report/Map Outputs
Detailed Report
Export Geography
Print Chart/Map
Legends
5 - 3,540 Jobs/Sq.Mile
3,541 - 14,147 Jobs/Sq.Mile
14,148 - 31,825 Jobs/Sq.Mile
31,826 - 56,573 Jobs/Sq.Mile
56,574 - 88,394 Jobs/Sq.Mile
1 - 32 Jobs
33 - 498 Jobs
499 - 2,518 Jobs
2,519 - 7,959 Jobs
Change Settings
Save
Load
Feedback
Previous Extent
Hide Tabs
Hide Chart/Report
West Lake Hills
Bee Cave Road
Rollingwood
Western Steuart
Airport Boulevard
South Lamar Boulevard
South Congress Avenue
Valley
35
290
183
71
N
2 km
1 mi
-97.81523, 30.21377
Click a Characteristic link in the Summary Report to see more detail.
Age
Earnings
Industry Sector
Race
View as
Bar Chart
Total Primary Jobs
2014
Count
Share
Total Primary Jobs
277,958
100.0%
Worker Age
2014
Count
Share
Age 29 or younger
57,620
20.7%
Age 30 to 54
164,687
59.2%
Age 55 or older
55,651
20.0%
Earnings
2014
Count
Share
$1,250 per month or less
38,744
13.9%
$1,251 to $3,333 per month
90,373
32.5%
More than $3,333 per month
148,841
53.5%
NAICS Industry Sector
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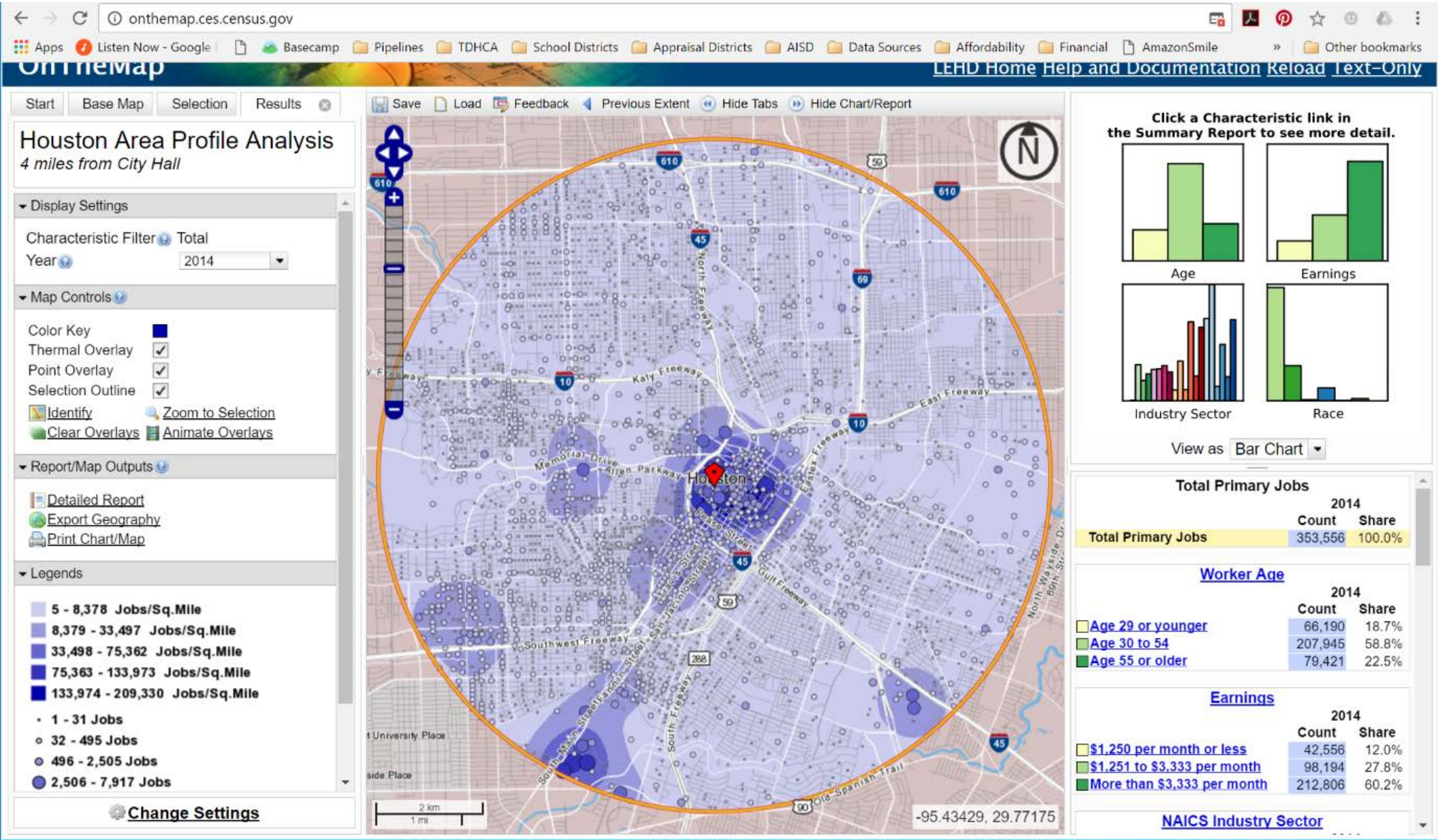
onthemap.ces.census.gov
OnTheMap
LEHD Home Help and Documentation Reload Text-Only
Start Base Map Selection Results
Houston Area Profile Analysis
4 miles from City Hall
Display Settings
Characteristic Filter Total
Year 2014
Map Controls
Color Key
Thermal Overlay
Point Overlay
Selection Outline
Identify Zoom to Selection
Clear Overlays Animate Overlays
Report/Map Outputs
Detailed Report
Export Geography
Print Chart/Map
Legends
5 - 8,378 Jobs/Sq.Mile
8,379 - 33,497 Jobs/Sq.Mile
33,498 - 75,362 Jobs/Sq.Mile
75,363 - 133,973 Jobs/Sq.Mile
133,974 - 209,330 Jobs/Sq.Mile
1 - 31 Jobs
32 - 495 Jobs
496 - 2,505 Jobs
2,506 - 7,917 Jobs
Change Settings
Save Load Feedback Previous Extent Hide Tabs Hide Chart/Report
Houston
-95.43429, 29.77175
Click a Characteristic link in the Summary Report to see more detail.
Age
Earnings
Industry Sector
Race
View as Bar Chart
Total Primary Jobs
2014
Count Share
Total Primary Jobs 353,556 100.0%
Worker Age
2014
Count Share
Age 29 or younger 66,190 18.7%
Age 30 to 54 207,945 58.8%
Age 55 or older 79,421 22.5%
Earnings
2014
Count Share
$1,250 per month or less 42,556 12.0%
$1,251 to $3,333 per month 98,194 27.8%
More than $3,333 per month 212,806 60.2%
NAICS Industry Sector
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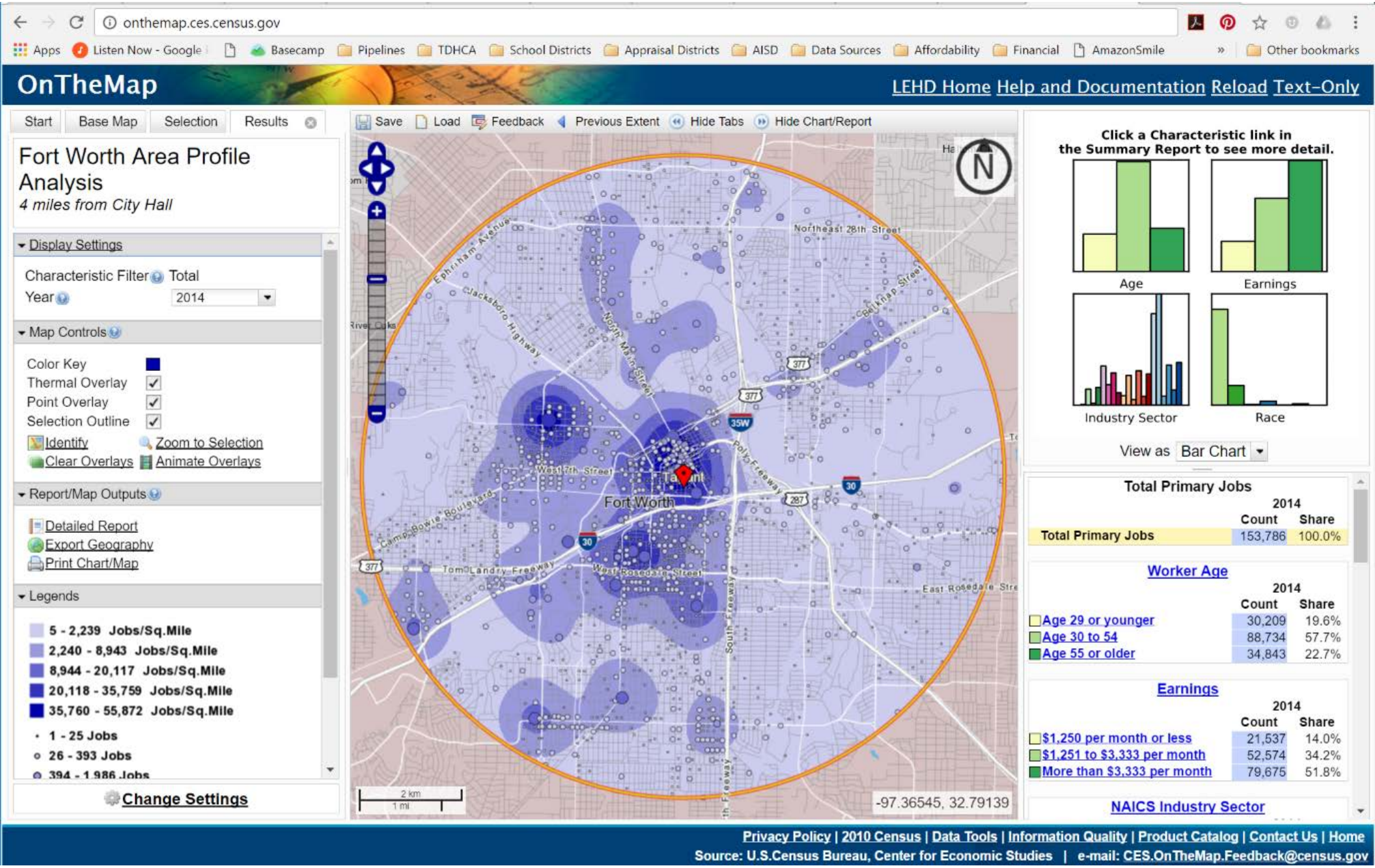
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Apps
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AISD
Data Sources
Affordability
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Other bookmarks
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Start
Base Map
Selection
Results
Fort Worth Area Profile Analysis
4 miles from City Hall
Display Settings
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Year 2014
Map Controls
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Thermal Overlay
Point Overlay
Selection Outline
Identify
Zoom to Selection
Clear Overlays
Animate Overlays
Report/Map Outputs
Detailed Report
Export Geography
Print Chart/Map
Legends
5 - 2,239 Jobs/Sq.Mile
2,240 - 8,943 Jobs/Sq.Mile
8,944 - 20,117 Jobs/Sq.Mile
20,118 - 35,759 Jobs/Sq.Mile
35,760 - 55,872 Jobs/Sq.Mile
1 - 25 Jobs
26 - 393 Jobs
394 - 1,986 Jobs
Change Settings
Save
Load
Feedback
Previous Extent
Hide Tabs
Hide Chart/Report
Fort Worth
Northeast 28th Street
Jacksboro Highway
North Main Street
Ephriham Avenue
Cleburne Street
West 7th Street
Camp Bowie Boulevard
Tom Landry Freeway
West Rosedale Street
East Rosedale Street
South Freeway
Poly Freeway
35W
30
287
377
2 km
1 mi
-97.36545, 32.79139
Click a Characteristic link in the Summary Report to see more detail.
Age
Earnings
Industry Sector
Race
View as Bar Chart
Total Primary Jobs
2014
Count Share
Total Primary Jobs 153,786 100.0%
Worker Age
2014
Count Share
Age 29 or younger 30,209 19.6%
Age 30 to 54 88,734 57.7%
Age 55 or older 34,843 22.7%
Earnings
2014
Count Share
$1,250 per month or less 21,537 14.0%
$1,251 to $3,333 per month 52,574 34.2%
More than $3,333 per month 79,675 51.8%
NAICS Industry Sector
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(22) Texas Affiliation of Affordable Housing Providers

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tel 512.476.9901 fax 512.476.9903 taahp.org taahp.org/housing-conference

October 14, 2016
Revised letter and attachments
Board of Directors
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Via Hand Delivery

Dear Chairman Oxer & Members of the Board:

On behalf of the Texas Affiliation of Affordable Housing Providers (TAAHP), we submit several recommendations for modifications to the 2017 Multifamily Program Rules, as well as the Qualified Allocation Plan (QAP) and the Underwriting and Loan Policy that are currently subject to public comment. TAAHP has more than 300 members including affordable housing professionals active in the development, ownership and management of affordable housing in the State of Texas.

It is TAAHP's policy to submit only recommendations that represent consensus opinions from the membership. TAAHP's recommendations were developed at a meeting with the TAAHP Membership on October 5, 2016 in response to the rules approved for public comment by the TDHCA Governing Board on September 8, 2015. With those comments as an introduction, please consider the following recommendations with regard to specific provisions of the rules:

Subchapter B – Site and Development Requirements and Restrictions

Section 10.101(a)(2) Undesirable Site Features

TAAHP requests changes to this section, which are included on the attached pages.

Justification: The radii in previous years' QAP are more appropriate. With regard to proximity to railroad tracks, the proposed change is consistent with HUD's guidelines on proximity to active railroad tracks which are more appropriate guidelines to use because they address the impact to the resident, rather than redline entire swaths of urban areas.

Section 10.101(a)(2)(B) Undesirable Neighborhood Characteristics.

TAAHP requests that this entire section be deleted.

Justification: This section is a remnant of the remediation plan and should be removed from the rules in the wake of the dismissal of the ICP litigation. It is an anti-urban provision that works to eliminate large swaths of urban areas from the competition. Furthermore, because data sources like Neighborhood Scout and school performance data are inherently faulty and produce inconsistent results, such measures are of questionable value in determining the worth of certain neighborhoods.

In the event that TDHCA does not support an entire removal of this section, we recommend the attached revisions.

§10.101(b)(2) Development Size Limitations.

TAAHP requests the attached changes.

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Justification: In prior years, the QAP allowed developments in Rural areas that exceeded 80 units. Rural Areas exist in major MSAs such as Dallas, Austin, Houston, San Antonio, El Paso and Mc Allen that have significant demand. The market study is the most reasonable method to determine the number of units demand in the market.

Section 10.101(b)(4) Mandatory Development Amenities

TAAHP requests the attached changes regarding the deletion of solar screens on all windows and a slight revision to the exception for PTAC units.

Justification: Solar screens should continue to be a point item under the green initiatives point category but not a mandatory amenity because they add construction costs to a project, limit the amount of ambient light in units, and negatively impact the appearance of developments. Energy efficient windows are a much better design option for appearance, light and energy efficiency.

Modern PTAC units are energy and cost efficient, and older existing buildings typically don't have the plate height to allow for both central air and a reasonable ceiling height. The current rule allows them in SRO, efficiency units and historic preservation properties, which is lower case and an undefined term. Our proposed rule replaces "historic preservation" with "Rehabilitation" which is a defined term.

Section 10.101(b)(7) Tenant Supportive Services

TAAHP requests deletion of the new language regarding who provides these services.

Justification: Many properties, especially smaller rural ones, cannot financial support a separate staff person or a third party provider to provide supportive services. In many rural communities, those third party providers are not even available.

Subchapter C: Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications

Section 10.201(7)(B) Administrative Deficiencies for Competitive HTC Applications.

TAAHP recommends changing the period to cure a deficiency from three days to five days.

Justification: More times than not, requests for deficiencies create a ripple effect, where making a change to one document requires the applicant to change several other documents to be consistent. When one of the documents requires input from a third party, addressing the deficiency takes time. Five days is more appropriate than three days.

§10.203 Public Notifications

TAAHP requests deletion of the new 14-day requirement.

Justification: It is very difficult to keep track of newly elected or appointed officials, especially with respect to school districts and school superintendents. The 14-day period creates yet another pitfall for Applicants who are trying to coordinate many evolving bits of information. Under prior rules Applicants have until the date of full application to notify newly elected/appointed officials.

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§10.204(13) Required Documentation for Application Submission – Previous Participation.
As reworded, this provision now seems to require that all Affiliates of a Development Owner complete the previous participation documentation. Please add after Affiliates "that have an ownership interest in the Development."

Section 10.204(16) Section 811 Project Based Rental Assistance Program

TAAHP requests that this Section be moved to the scoring criteria under the QAP as in past years. We believe this change can be made since the QAP addresses the Section 811 Program under the Tenants with Special Needs section of the QAP. Adding this provision back into the QAP would be a natural outgrowth of the Tenants with Special Needs section.

The justification for moving back to the scoring section is that as threshold, this provision burdens 4% developments in two ways. First, administering 811 units creates added operating expenses to deals that often need tax exemptions or soft money to work. Second, adding this requirement limits the ability to position these developments as "workforce housing" and gives neighbors another reason to strongly oppose.

In the event that TDHCA determined that it cannot be moved back to scoring, TAAHP requests that 4% tax credit/tax exempt bond transactions are exempted from this threshold provision.

Regardless of whether this section remains as a threshold item or a scoring item, TAAHP requests that this rule revert back to the previous version where the Applicant has a choice regarding placing Section 811 residents in an existing development or in the development for which an application is submitted. This flexibility is important to applicants, especially when committing existing developments to accept Section 811 residents requires lender and investor approval. TAAHP recommends language allowing applicants to choose to locate the Section 811 residents in an existing development or in the development for which the application is submitted. Additionally, we request language that an Applicant be exempt from locating 811 residents in an existing development if the applicant provides evidence that it cannot receive approval from either its lender or investor.

Additionally, TAAHP recommends that for developments with 100 or fewer units, the unit requirement be 10% of total units, not 10 units.

Qualified Allocation Plan

Section 11.7 Tie Breaker Factors

TAAHP recommends the attached changes.

Justification: Having an educational quality factor as two of the seven tie breakers seems unnecessary. Poverty rate should be deleted so that linear distance is the last tie breaker should all others fail to break the tie.

Section 11.9 Competitive HTC Selection Criteria

(c) Criteria to service and support Texans most in need

(3) *Tenant Services*

In the event that educational quality is removed as a separate point category, TAAHP recommends reducing the total points available for this point category to 10 for all development types based on the scoring parity bill. Please see the attached changes.

(4) *Opportunity Index*

TAAHP requests the attached changes.

Justification: This section is greatly improved from previous years. The attached changes merely reflect some slight nuances to clarify some of the grey areas. Additionally, we recommend including aspects of the educational quality scoring item into the menu item, and deleting educational quality as a separate scoring item.

(5) Educational Quality

TAAHP recommends that this scoring item be deleted in its entirety but that aspects of it are included in the Opportunity Index scoring, as previously provided.

Justification: This scoring provision is the greatest barrier to applications with sites in highly populated urban areas from competing for 9% tax credits. Furthermore, the testing and the standards by which Texas schools are rated are flawed and unreliable. Over the past few rounds, this scoring item has effectively determined the winners and losers. Since the high opportunity scoring category still has a rigorous income and poverty threshold, the areas with well performing schools already have a point advantage. Maintaining this scoring item would provide for those areas to get even more points for the same neighborhood feature, especially given that TAAHP's recommendation is to add school ratings to the new high opportunity menu item.

(6) Underserved Area

TAAHP members have differing opinions in this point category, although members reached consensus on the language in the attached changes.

(7) *Tenant Populations with Special Needs*

TAAHP recommends moving the Section 811 requirements back to this scoring category. TAAHP recommends reverting back to the language regarding scoring of Section 811 participation that was included in the 2016 QAP.

(d) Criteria promoting community support and engagement

(5) Community Support from State Representative

TAAHP requests the attached changes to this section.

Justification: Allowing state representatives to change their position mid-process creates another way for NIMBY-based concerns to pollute the process, thereby creating yet another barrier to placing affordable housing in high opportunity neighborhoods. Because this point category has a 16-point swing between letters of opposition and support, allowing state representative to change their position after developers have incurred significant expense to submit applications creates an unfair burden on the development community.

(6) Input from Community Organizations

TAAHP recommends a new four points scoring category for additional letters in the event that the application gets zero points under the Local Government Support scoring category. This is an extension of the current language which allows letters of support from "civic organizations." The additional four points are only available when the application scores a zero on the Local Government Support scoring category.

Justification: Municipalities often fail to place the requested resolutions on their agenda or the resolution fails for lack of motion, even in cases when city staff recommends approval of the proposed development. This additional four points for input from community organizations will help balance the scoring in those cases.

(7) Concerted Revitalization Plan

TAAHP recommends the attached changes. Please note that TAAHP recommends deleting the population minimum because this point item is so difficult to achieve with all the limiting requirements.

Justification: This scoring item is simply too difficult to achieve because even the most sophisticated planning efforts do not result in a final product that can meet the extremely codified TDHCA definition. The proposed changes are subtle but will open up areas that are truly undergoing revitalization to receiving these points.

(e) Criteria promoting the efficient use of limited resources and applicant accountability

(1) Cost of Development per Square Foot

TAAHP recommends some clarifying language in the attached changes. It is important that both Hard Costs and Building Costs are defined by cost that are voluntarily included in Eligible Basis.

(3) Pre-Application Participation

TAAHP recommends the attached changes regarding deleting the subsection (g) regarding the disclosure of undesirable site features.

Justification: It is difficult to fully vet all aspects of a neighborhood prior to pre-application. Losing these points based on something that the Applicant simply missed prior to pre-app is an undue burden.

(4) Leveraging of Private, State and Federal Resources

TAAHP recommends the attached language, which reflects the 2016 language.

Justification: There are several other provisions that create a cap on credits per application. This one is very difficult to achieve and results in an under-leverage of credits.

Section 11.10 Third Party Request for Administrative Deficiency for Competitive HTC Applications

TAAHP recommends the attached language.

Justification: Staff sometimes make errors, as we all do. It is important that these errors be caught during the third party request for administrative deficiency process.

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Subchapter D – Underwriting and Loan Policy

§10.304(d)(10)(B) Appraisal Rules and Guidelines: Value Estimates, Developments with Project-Based Rental Assistance

TAAHP recommends the attached changes.

Justification: Nationwide a number of closed RAD transactions have been awarded acquisition credits based on building values derived using market rents under the income approach. Tax counsel for these transactions have opined that this approach is reasonable, as have national accounting and appraisal firms. The reason this approach has been accepted nationwide is that in the "As Is" condition public housing developments operate on a breakeven basis, preventing an accurate valuation under the income approach. There are several ways in which HUD may allow the release of public housing restrictions. For public housing converting to Section 8 assistance, at the closing of RAD transactions, the existing public housing restrictions are removed and the property is unencumbered. This release of public housing restrictions supports the use of a market-rent derived value.

Tax credits are an essential tool in the rehabilitation and redevelopment of public housing developments under the RAD program, and the nationally accepted use of a market rent-derived value allows housing authorities to generate needed financing to structure financially feasible transactions. In areas with strong rental markets where affordability crises often exist, the differential between the market rents a housing authority could realize in an unencumbered scenario and the RAD rents provide a mechanism for the housing authority to maximize the value of existing assets to generate more financing to improve and preserve existing affordable housing.

We thank you for your time and consideration of these recommendations. Please note that representatives from the TAAHP QAP committee are happy to meet with your staff in order to discuss these recommendations fully.

Thank you for your service to Texas.

Sincerely,

Janine Sisak

Chair TAAHP QAP Committee

cc: Tim Irvine – TDHCA Executive Director
Brent Stewart – TDHCA Director of Real Estate Analysis
TAAHP Membership

UNDESIRABLE SITE FEATURES

(2) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph maybe considered ineligible as determined by the Board unless Applicant provides information regarding mitigation of the applicable undesirable site feature(s). Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs ("VA") may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application ~~and must include a letter stating the Rehabilitation of the existing units is consistent with achieving at least one or more of the stated goals as outlined in the State of Texas Analysis of Impediments to Fair Housing Choice or, if within the boundaries of a participating jurisdiction or entitlement community, as outlined in the local analysis of impediments to fair housing choice and identified in the participating jurisdiction's Action Plan.~~ The distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the undesirable feature. The minimum distances noted assume that the land between the proposed Development Site and the particular undesirable feature has no significant intervening barriers or obstacles such as waterways or bodies of water, major high speed roads, park land, or walls, such as noise suppression walls adjacent to railways or highways, in which case this section does not apply. Where there is a local ordinance that regulates the proximity of such undesirable feature to a multifamily development that has smaller distances than the minimum distances noted below, documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application. The distances identified in subparagraphs (A) - (J) of this paragraph are intended primarily to address sensory concerns such as noise or smell, social factors making it inappropriate to locate residential housing in proximity to certain businesses. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (K) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

(A)Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Transportation Code, §396.001;

(B)Development Sites located within 300 feet of a solid waste or sanitary landfills;

(C)Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local Government Code, §243.002, or as zoned, licensed and regulated as such by the local municipality;

(D)Development Sites in which the buildings are located within of the easement of any overhead high voltage transmission line, support structures for high voltage transmission lines, or other similar

structures. This does not apply to local service electric lines and poles; high voltage transmission are lines that carry 138 Kv of power or greater.

(E)Development Sites located within ~~5~~ 100 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail, or the Applicant submits a noise study with the application and commits at the time of commitment to provide sound attenuation of noise levels in excess of 65 decibels;

(F)Development Sites located within 500 feet of heavy industrial (i.e. facilities that require extensive capital investment in land and machinery, are not easily relocated and produce high levels of external noise such as manufacturing plants, fuel storage facilities (excluding gas stations) etc.);

(G)Development Sites located within 10 miles of a nuclear plant;

(H)Development Sites in which the buildings are located within of the accident zones or clear zones of any airport;

(I)Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids. Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance ("PIPA");

(J)Development Sites located within 1000 feet ~~2 miles~~ of refineries capable of refining more than 100,000 barrels of oil daily; or

(K)Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated.

(1)Applications having achieved a score on Proximity to the Urban Core

(2)Applications scoring higher on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.

(3)Applications having achieved the maximum Opportunity Index Score and the highest number of point items on the Opportunity Index menu that they were unable to claim because of the 7 point cap on that item.

(4)Applications having achieved the maximum Educational Quality score and the highest number of point items on the Educational Quality menu that they were unable to claim because of the 5 point cap on that item.

(5)The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site.

(6)Applications proposed to be located in a census tract with the lowest poverty rate as compared to another Application with the same score.

(7)Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear measurement will be performed from closest boundary to closest boundary.

(3) Undesirable Neighborhood Characteristics.

(A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. An Applicant may choose to disclose the presence of such characteristics at the time the pre-application (if applicable) is submitted to the Department. Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit the documentation described under subparagraphs (C) and (D) of this paragraph at pre- application and staff may perform an assessment of the Development Site to determine Site eligibility. The Applicant understands that any determination made by staff or the Board at the time of bond inducement regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the undesirable neighborhood characteristics become available while the full Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board. Should staff determine that the Development Site has any of the characteristics described in subparagraph (B) of this paragraph and such characteristics were not disclosed, the Application may be subject to termination. Termination due to non-disclosure may be appealed pursuant to §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)). The presence of any characteristics listed in subparagraph (B) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit, and include, where applicable, a review as described in subparagraph (C) of this paragraph. The assessment of the Development Site and neighborhood will be presented to the Board with a recommendation with respect to the eligibility of the Development Site. Factors to be considered by the Board, despite the existence of the undesirable neighborhood characteristics are identified in subparagraph (E) of this paragraph. Should the Board make a determination that a Development Site is ineligible, the termination of the Application resulting from such Board action is not subject to appeal.

(B) The undesirable neighborhood characteristics include those noted in clauses (i) – (iv) of this subparagraph and additional information as provided in subparagraphs (C) and (D) must be submitted in the Application. If an Application for a Development Site involves three or more undesirable neighborhood characteristics, in order to be found eligible it will be expected that, in addition to demonstrating satisfactory mitigation for each characteristic disclosed, the Development Site must be located within an area in which there is a concerted plan of revitalization already in place or that private sector economic forces, such as those referred to as gentrification are already underway and indicate a strong likelihood of a reasonably rapid transformation of the area to a more economically vibrant area. In order to be considered as an eligible Site despite the presence of such undesirable neighborhood characteristic, an Applicant must demonstrate actions being taken that would lead a reader to conclude that there is a high probability the undesirable characteristic will be sufficiently mitigated within a reasonable time, typically prior to placement in service, and that the undesirable characteristic will either no longer be present or will have been sufficiently mitigated such that it would not have required disclosure.

a. The Development Site is located within a census tract that has a poverty rate above ~~4030~~ 40 percent for individuals

~~b.The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons~~

~~(annually) as reported on neighborhoodscout.com.~~

c. The Development Site is located within 1,000 feet (measured from nearest boundary of blighted structure) of ~~multiple~~ at least 5 vacant structures visible from the street, which that have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.

d. The Development Site is ~~l~~located within the attendance zones of an elementary school~~, a middle school or a high school~~ that does not have a Met Standard rating by the Texas Education Agency. ~~Any school in the attendance zone that has not achieved Met Standard for three consecutive years and has failed by at least one point in the most recent year, unless there is a clear trend indicating imminent compliance, shall be unable to mitigate due to the potential for school closure as an administrative remedy pursuant to Chapter 39 of the Texas Education Code.~~ In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary~~, middle and high school, respectively,~~ which may possibly be attended by the tenants in determining whether or not disclosure is required. The applicable school rating will be the 2016~~5~~ accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K- 6), ~~middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12)~~, the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. ~~Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating.~~ Development Sites subject to an Elderly Limitation or Single Room Occupancy is considered exempt and does not have to disclose the presence of this characteristic.

(C) Should any of the undesirable neighborhood characteristics described in subparagraph (B) of this paragraph exist, the Applicant must submit the Undesirable Neighborhood Characteristics Report that contains the information described in clauses (i)-(viii) of this subparagraph and subparagraph (D) of this paragraph so that staff may conduct a further Development Site and neighborhood review.

(i) A determination regarding neighborhood boundaries, which will be based on the review of a combination of natural and manmade physical features (rivers, highways, etc.), apparent changes in land use, the Primary Market Area as defined in the Market Analysis, census tract or municipal boundaries, and information obtained from any Site visits;

(ii) An assessment of general land use in the neighborhood, including comment on the prevalence of residential uses;

(iii) An assessment concerning any of the features reflected in paragraph (3) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (3);

(iv) An assessment of the number of existing affordable rental units (generally includes rental properties subject to TDHCA, HUD, or USDA restrictions) in the Primary Market Area, including comment on concentration based on the size of the Primary Market Area;

(v) An assessment of the percentage of households residing in the census tract that have household incomes equal to or greater than the median household income for the MSA or county where the Development Site is located; ~~and~~

An assessment of the number of market rate multifamily units in the neighborhood and their current rents and levels of occupancy;

(vii) An assessment of school performance for each of the schools in the attendance zone containing the Development that did not achieve the Met Standard rating, for the previous two academic years (regardless of whether the school Met Standard in those years), that includes the TEA Accountability Rating Report, a discussion of performance indicators and what progress has been made over the prior year, and progress relating to the goals and objectives identified in the campus improvement plan in effect; and

(viii) Any additional information necessary to complete an assessment of the Development Site, as requested by staff.

(D) Information regarding mitigation of undesirable neighborhood characteristics should be relevant to the undesirable characteristics that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application and may include, but is not limited to, the measures described in clauses (i)-(iv) of this subparagraph. In addition to those measures described herein, documentation from the local municipality may also be submitted stating the Development is consistent with their obligation to affirmatively further fair housing. The mitigation must be accompanied by a report summarizing the data and to support the conclusion of a reasonable expectation by staff and the Board that the issues will be resolved or significantly improved by the time the Development is placed into service. Conclusions for such reasonable expectation must be affirmed by an industry professional, as appropriate.

(i) Evidence that the poverty rate within the census tract has decreased over the five-year period preceding the date of Application, or that the census tract is contiguous to a census tract with a poverty rate below ~~20%~~ 40% and there are no physical barriers between them such as highways or rivers which would be reasonably considered as separating or dividing the neighborhood containing the proposed Development from the low poverty area must be submitted. Other mitigation may include, but is not limited to, evidence of the availability of adult education and job training that will lead to full-time permanent employment for tenants, a description of additional tenant services to be provided at the development that address root causes of poverty, evidence of gentrification in

the area (which may include contiguous census tracts) and a clear and compelling reason that the Development should be located at the Site. ~~Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility.~~

(ii) Evidence that crime rates are ~~substantially~~ decreasing, based on violent crime data from the city's police department or county sheriff's department, for the police beat or patrol area within which the Development Site is located, based on the population of the police beat or patrol area that would yield a crime rate below the threshold indicated in this section. The instances of violent crimes within the police beat or patrol area that encompass the census tract, calculated based on the population of the census tract, may also be used. A map plotting all instances of violent crimes within a one-half mile radius of the Development Site may also be provided that reflects that the crimes identified are not at a level that would warrant an ongoing concern. The data must include incidents reported during the entire 2015 and 2016 calendar year. Violent crimes reported through the date of Application submission may be requested by staff as part of the assessment performed under subparagraph (C) of this paragraph. A written statement from the local police department or local law enforcement agency, including a description of efforts by such enforcement agency addressing issues of crime and the results of their efforts may be provided, and depending on the data provided by the Applicant, such written statement may be required, as determined by staff. For Rehabilitation or Reconstruction Developments, to the extent that the high level of criminal activity is concentrated at the Development Site, documentation may be submitted to indicate such issue(s) could be remedied by the proposed Development. Evidence of such remediation should go beyond what would be considered a typical scope of work and should include a security plan, partnerships with external agencies, or other efforts to be implemented that would deter criminal activity. Information on whether such security features have been successful at any of the Applicant's existing properties should also be submitted, if applicable.

(iii) Evidence of mitigation efforts to address blight or abandonment may include new construction in the area already underway that evidences public and/or private investment. ~~Acceptable mitigation to address extensive blight should go beyond the acquisition or demolition of the blighted property and identify the efforts and timeline associated with the completion of a desirable permanent use of the site(s) such as new or rehabilitated housing, new business, development and completion of dedicated municipal or county-owned park space.~~ In instances where blight exists but may only include a few properties, mitigation efforts could include partnerships with local agencies to engage in community-wide clean-up efforts, or other efforts to address the overall condition of the neighborhood.

(iv) Evidence of mitigation for all of the schools in the attendance zone that have not achieved Met Standard will include documentation from a school official with oversight of the school in question that indicates current progress towards meeting the goals and performance objectives identified in the Campus Improvement Plan. For schools that have not achieved Met Standard for two consecutive years, a letter from the superintendent, member of the school board or a member of the transformation team that has direct experience, knowledge and oversight of the specific school must also be submitted. The letter should, at a minimum and to the extent applicable, identify the efforts that have been undertaken to increase student performance, decrease mobility rate, benchmarks for re-evaluation, increased parental involvement, plans for school expansion, and long-term trends that would point toward their achieving Met Standard by the time the Development is placed in service. ~~The letter from such education professional should also speak to why they believe the staff tasked with carrying out the plan will be successful at making progress towards acceptable student performance considering that prior Campus Improvement Plans were unable to do so.~~ Such assessment could include whether the team involved has employed similar

strategies at prior schools and were successful. In addition to the aforementioned letter from the school official, information should also be provided that addresses the types of services and activities offered at the Development or external partnerships that will facilitate and augment classroom performance.

(E) In order for the Development Site to be found eligible by the Board, despite the existence of undesirable neighborhood characteristics, the Board must find that the use of Department funds at the Development Site must be consistent with achieving at least one of the goals in clauses (i) – (iii) of this subparagraph.

(i) Preservation of existing occupied affordable housing units, subject to federal or state income restrictions and mitigating evidence supports a conclusion that the characteristic will be remedied in an appropriate time period, which may be after placement in service; or ~~to ensure they are safe and suitable, or development of new high quality affordable housing units that are subject to federal rent or income restrictions; and~~

(ii) Factual determination that the undesirable characteristic(s) that has been disclosed are not of such a nature or severity that ~~they~~ should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph. Such information sufficiently supports a conclusion that the characteristic(s) will be remedied by the time the Development places into service; Or

(iii) The Development satisfies HUD Site and Neighborhood Standards or is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order. ~~or HUD Site and Neighborhood Standards approval, as such documentation is provided by the Applicant as part of the disclosure~~.

DEVELOPMENT SIZE LIMITATIONS

§10.101(b)(2) Development Size Limitations. The minimum Development size is 16 Units. New Construction or Adaptive Reuse Developments in Rural Areas are limited to a maximum of 80. New Construction Tax Exempt Bond Developments may exceed 80 units if the Market Analysis clearly documents that there is significant demand for additional Units. Other Developments do not have a limitation as to the maximum number of Units.

MANDATORY DEVELOPMENT AMENITIES

(4)Mandatory Development Amenities. (§2306.187) New Construction, Reconstruction or Adaptive Reuse Units must include all of the amenities in subparagraphs (A) - (M) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs (D) - (M) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), (I), or (M) of this paragraph; however, access must be provided to a comparable amenity in a common area. All amenities listed below must be at no charge to the tenants. Tenants must be provided written notice of the applicable required amenities for the Development.

(A)All Units must be wired with RG-6/U COAX or better and CAT3 phone cable or better, wired to each bedroom, dining room and living room;

(B)Laundry connections;

(C)Exhaust/vent fans (vented to the outside) in the bathrooms;

~~(D)Solar screens on all windows (north-facing windows may exclude solar screens if north-facing operable windows provide insect screens);~~

(E)Disposal and Energy-Star rated dishwasher (not required for USDA; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit);

(F)Energy-Star rated refrigerator;

(G)Oven/Range;

(H)Blinds or window coverings for all windows;

(I)At least one Energy-Star rated ceiling fan per Unit;

(J)Energy-Star rated lighting in all Units which may include compact fluorescent or LED light bulbs;

(K)Plumbing fixtures must meet performance standards of Texas Health and Safety Code, Chapter 372;

(L)All Units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units only or ~~historic preservation~~ Rehabilitation where central would be cost prohibitive); and

(M)Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be one and a half (1.5) spaces per Unit for non- Elderly Developments and one (1) space per Unit for Elderly Developments. The minimum number of required spaces must be available to the tenants at no cost.

TENANT SUPPORTIVE SERVICES

(7)Tenant Supportive Services. The supportive services include those listed in subparagraphs (A) - (Z) of this paragraph. Tax Exempt Bond Developments must select a minimum of eight (8) points; Direct Loan Applications not layered with Housing Tax Credits must include enough services to meet a minimum of four (4) points. The points selected and complete list of supportive services will be included in the LURA and the timeframe by which services are offered must be in accordance with §10.619 of this chapter (relating to Monitoring for Social Services) and maintained throughout the Affordability Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. The services provided should be those that will directly benefit the Target Population of the Development. Tenants must be provided written notice of the elections made by the Development Owner. No fees may be charged to the tenants for any of the services, there must be adequate space for the intended services and services offered should be accessible to all (e.g., exercises classes must be offered in a manner that would enable a person with a disability to participate). Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. ~~These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider. Where applicable, the services must be documented by a written agreement with the provider.~~

SCORING – TIE BREAKER

Tie Breaker Factors

In the event there are Competitive HTC Applications that receive the same number of points in any given set-aside category, rural regional allocation or urban regional allocation, or rural or statewide collapse, the Department will utilize the factors in this section, in the order they are presented, to determine which Development will receive preference in consideration for an award. The tie breaker factors are not intended to specifically address a tie between equally underserved sub-regions in the rural or statewide collapse.

(1)Applications having achieved a score on Proximity to the Urban Core

(2)Applications scoring higher on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.

(3)Applications having achieved the maximum Opportunity Index Score and the highest number of point items on the Opportunity Index menu that they were unable to claim because of the 7 point cap on that item.

~~(4)Applications having achieved the maximum Educational Quality score and the highest number of point items on the Educational Quality menu that they were unable to claim because of the 5 point cap on that item.~~

(5)The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site.

~~(6)Applications proposed to be located in a census tract with the lowest poverty rate as compared to another Application with the same score.~~

(7)Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear measurement will be performed from closest boundary to closest boundary.

OPPORTUNITY INDEX

(4)Opportunity Index. The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials.

(A)A Proposed Development is eligible for a maximum of seven (7) opportunity index points if it is located in a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and meets the requirements in (i) or (ii) below. Rural developments, and developments that are competing in the At Risk and/or USDA set-asides can achieve the maximum 7 points without meeting (i) or (ii) below.

(i) The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and an income rate in the two highest quartiles within the uniform service region. (2 points)

(ii) The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile~~, without physical barriers such as highways or rivers between,~~ and the Development Site is no more than 2 miles from the boundary between the census tracts. and, (1 point)

(B)An application that meets the foregoing criteria may qualify for additional points up to seven (7) points for any one or more of the following factors. Each facility or amenity may be used only once for scoring purposes, regardless of the number of categories it fits:

(i) For Developments located in an Urban Area, an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIV) of this subparagraph.

(I) The Development site is located less than 1/2 mile on an accessible route from a public park with a~~n accessible~~ playground (1 point)

(II) The Development Site is located less than ½ mile on an accessible route from Public Transportation with a route schedule that provides regular service (meaning buses scheduled between 7 and 9 a.m. and between 4 and 6 p.m., Monday through Friday) to employment and basic services (1 point)

(III) The Development site is located within 1 mile of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point)

(IV) The Development is located within 3 miles of either an emergency room or an urgent care facility (1 point)

(V) The Development Site is within 2 miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten (1 point)

(VI) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less (1 point)

(VII) The development site is located within 1 mile of a public library (1 point)

(VIII) The Development Site is located within 5 miles of a University or Community College campus (1 point)

(IX) The Development Site is located within 3 miles of a concentrated retail shopping center of at least ~~1 million~~ 500,000 square feet or that includes at least 4 big-box national retail stores (1 point)

(X) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher as tabulated by 2010-2014 American Community Survey 5-Year Estimates. (1 point)

(XI) Development site is within 2 miles of a government or 501(c)(3) non profit-sponsored museum (1 point)

(XII) Development site is within 1 mile of an indoor recreation facility available to the public (1 point)

(XIII) Development site is within 1 mile of an outdoor recreation facility available to the public (1 point)

(XIV) Development site is within 1 mile of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point)

(XV) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score (3 points);

(XVI) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (2 points);

(XVII) The Development Site is within the attendance zone of any one of the following three schools (an elementary school, a middle school, and a high school) with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (1 point).

(ii)For Developments located in a Rural Area, an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIII) of this subparagraph.

(I) The Development site is located within ~~2~~ 5 miles of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and

prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point)

(II) The Development is located within 4 miles of health -related facility, such a full service hospital, community health center, or minor emergency center. Physician specialty offices are not considered in this category. (1 point)

(III) The Development Site is within 3 miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten (1 point)

(IV) The Development Site is located in a census tract with a property crime rate 26 per 1,000 or less (1 point)

(V) The development site is located within 3 miles of a public library (1 point)

(VI) The development site is located within 3 miles of a public park (1 point)

(VII) The Development Site is located within 15 ~~7~~ miles of a University or Community College campus (1 point)

(VIII) The Development Site is located within 5 miles of a retail shopping center with at least three retail establishments ~~XX square feet of~~ stores (1 point)

(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is ~~27~~ 20% or higher as tabulated by 2010-2014 American Community Survey 5-Year Estimates. (1 point)

(X) Development site is within 5 ~~2~~ miles of a government or 501(3)(c) non-profit sponsored museum (1 point)

(XI) Development site is within ~~1~~ 3 miles of an indoor recreation facility available to the public (1 point)

(XII) Development site is within ~~1~~ 3 miles of an outdoor recreation facility available to the public (1 point)

(XIII) Development site is within ~~1~~ 3 miles of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point)

UNDERSERVED AREAS

(6)Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive up to five (5) points if the Development Site is located in one of the areas described in subparagraphs (A) - (G) of this paragraph, and the Application contains evidence substantiating qualification for the points. If an Application qualifies for points under paragraph (4) of this subsection then the Application is not eligible for points under subparagraphs (A) and (B) of this paragraph.

(A) The Development Site is located wholly or partially within the boundaries of a colonia as such boundaries are determined by the Office of the Attorney General and within 150 miles of the Rio Grande River border. For purposes of this scoring item, the colonia must lack water, wastewater, or electricity provided to all residents of the colonia at a level commensurate with the quality and quantity expected of a municipality and the proposed Development must make available any such missing water, wastewater, and electricity supply infrastructure physically within the borders of the colonia in a manner that would enable the current dwellings within the colonia to connect to such infrastructure (2 points);

(B) An Economically Distressed Area (1 point);

(C) A census tract within the boundaries of an incorporated area that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development serving the same target population within the past 15 years (2 points);

(D) A census tract within the boundaries of an incorporated area that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development within the past 15 years (3 points);

(E) ~~For areas not scoring points for (C) or (D) above, a census tract that does not have a Development subject to an active tax credit LURA (2 points~~);

(F) A census tract within the boundaries of an incorporated area and all contiguous census tracts for which neither the census tract in which the Development is located nor the contiguous census tracts have received an award or HTC allocation serving the same target population within the past 15 years. This item will apply to cities with a population of 500,000 or more, and will not apply in the At-Risk Set-Aside (4 points).

(G) A census tract within the boundaries of an incorporated area and all contiguous census tracts for which neither the census tract in which the Development is located nor the contiguous census tracts have received an award or HTC allocation within the past 15 years ~~and continues to appear on the Department's inventory~~. This item will apply to cities with a population of 500,000 or more, and will not apply in the At-Risk Set-Aside (5 points).

COMMUNITY SUPPORT FROM STATE REPRESENTATIVE

Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2)) Applications may receive up to eight (8) points or have deducted up to eight (8) points for this scoring item. To qualify under this paragraph letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development and clearly state support for or opposition to the specific Development. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative and must be submitted no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Once a letter is submitted to the Department it may not be changed or withdrawn~~. except in the instance where a representative who has provided a letter provides an additional letter to the Department, on or before April 3, 2017, stating that in their estimation the factual representations made to them to secure their original letter have proven to have been inaccurate, misleading, or otherwise insufficient to form a basis for their support, neutrality or opposition and, accordingly, their letter is withdrawn~~. A change in this manner is final and will result in a score of zero (0) points. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. A letter expressly stating opposition is scored - 8 points. A letter expressly stating neutrality is scored 0 points. Any other letter conveying a sense of support is scored 8 points. If a tone of support cannot be discerned in a letter that does not expressly state support, neutrality or opposition, the representative will be contacted and given five (5) business days to indicate in writing if they wish to have the letter scored as support or neutral. If clarification is not timely provided, the letter will be scored as neutral.

INPUT FROM COMMUNITY ORGANIZATIONS

(6)Input from Community Organizations. (§2306.6725(a)(2)) Where, at the time of Application, the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization, then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. Additionally, the Application may receive up to four (4) additional points if it claims less than 17 points under Section 11.7(d)(1). No more than eight ~~four~~ (8 ~~4~~) points will be awarded under this point item under any circumstances. All letters must be submitted within the Application. Once a letter is submitted to the Department it may not be changed or withdrawn. Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item.

A. An Application may receive two (2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide evidence of its tax exempt status and its existence and participation in the community in which the Development Site is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts), or taxing entities.
B. An Application may receive two (2) points for a letter of support from a property owners association created for a master planned community whose boundaries include the Development Site and that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (4) of this subsection.
C. An Application may receive two (2) points for a letter of support from a Special Management District whose boundaries, as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site.

CONCERTED REVITALIZATION PLAN

(7) Concerted Revitalization Plan. An Application may qualify for points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.

~~(A)For Developments located in an Urban Area, and in a city with a population of 100,000 or more.~~

(i) an Application may qualify to receive up to six (6) points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed ~~and executed~~. The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems. The concerted revitalization plan that meets the criteria described in subclauses (I) - (IV) of this clause:

~~(I) The concerted revitalization plan must have been adopted by the municipality or county in which the Development Site is located. The resolution adopting the plan or other acceptable evidence that the plan has been duly adopted must be submitted with the application.~~

(II) The problems in the revitalization area must be identified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. These problems must include the limited availability of safe, decent, affordable housing and may include the following:

a. long-term disinvestment, such as significant presence of residential and/or commercial blight, streets infrastructure neglect such as inadequate drainage, and/or sidewalks in significant disrepair;
b. declining quality of life for area residents, such as high levels of violent crime, property crime, gang activity, or other significant criminal matters such as the manufacture or distribution of illegal substances or overt illegal activities;

(III) Staff will review the target area for presence of the problems identified in the plan and for targeted efforts within the plan to address those problems. In addition, but not in lieu of, such a plan may be augmented with targeted efforts to promote a more vital local economy and a more desirable neighborhood, including but not limited to:

a. creation of needed affordable housing by improvement of existing affordable housing that is in need of replacement or major renovation;
b. attracting private sector development of housing and/or business;
c. developing health care facilities;
d. providing public transportation;
e. developing significant recreational facilities; and/or
f. improving under-performing schools.

(IV) The adopted plan must have a sufficient, documented and committed budget to accomplish its purposes on its established timetable. The~~is~~ funding for the budgeted expenses must either be identified inthe plan or have already been spent in full or in part, such that the

problems identified within the plan will have been sufficiently mitigated and addressed within 5 years of being placed in service.

(ii)up to seven (7) points will be awarded based on:

(I) Applications will receive four (4) points for a letter from the appropriate local official providing documentation of measurable improvements within the revitalization area based on the target efforts outlined in the plan; and

(II) Applications may receive (2) points in addition to those under subclause (I) of this clause if the Development is explicitly identified in a ~~resolution by~~ letter from the the city or county as contributing more than any other to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause.. If multiple Applications submit letters ~~resolutions~~ under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points.

(III) Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4)

(B)For Developments located in a Rural Area.

(i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction in an location meeting the threshold requirements of the Opportunity Index, §11.9(c)(4)(A) of a development in a rural area that is currently leased at 90% or greater by low income households and which was initially constructed prior to 1980 as either public housing or as affordable housing with support from USDA, the HOME program, HUD, or the CDBG program. Demolition and relocation of units must be determined locally to be necessary to comply with the Affirmatively Furthering Fair Housing Rule, or if necessary to create an acceptable distance form Undesirable Site Features or Undesirable Neighborhood Characteristics.

(ii) Applications will receive 3 points for the rehabilitation of a development in a rural area that is currently leased at 90% or greater by low income households and which was initially constructed prior to 1980 as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program if the proposed location requires no disclosure of Undesirable Neighborhood Features under Section §10.101(a)(4) or required such disclosure but the disclosed items were found acceptable.

(iii) Applications may receive (2) points in addition to those under subclause (i) or (ii) of this clause if the Development is explicitly identified in a letter by the city or county as contributing more than any other Development to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause. The letter from the Governing Body of the city or county that approved the

plan is required to be submitted in the Application. If multiple Applications submit valid letters under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application as contributing more than any other Development to concerted revitalization efforts.

(iv) Applications may receive (1) additional point if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4).

COST OF DEVELOPMENT PER SQUARE FOOT

Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii))

An Application may qualify to receive up to twelve (12) points based on either the Building Cost per square foot of the proposed Development voluntarily included in eligible basis ("Eligible Building Cost") or the Hard Costs per square foot of the proposed Development voluntarily included in eligible basis ("Eligible Hard Cost"), as originally submitted in the Application. For purposes of this paragraph, Eligible Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Eligible Hard Cost will include general contractor overhead, profit, and general requirements. Structured parking or commercial space costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking or commercial construction, as applicable. The square footage used will be the Net Rentable Area ("NRA"). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule. If the proposed Development is a Supportive Housing Development, the NRA will include common area up to 50 square feet per Unit.

(A)A high cost development is a Development that meets one of the following conditions:

(i)the Development is elevator served, meaning it is either a Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors;

(ii)the Development is more than 75 percent single family design;

(iii)the Development is Supportive Housing; or

(iv)the Development Site qualifies for a minimum of five (5) points under subsection (c)(4) of this section, related to Opportunity Index, and is located in an Urban Area.

(B)Applications proposing New Construction or Reconstruction will be eligible for twelve (12) points if one of the following conditions is met:

(i)the Eligible Building Cost per square foot is less than $72.80 per square foot;

(ii)the Eligible Building Cost per square foot is less than $78 per square foot, and the Development meets the definition of a high cost development;

(iii)the Eligible Hard Cost per square foot is less than $93.60 per square foot; or

(iv)the Eligible Hard Cost per square foot is less than $104 per square foot, and the Development meets the definition of high cost development.

(C)Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:

(i)the Eligible Building Cost per square foot is less than $78 per square foot;

(ii)the Eligible Building Cost per square foot is less than $83.20 per square foot, and the Development meets the definition of a high cost development;

(iii)the Eligible Hard Cost per square foot is less than $98.80 per square foot; or

(iv)the Eligible Hard Cost per square foot is less than $109.20 per square foot, and the Development meets the definition of high cost development.

(D)Applications proposing New Construction or Reconstruction will be eligible for ten (10) points if one of the following conditions is met:

(i)the Eligible Building Cost is less than $93.60 per square foot; or

(ii)the Eligible Hard Cost is less than $114.40 per square foot.

(E)Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i)twelve (12) points for Applications which include Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than $104 per square foot;

(ii)twelve (12) points for Applications which include Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than $135.20 per square foot, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

(iii)eleven (11) points for Applications which include Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than $135.20 per square foot.

PRE-APPLICATION

(3)Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted during the Pre-Application Acceptance Period. Applications that meet the requirements described in subparagraphs (A) - (H) of this paragraph will qualify for six (6) points:

(A)The total number of Units does not increase by more than ten (10) percent from pre-application to Application;

(B)The designation of the proposed Development as Rural or Urban remains the same;

(C)The proposed Development serves the same Target Population;

(D)The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, and/or Rural);

(E)The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than six (6) points from what was reflected in the pre-application self score;

(F)The Development Site at Pre-Application and full Application are the same or have contiguous borders of at least 10% with the site at full application, and the site at both pre-application and at full application are entirely within the same census tract. The site at full Application may not require notification to any person or entity not required to have been notified at pre-application;

~~(G)The Development Site does not have Undesirable Neighborhood Characteristics as described in 10 TAC §10.101(a)(4) that were not disclosed with the pre-application; and~~

(H)The pre-application met all applicable requirements.

LEVERAGING

(4)Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3))

(A)An Application may qualify to receive up to three (3) points if at least five (5) percent of the total Units are restricted to serve households at or below 30 percent of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) - (iv) of this subparagraph:

(i)the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 9 percent of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or

(ii)if the Housing Tax Credit funding request is less than eight ~~seven~~ (8~~7~~) percent of the Total Housing Development Cost (3 points); or

(iii)if the Housing Tax Credit funding request is less than ~~eight~~ nine (8~~9~~) percent of the Total Housing Development Cost (2 points); or

(iv)if the Housing Tax Credit funding request is less than ~~nine~~ ten (~~9~~ 10) percent of the Total Housing Development Cost (1 point).

(B)The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50 percent of the developer fee can be deferred. Where costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

THIRD PARTY REQUEST FOR ADMINISTRATIVE DEFICIENCY

§11.10. Third Party Request for Administrative Deficiency for Competitive HTC Applications. The purpose of the Third Party Request for Administrative Deficiency ("RFAD") process is to allow an unrelated person or entity to bring new, material information about an Application to staff's attention. Such Person may request the staff to consider whether a matter in an Application in which the Person has no involvement should be the subject of an Administrative Deficiency. Staff will consider the request and proceed as it deems appropriate under the applicable rules including, if the Application in question is determined by staff to not be a priority Application, not reviewing the matter further~~. Staff actions are not subject to RFAD, as the request does not bring new information to staff's attention.~~ Requestors must provide, at the time of filing the challenge, all briefings, documentation, and other information that the requestor offers in support of the deficiency. A copy of the request and supporting information must be provided directly to the Applicant at the same time it is provided to the Department. Requestors must provide sufficient credible evidence that, if confirmed, would substantiate the deficiency request. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered. The results of a RFAD may not be appealed by the Requestor.

UNDERWRITING RULES: APPRAISAL RULES

§10.304(d)(10)(B) Appraisal Rules and Guidelines: Value Estimates, Developments with Project-Based Rental Assistance.

(B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value". ~~inclusive of the value associated with the rental assistance.~~ For public housing converting to project-based rental assistance or project-based vouchers under the Rental Assistance Demonstration (RAD) program, the value must be based on the unrestricted market rents. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates and/or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter.

(23) Texas Coalition of Affordable Developers

TX-CAD 2017 Final Comments

The Texas Coalition of Affordable Developers (TX-CAD) is pleased to submit our comments for the 2017 QAP and Multifamily Rules. TX-CAD is a coalition of Developers and consultants who have come together for the purpose of focusing on the improvement of affordable housing policy in Texas. The members of this group represent over 200 years of affordable housing development/policy and approximately 35,000 units of affordable housing in Texas.

QAP

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

The Leveraging issue was studied in depth several years ago and was determined to adversely impact deals – that it directly leads to "a race to the bottom". We believe that this still holds true. The economic impact of lowering the leveraging is devastating to deals and results in developments that are significantly less financially sound. Below is an example of the financial impact on a generic deal:

> *Assume the average Tax Credit Request is $1.5M, the average deal cost at that tax credit request is $18,750,000. ($18,750,000 * 8% = $1.5M). Now reduce the 8% to 7% ($18,750,000 * 7% = $1,312,500) - instead of $1.5M in credits, you can only request $1,312,500 in credits – a $187,500 reduction in annual credits.* ***Multiply that by the 10 year credit period and a 1% reduction in leveraging results in $1,875,000 LESS sources to fund the deal the exact same deal****.*

If you can't reduce your costs to recapture this reduction in credits (which has a circular effect), then you could reduce or defer your developer fee and even then you may still have a gap. A reduction in cost at this level will result in the lowest quality level of materials and finish out, further stigmatizing affordable housing with the public.

Alternatively, an applicant could drive up costs to lower the leveraging percentage but without a source of funding to cover the additional costs, the result is to financially stress a development potentially to a point that it adversely impacts the financial health of the deal or risks not being able to actually get the project closed or constructed.

Finally, one of the unintended consequences of implementing high opportunity scoring in the QAP is the higher cost of land that is competitive. With higher land costs and construction costs rising, to lower the leverage percentage by 1% risks unfeasibility for many high opportunity sites.

We believe this issue has been significantly vetted and shown by Department staff in prior years to not be in the best interest of the program and request it go back to the 2016 language as illustrated below:

> (ii) if the Housing Tax Credit funding request is less than eight (8) percent of the Total Housing Development Cost (3 points); or

(iii) if the Housing Tax Credit funding request is less than nine (9) percent of the Total Housing Development Cost (2 points); or
(iv) if the Housing Tax Credit funding request is less than ten (10) percent of the Total Housing Development Cost (1 point).

2. Third Party Request for Administrative Deficiency for Competitive HTC Applications (§11.10)

We want to ensure that the Development community continues to have the right to point out mistakes on the part of competing applicants, as well as Department staff. The language added to this year's QAP seems to indicate that staff mistakes cannot be a part of this review.

We believe that the Department should continue to be responsible for administering this process and that having applicants communicate these issues directly with each other is not good policy.

Lastly, we want to encourage the Department to post all information received from both the Requestor, Applicant, and staff determinations in a timely manner on the TDHCA web site.

Proposed Language Change:

The purpose of the Third Party Request for Administrative Deficiency ("RFAD") process is to allow an unrelated person or entity to bring new, material information about an Application to staff's attention. Such Person may request the staff to consider whether a matter in an Application in which the Person has no involvement should be the subject of an Administrative Deficiency. Staff will consider the request and proceed as it deems appropriate under the applicable rules including, if the Application in question is determined by staff to not be a priority Application, not reviewing the matter further. ~~*Staff actions are not subject to RFAD, as the request does not bring new information to staff's attention.*~~ *Requestors must provide, at the time of filing the challenge, all briefings, documentation, and other information that the requestor offers in support of the deficiency.* ~~*A copy of the request and supporting information must be provided directly to the Applicant at the same time it is provided to the Department.*~~ *Requestors must provide sufficient credible evidence that, if confirmed, would substantiate the deficiency request. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered. The results of a RFAD may not be appealed by the Requestor.*

3. Revitalization Plans (§11.9 (d)(7))

While we agree with the concept of the revitalization points, and encourage staff to look at these plans and or activities in a holistic way. We are concerned that new language regarding language required in the plan is too prescriptive and doesn't seem to match what staff or the Board says they want to see in these plans. Not all revitalization plans will include specific language on affordable housing, yet may be the epitome of revitalization for an area. We encourage staff to look at these plans and or activities in a holistic way, rather than simply a checklist of required language.

(IV) The adopted plan must have sufficient, documented and committed ~~funding~~ budget to accomplish its purposes on its established timetable. This funding for the budgeted expenses ~~must have been flowing in accordance with~~ be identified in the plan, such that the problems identified within the plan will have been sufficiently mitigated and addressed within 5 years of being placed in service ~~prior to the Development being placed into service~~.

4. Proximity to the Urban Core (§11.9(c)(8))

While we look forward to seeing the impact of this new scoring item, we believe that it should not be a scoring factor for the At-Risk Set Aside. We do not believe that five urban areas should have an unsurmountable scoring advantage in what is a statewide competition. All urban and rural areas in the At-Risk Set Aside should be competing on equal footing.

We also question whether the proposed language is in direct conflict with the legislative purpose of the Regional Allocation Formula, which already requires that the General Set Aside funds be allocated appropriately to the regions which contain the five cities that qualify for the Urban Core points.

Staff has removed other scoring items from consideration in At-Risk and we would ask that this also be removed

(8) Proximity to the Urban Core. A development in a County with a population over 1 million and in a City with a population over 500,000 if the Development Site is located within 4 miles of the main City Hall facility. The main City Hall facility will be determined by the location of regularly scheduled City Council, City Commission, or similar governing body meetings. Distances are measured from the nearest property boundaries, not inclusive of non-contiguous parking areas. This will not apply to applications within the At-Risk Set Aside (5 points).

5. Community Support from State Representative (§11.9(d)(5))

We understand the reason why this was added to the QAP, but we believe that it adds another avenue for NIMBY to adversely impact the scoring process. Legal options are available to a Representative if an applicant lies or misrepresents information to an elected official. Additionally, TDHCA can sanction an applicant who misrepresents items in their application. We do not believe that rescission of a letter should be an option.

(5) Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2)) Applications may receive up to eight (8) points or have deducted up to eight (8) points for this scoring item. To qualify under this paragraph letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development and clearly state support for or opposition to the specific Development. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative and must be submitted no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Once a letter is submitted to the Department it may not

be changed or withdrawn ~~except in the instance where a representative who has provided a letter provides an additional letter to the Department, on or before April 3, 2017, stating that in their estimation the factual representations made to them to secure their original letter have proven to have been inaccurate, misleading, or otherwise insufficient to form a basis for their support, neutrality or opposition and, accordingly, their letter is withdrawn~~. A change in this manner is final and will result in a score of zero (0) points. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. A letter expressly stating opposition is scored – 8 points. A letter expressly stating neutrality is scored 0 points. Any other letter conveying a sense of support is scored 8 points. If a tone of support cannot be discerned in a letter that does not expressly state support, neutrality or opposition, the representative will be contacted and given five (5) business days to indicate in writing if they wish to have the letter scored as support or neutral. If clarification is not timely provided, the letter will be scored as neutral.

In the event that the Department will not remove this section we believe that the draft language giving the ability to retract a letter based on the Representative's "estimation" as to whether information was "inaccurate, misleading, or otherwise insufficient to form a basis" for their decision is far too low a bar to have to meet. We believe that there should at a minimum be definitive proof of intent to deceive on the part of the Developer.

6. Pre Application Participation (§11.9(e)(3))

Having only a ten percent border in common from pre to full application means that essentially an entirely new site (with a new contract and/or new owner) can be brought to the full application. With so many of the scoring items in this year's QAP being distance based from a site's boundaries, it is essential that significant changes to sites from pre to full application be minimized.

Additionally, we believe the new language regarding pre application site changes from pre to full application is going to be problematic for the Department to be able to confirm.

(F) The Development Site at Pre-Application and full Application are the same. A reduced portion of a larger parcel submitted as site control at Pre Application may be used for the full Application. ~~or have contiguous borders of at least 10% with the site at full application, and the site at both pre-application and at full application are entirely within the same census tract.~~

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

"Voluntarily included in eligible basis" should apply to both Building Costs and Hard Costs, not just to Hard Costs. The purpose of modifying this section of the QAP was to allow applicants to provide actual total costs while still limiting and encouraging an efficient use of tax credits in financing the development. Building Cost is the measurement most often used in applications and therefore to

provide meaningful change, Building Cost used for scoring should be that voluntarily included in eligible basis, same as the change made for Hard Costs. The measurement factor for Hard Costs is used by applicants on a very limited basis due to the limited amount allowed for an expanded set of construction cost categories. Therefore allowing the eligible basis option for only Hard Costs will not produce the desired result.

Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii)) An Application may qualify to receive up to twelve (12) points based on the amount voluntarily included in eligible basis for either the Building Cost or the Hard Costs per square foot of the proposed Development ~~voluntarily included in eligible basis~~ ("Eligible Hard Cost"), as originally submitted in the Application.

Multifamily Rules

1. 811 Program as Threshold (§10.204(16))

We believe it is premature to make participation in the 811 Program a threshold item. Until the program has been fully implemented and has some history of performance, we believe this should remain a scoring item, where an applicant has the choice of participation.

2. Undesirable Neighborhood Characteristics (§10.101(a)(3))

We would like to see the higher limits for the poverty rate for Regions 11 and 13 be added back to this item. We would also like to see a more precise definition for the number of blighted structures in an area that triggers this item rather than "multiple". We suggest five structures visible from the street for your consideration.

3. Undesirable Site Feature (§10.101(a)(2))

We are unsure where many of these changes came from since they were not a topic of discussion at the round table. We would prefer that these items mirror HUD requirement, which is what the previous language reflected. We are specifically concerned about and would ask where these changes came from and what they are based on:

- The expansion of distance from rail road tracts
- High voltage lines – now being 100 ft outside of easement
- 2 miles from refinery (this was include several years ago, but have been unable to get a response about what this distance figure is based on)

4. Mandatory Development Amenities (§10.101(b)(4)(D))

We disagree with the addition of solar screens as a mandatory amenity for all developments. In additional to the enormous cost associated with the screens, we are concerned about potential conflicts/violations of local design ordinances. Comments received from green building consultants specializing in both LEED and NGBS certifications include the following:

1. Solar screens will reduce the SHGC effectiveness during the winter to help heat the units, at least on the south facing units. That may increase energy use during the heating cycle.
2. Solar screens reduce the amount of natural daylight coming into the room. Natural daylighting is a consideration when looking holistically at the design of the building and the units.
3. The whole idea of using a performance path method of certification (NGBS or LEED) is that you can show equivalent or better energy savings doing other things that mandating solar screens for all units

We believe that this language should instead be added as a Green Building option to be used when appropriate and by choice, not mandated.

5. Tenant Support Services (§10.101(b)(7))

We do not agree with the premise that all tenant services should be provided by a third party/off-site entity. Many of the tenant service provided at a development, such as onsite food pantry, notary services, and onsite social events, are most appropriately administered by on-site leasing or other property staff.

(7) Tenant Supportive Services. The supportive services include those listed in subparagraphs (A) -(Z) of this paragraph. Tax Exempt Bond Developments must select a minimum of eight (8) points; Direct Loan Applications not layered with Housing Tax Credits must include enough services to meet a minimum of four (4) points. The points selected and complete list of supportive services will be included in the LURA and the timeframe by which services are offered must be in accordance with §10.619 of this chapter (relating to Monitoring for Social Services) and maintained throughout the Affordability Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. The services provided should be those that will directly benefit the Target Population of the Development. Tenants must be provided written notice of the elections made by the Development Owner. No fees may be charged to the tenants for any of the services, there must be adequate space for the intended services and services offered should be accessible to all (e.g. exercises classes must be offered in a manner that would enable a person with a disability to participate). Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. These services are intended to be provided by a qualified and reputable provider ~~in the specified industry~~ such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. ~~In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider.~~ Where applicable, the services must be documented by a written agreement with the provider.

6. Evaluation Process (§10.201(5))

We do not believe that the posting of an online scoring log should be what triggers timeframes as important as appeal rights, nor do we believe that formal scoring notices from the Department should be

considered “a courtesy”. Given the problems with the postings of the logs in the 2015 round, and the frequency with which people of dropped from TDHCA email notifications it does not seem like sound administrative policy to have such an important item be left to such a passive and problematic process. Additionally, we believe that scoring notices are an important part of the administrative process and should be a mandatory, not something that staff “may” provide.

We believe the following language should be removed:

> ~~*The Department will, from time to time during the review process, publish an application log which shall include the self-score and any scoring adjustments made by staff. The posting of such scores on the application log may trigger appeal rights and corresponding deadlines pursuant to Tex. Gov't. Code §2306.6715 and §10.902 of this chapter (relating to Appeals Process). The Department may also provide a courtesy scoring notice reflecting such score to the Applicant.*~~

7. Site and Development Requirements and Restrictions (§10.101(b)(1)(A)(vi))

Under General Ineligibility Criteria, item vi, the addition of adaptive reuse as it relates to one for one replacement units is not appropriate. An adaptive reuse by definition includes no units because it was not being used for residential. “Adaptive Reuse -- The change-in-use of an existing building not, at the time of Application, being used, in whole or in part, for residential purposes…” Adaptive Reuse should be removed from item vi.

> *(vi) A Development utilizing a Direct Loan that is subject to the Housing and Community Development Act, §104(d) requirements and proposing Rehabilitation, or Reconstruction* ~~*or Adaptive Reuse*~~*, if the Applicant is not proposing at least the one-for-one replacement of the existing unit mix. Adding additional units would not violate this provision.*

8. Administrative Deficiencies for Competitive HTC Applications. (§10.201(7)(B))

We recommends keeping the period to cure a deficiency five days instead of reducing to three days.

Justification: More times than not, requests for deficiencies create a ripple effect, where making a change to one document requires the applicant to change several other documents to be consistent. When one of the documents requires input from a third party, addressing the deficiency takes time. Five days is more appropriate than three days.

Appraisal Methodology for RAD Developments

§10.304(d)(10)(B) Appraisal Rules and Guidelines: Value Estimates, Developments with Project-Based Rental Assistance.

Proposed Language:
(B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value". ~~inclusive of the~~

~~value associated with the rental assistance.~~ For public housing converting to project-based rental assistance or project-based vouchers under the Rental Assistance Demonstration (RAD) program, the value must be based on the ~~post conversion restricted rents and must consider any other on going restrictions that will remain in place even if not affecting rents~~ unrestricted market rents. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates and/or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter.

Rationale:

Nationwide a number of closed RAD transactions have been awarded acquisition credits based on building values derived using market rents under the income approach. Tax counsel for these transactions have opined that this approach is reasonable, as have national accounting and appraisal firms. The reason this approach has been accepted nationwide is that in the "As Is" condition public housing developments operate on a breakeven basis, preventing an accurate valuation under the income approach. There are several ways in which HUD may allow the release of public housing restrictions. For public housing converting to Section 8 assistance, at the closing of RAD transactions, the existing public housing restrictions are removed and the property is unencumbered. This release of public housing restrictions supports the use of a market-rent derived value.

Tax credits are an essential tool in the rehabilitation and redevelopment of public housing developments under the RAD program, and the nationally accepted use of a market rent-derived value allows housing authorities to generate needed financing to structure financially feasible transactions. In areas with strong rental markets where affordability crises often exist, the differential between the market rents a housing authority could realize in an unencumbered scenario and the RAD rents provide a mechanism for the housing authority to maximize the value of existing assets to generate more financing to improve and preserve existing affordable housing.

(24) Low Income Housing Information Service

Texas Low Income Housing Information Service

October 14, 2016

Texas Department of Housing and Community Affairs
221 E. 11th St
Austin, Texas 78701

TDHCA Staff & Board,

Texas Low Income Housing Information Service applauds the great efforts which the staff of the Texas Department of Housing and Community Affairs (TDHCA) have expended in working with stakeholders to craft the Draft 2017 Qualified Allocation Plan (QAP) and Draft Uniform Multifamily Rules. Overall, we believe that many of the rules and changes contained in these documents will advance this state's obligation to affirmatively further fair housing and to provide quality housing choices to low-income Texans who are dependent on affordable housing programs. However, there are several changes, as well as strong sentiments among stakeholders, which stand to impede this same obligation and are a regression from the 2016 QAP.

We submit the follow comments and recommendations on the Draft 2017 Qualified Allocation Plan and Draft Uniform Multifamily Rules.

Overview of Changes to Location-based Criteria

First, we'd like to quickly go over some of the changes made in this year's QAP which stand to open up new areas of the state to being competitive in the 9% LIHTC program:

1. Raising the allowable tract poverty rate in the opportunity index from 15% to the **higher** of 20% or the median tract poverty rate for the service region
2. Equalizing 1st, 2nd, and 3rd quartile tracts based on median household income for possible points in the opportunity index
3. Removing schools from the opportunity index
4. Using a school quality measure under Educational Quality that is the **lower** of 77 or the average of all schools for a service region
5. Providing opportunities to score points based on additional merits of these schools
6. Allowing for mitigation should a school campus not have a 'met standard' rating from TEA, as well as for other issues identified under Undesirable Neighborhood Characteristics
7. Awarding 5 points for simply being located within 4 miles of city hall in a municipality with at least 500,000 people
8. Awarding 5 points for being in an underserved census tract surrounded by other underserved census tracts that is located in a municipality with at least 500,000 people

With these changes, new areas have been opened to competition, while cumulatively these eight changes undermine the state's obligation to affirmatively further fair housing. Individually, these changes might have modest effects on the locations of LIHTC awardees. Together, however, they stand to potentially reopen the very areas where LIHTC development and other affordable housing types have been concentrated, thereby denying housing choices to low-income Texans. Some of these changes require further consideration by staff, and all should be considered when evaluating comments and

recommendations which call for further rule changes that will be even more consequential to the AFFH obligation for the state.

Below are our specific comments and recommendations.

Opportunity Index

Most troubling is the equalization of 1st, 2nd, and 3rd quartile tracts in scoring. This change is accompanied by a raising of the poverty threshold from 15 percent to the higher of 20 percent or the average for the state service region. This QAP went from rewarding deals in high opportunity tracts where few LIHTC developments are currently located to, poverty rate aside, placing three-fourths of census tracts in Texas on an equal playing field. Given that property values, a major factor in development decisions, are likely to be lower in 3rd quartile tracts, it is reasonable to presume that there will be a significant shift in the locations of awards in the 2017 cycle away from the progress which has been made over the past several competitive cycles. With the addition of the Proximity to the Urban Core points which are weighted equally with Educational Quality, there is a further reduced incentive to pursue developments in these top quartile tracts.

We recommend that 3rd quartile tracts be eligible for a maximum of 6 points for the opportunity index scoring item.

Educational Quality

It is unconscionable and offensive to witness such an effort from developers to discount the importance of a good education through the calls to remove this scoring item entirely. Say what one will about the TEA and its ever-changing metrics, but they are the sole source of the objective measures that you (TDHCA) have to work with. Emphasizing school quality in the state's QAP was the right thing to do. It has contributed to the trend of awards to areas which haven't had affordable housing available, providing new housing choices to low-income Texans.

There has also been a recommendation that school quality become one of the "menu items" under opportunity index. It is offensive to even consider relegating something so critical to life outcomes like a quality education to a mere option that might be chosen by developers. Knowing how school quality drives housing decisions in the market, and then understanding the effect this has on property values, it is reasonable to assume that this "option" will not be a desirable one when there are others that place smaller financial obligations upon applicants in the LIHTC program.

The changes called for in the Remedial Plan were implemented, produced undeniably positive results, and have set our state on a trajectory toward finally providing some real choice for its low-income residents. Retreating from these positive changes would not only be detrimental to those dependent on this housing, but would likely open the state up to future legal challenges based on the recently re-affirmed disparate impact methodology given the correlations between school quality and the increased presence of protected classes.

We recommend no changes to this section from its current form in the 2017 Draft.

Underserved Areas & Proximity to the Urban Core

Subsection 6(E) awards applications 5 points to applications if both the census tract of the proposed site and all contiguous tracts have not received any LIHTC reward for at least 15 years. Section 8 awards applications 5 points if the proposed development site is within 4 miles of the main City Hall facility. Both are bracketed to cities of 500,000 or more. This is a significant advantage available to qualifying proposals in large urban areas which smaller cities—many of which are suburbs—do not have. While it is unlikely that many areas exist where both of these point categories would apply, it is somewhat offensive that these items individually carry the same scoring weight as educational quality. Additionally, scoring criteria should not place suburban areas at such a disadvantage given the current lack of affordable housing options in many of these areas.

We recommend that at least one of the following two changes are made: 1) the population threshold for the 5-point underserved area item be lowered to 100,000 people; or 2) both of the aforementioned scoring items have their point award reduced to a level below that of educational quality.

Community Support from State Representative

Changes made in this rule appear to be in response to a couple of isolated incidents where representatives felt they were misled by the applicant and desired to withdraw their letters of support. These changes stand to make it even easier for state representatives to dodge the responsibility vested to themselves and effectively veto LIHTC developments. Allowing representatives to contest claims made by applicants after letters have been submitted will turn the agency's board and staff into a respective court and jury. The burden is upon the representative to get the information and facts they need to make their decision—something they do for a living inside our Capitol—so there is no need for the TDHCA to allow additional opportunities for dispute in this already-contentious process.

We recommend removal of this provision allowing state representatives to withdraw their submitted letters of support.

Undesirable Site Features (USF)

There is an important question to ask when considering changes which would place developments even closer to these feature: *would you want to live next to this?* Those of us who have likely had many housing choices available would answer a resounding 'no'. There is no reason to think the desires of a low-income household would be any different.

We recommend that at a minimum, these distances should remain at the greater of 2016 levels or those proposed 2017 Draft Uniform Multifamily Rules.

Undesirable Neighborhood Characteristics (UNC)

Without a QAP, these and USF are the only controls that staff has on what the locational priorities are in awarding non-competitive tax credits, as well as funding for housing through other programs. Calls to remove these in their entirety disregard the well-documented effects that concentrated poverty, lack of quality education, high crime, and structural blight have on the levels of opportunity afforded to neighborhood residents, as well as their general quality of life.

To the criticisms of using proprietary data from Neighborhood Scout for crime: it is unfortunate that there is not a publicly-available crime data source at the census tract level, but this is the best data

available for this purpose and is used for a small portion of the program. To not consider crime rates under this section would be a crime in and of itself and there is no reason to remove its consideration over unproven allegations of inaccuracy or unreliability.

We recommend no changes to this section from its current form in the 2017 Draft.

Thank you for your consideration of our comments and recommendations.

Best Regards,

Charlie Duncan
Fair Housing Planner

(25) Corporation for Supportive Housing

October 14, 2016

Ms. Sharon Gamble
Tax Credit Program Manager
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Ms. Gamble,

Thank you for the opportunity to present recommendations to the 2017 Qualified Allocation Plan (QAP). Please consider the below recommendations by the Corporation for Supportive Housing.

2017 Qualified Allocation Plan

1. **Criteria to Serve Texans most in need – Tenant Services**
   We applaud TDHCA for recognizing the importance of local service providers for low-income households. However, to effectively pair local service providers to affordable housing, a dedicated Service Coordinator must be at the property. Service Coordinators bridge everything from hot meal delivery, home health based services, health education, transportation, insurance & doctor navigation, healthcare system navigation and social activities. Service Coordinators understand what residents need so they can coordinate with providers and tailor the services appropriately to the needs of the residents. Furthermore, Service Coordinators in Elderly and Supportive Housing developments have proven to reduce Medicaid and Medicare spending by enabling residents to remain living independently, out of high-cost skilled living and hospitals and improving quality of life.

   We recommend the following language:
   (B) The Applicant certifies that the Development will have a dedicated Service Coordinator to contact local service providers, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. The Service Coordinator will pro-actively engage and assess residents' needs through direct communication and tailor services appropriately.

2. **Underserved Area**
   The proposed language in Underserved Areas does not support TDHCA's intention. Census tracts very greatly in size and do not reflect the monumental population growth that many areas throughout Texas have experienced. At the very least, we recommend adding **"does not have a tax credit development serving the same Target Population"** to (C) and (D) as reflected in the 2016 QAP. For low-income frail seniors, a general population apartment building are not appropriate for their needs to allow for Aging In Place. These properties typically do not have elevators, have limited accessibility and are not paired with appropriate services that a frail senior will likely need to remain living independently. On the opposite spectrum, a census tract with an Elderly development cannot serve a young household with children.

   We recommend:

(C) A census tract within the boundaries of an incorporated area that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development within the past 15 years serving the same Target Population (3 points);
(D) For areas not scoring points for (C) above, a census tract that does not have a Development subject to an active tax credit LURA serving the same Target Population; (2 points);

3. **Concerted Revitalization Plans (CRP) - Rural**
Under the Rural CRP, the only properties allowed to receive points currently exclude HUD properties such as HUD 202 developments. HUD 202s were designed specifically house seniors and persons with disabilities. Since 2012, the HUD 202 Capital program has been eliminated and relies on the LIHTC program to fund preservation of these buildings. In addition, these HUD 202 properties typically have rental assistance making these units available for Extremely Low Income households. Not only has this program ceased to create new units for Seniors, the Elderly population in the US and in TX is exploding, creating a significant shortage of units. Without preservation, this housing stock is at risk of being lost. We recommend:

(i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction in an location meeting the threshold requirements of the Opportunity Index, §11.9(c)(4)(A) of a development in a rural area that is currently leased at 90% or greater by low income households and which was initially constructed prior to 1980 as either public housing or as affordable housing with support from USDA, the HOME program, a HUD program or the CDBG program…

(ii) Applications will receive 3 points for the rehabilitation of a development in a rural area that is currently leased at 90% or greater by low income households and which was initially constructed prior to 1980 as either public housing or as affordable housing with support from USDA, the HOME program, a HUD program or the CDBG program …

4. **Educational Quality**
Given the various populations served in LIHTC properties, and the fact that for Elderly and Supportive Housing projects serving only adults, residents do not benefit from proximity to a high performing school, we recommend:

- Placement of this criteria as an item in the Opportunity Index. It could be a high point option within the Opportunity Index, but those development not serving a population inclusive of children should not be required to meet that criteria to compete;
  OR
- If left in place, we believe that Supportive Housing projects should not be penalized through point limitation for proximity to a high performing school. Any Supportive Development serving children should be able to score just as highly as other developments on this scoring item.

5. **Criteria promoting the efficient use of limited resources – Cost per Square Foot**
While we applaud TDHCA for increasing the $/SF of hard cost by 4%, the first increase in 4 years, the $78 or $104 $/SF allowance remains well below the actual cost. To best house seniors,

buildings must be serviced by elevators which require interior hallways and common space such as a community room, library, fitness room and computer room, yet these costs are not included in the Net Rentable calculation. These common areas are also required to facilitate services from local providers. For elderly, who primarily remain home and in their building 90%+ of the time, these common areas are essential for healthy aging and quality of life. Furthermore, restricting cost prohibits more costly up-front green and sustainability features which promote future operational savings and high-quality developments. We recommend:

- Developments electing to coordinate with local service providers under Tenant Services and have appropriate community space for services, be allowed an additional 50 ft per unit; OR
- Any development serviced by elevators and includes social service offices or a service coordinator office AND includes common area for providers to deliver services be allowed an additional 50 ft per unit.

6. **Leveraging of Private, State and Federal Resources**

   CSH recommends this item remain the same as 2016. By encouraging applicants to limit tax credit requests to 7% of total development costs as opposed to 8% encourages financial burden on applicants as they add larger amounts of debt, further stressing the financial integrity of their development. Furthermore, this item will encourage more and more units to be designated as market rate and we will be serving far fewer low-income households to support additional debt loads. This is not the goal of S.42 which is to provide affordable rental housing for low-income households.

7. **Proximity to Urban Core & Urban Core Tie-Breaker**

   We understand the focus on Urban Core locations, but we recommend this criterion does not apply to At-Risk developments. It creates an uneven playing field as these properties do not compete within Urban Regional pools, but state-wide and include both rural and urban applications throughout the state.

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

Sincerely,

Kathryn Turner
CSH
1111 Rosalie; Suite 310
Houston, TX 77004
Office: 713-526-1887
kathryn.turner@csh.org

(26) Preservation Texas

PRESERVATION TEXAS

October 14, 2016

Ms. Sharon Gamble
Competitive Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin TX 78711-3941

[Via-E-mail]

Dear Ms. Gamble:

We appreciate the opportunity to comment on proposed housing tax credit rules.

Let me start by saying that historic buildings are fantastic places to live. They are authentic places that connect people with our rich history in pedestrian-friendly and people-scaled neighborhoods.

Preservation Texas works statewide to preserve historic structures in communities large and small. We know that there are many high-quality historic structures that have stood for a century or more that await a new life.

What is exciting is that these vacant and underused buildings can be efficiently repurposed as affordable housing, becoming dynamic catalysts for the revitalization of historic downtowns.

We strongly encourage TDHCA to give priority consideration to the scoring of applications for these historic structures. Such projects are a win for historic preservation, a win for affordable housing, and a tremendous economic boost to the communities in which they are located.

Sincerely,

Evan R. Thompson
Executive Director

P.O. Box 12832
Austin TX 78711

512.472.0102

preservationtexas.org

(27) Atlantic Housing Foundation, Inc.

Steve LeClere
Atlantic Housing Foundation, Inc.
5910 N Central Expressway, Ste. 1310
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Mobile: 812-340-6897
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sleclere@atlantichousing.org

TDHCA QAP & Rule Changes
Items for Public Comment

- Multifamily Rules:
  - Subchapter B Section 10.101 Site Development Requirements and Restrictions – Rehabilitation Costs
    - The proposed increases for 4% transactions will exclude many large multifamily projects from utilizing the LIHTC for substantial renovations. LIHTC equity will return $0.315 per dollar of eligible cost ($0.415 for projects in QCTs) assuming a price per credit of $1.00. The balance of each dollar of cost must be funded with either debt or deferred developer fee. The availability of soft financing has dwindled and the criteria for obtaining soft financing skewed more heavily towards projects that are more likely to receive an allocation of 9% credits. Thus, any additional debt would be from the permanent lender. The additional rehabilitation expenditures could result in the ability to achieve higher rents and thus support additional debt expenditures, but that may not be true in all markets. In the absence of additional rental income potential, the only remaining source of funds would be deferred developer fee.
      - For a 200 property constructed more than 20 years ago, the additional rehabilitation cost requirement would be $1,000,000. Of that amount, assuming a price per credit of $1.00, the project could expect an additional $316,000 of LIHTC equity (or $416,000 if located in a QCT). The remaining $684,000 would need to be funded from additional debt or deferred developer fee. For a property of the same size constructed less than 20 years ago, the same analysis under the proposed rule change would result in the preceding figures being doubled.
      - The LIHTC remains the most effective means to substantially renovate existing properties and preserve affordable housing units without excessive leverage. The proposed rule could make the LIHTC program infeasible for many large multifamily developers, particularly those located outside of a QCT.
    - Presumably, TDHCA's concern is that credits would be allocated to projects which were not including enough in renovation expenditures to adequately preserve the properties through the Compliance Period. In

that case, would it be more precise to incorporate threshold criteria which require that systems of a certain age be replaced or that certain scope items (roofs, HVAC, flooring, common areas) be addressed absent some evidence of recent improvements addressing those items? The per unit minimum establishes a dollar amount to be spent, but does not necessarily direct that those dollars be spent on items that will preserve/enhance the property.

- In addition, there are numerous stakeholders in a LIHTC development, particularly investors and lenders, that are incentivized to ensure that any rehabilitation adequately addresses the long term and short term needs of a property. Restricting the types of developments that can access the resource seems like an overly punitive measure when there are stakeholders in place to ensure rehabs are done appropriately and more precise measures that could be applied as opposed to a broad criteria requiring only that a threshold amount be spent.

- QAP
  - Subchapter C Section 10.204 Required Documentation for Application Submission; incorporation of the Section 811 Program as a threshold item applicable to all multifamily developments.
    - TDHCA's inclusion of the Section 811 Program as a threshold item will result in developers being forced to either make the project for which an application is submitted or an existing project with the developer's portfolio fall under the definition of "federally assisted housing" according to 42 U.S.C. 13641.
      - The "federally assisted housing" designation applies to many projects which are funded in the 9% and 4% rounds each year, e.g. project with project based Section 8 contracts, HOME Funds, etc. The important distinction is that projects with HOME Funds or Section 8 contracts have actively sought to obtain those resources or keep those resources in place for their project. Making the Section 811 program a threshold criteria removes the choice as to whether or not to accept the "federally assisted housing" designation and the requirements that accompany the designation such as Davis Bacon Wages, application of the Uniform Relocation Act, etc.
        - The application of the URA substantially increases the administrative cost of an in-place rehab relocation due to the federal regulations with which the owner would be required to comply.
        - In addition, there are significant additional cost burdens implemented by the URA (42 months of the rental assistance payment) for any permanently displaced tenants, which would

occur for any in place rehab proposing to increase the percentage of affordable units from its existing configuration.
    - In the absence of the URA, the owner could determine what, in addition to moving expenses and any incentives offered to relocate, would be needed.
- Leaving participation in the 811 program as a scoring criterion would leave the decision as to whether to accept the additional costs and administrative burden created by the federally assisted designation up to the applicant.
- If THDCA wishes to expand the reach of the 811 program, perhaps it would be better achieved by imposing the threshold requirement on Direct Loan applications or others already choosing to receive funds that would designate the project as federally assisted.

(28) Locke Lord Attorneys and Counselors

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Attorneys & Counselors

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MEMORANDUM

TO: Texas Department of Housing and Community Affairs

FROM: Cynthia Bast

DATE: October 14, 2016

RE: PUBLIC COMMENTS ON RULES – **CHAPTER 11, QUALIFIED ALLOCATION PLAN**

On behalf of Locke Lord LLP and not any particular client of our firm, please find comments to draft Chapter 11, Texas Administrative Code ("**TAC**"), Qualified Allocation Plan.

Section 11.9(c)(4)(B)(ii)(II)

Comment: The text needs to be changed from "such a full" to "such as a full".

Sections 11.9(c)(4)(B)(i)(VII) and (c)(4)(B)(ii)(V) and (VI)

Comment: The word "development" needs to be capitalized.

Section 11.9(d)(5)

Comment: I object to the concept of allowing State Representatives to retract their letters of support. Applicants expend considerable time and effort to communicate with the State Representatives' offices and educate them about the proposed Development. At the same time, the State Representatives should perform some due diligence and be comfortable with the proposal before issuing a letter of support. Further, TDHCA already suggests that State Representatives should be deliberate in their considerations and wait to submit their letters until appropriate review is conducted. Allowing a State Representative to withdraw a letter of support encourages behind-the-scenes activities that are not healthy for the program. It encourages NIMBYism to overtake a proposed Development, moving us away from the goals of affirmatively furthering fair housing. If an Applicant has truly provided false information, there is a mechanism in the threshold criteria to address that situation with a different procedure and remedy.

Section 11.9(e)(3)(F)

Comment: I think a clarification for the last sentence may be required. It says "The site at full Application may not require notification to any person or entity not required to have been notified at pre-application." Isn't it possible that, even if a site is exactly the same between pre-application and full application, the notification requirements could have changed because of a change in elected public official? Perhaps this qualification should be added. Thus, the sentence would read something like this: "The site at full Application may not require notification to any person or entity not required to have been notified at pre-application, other than by reason of a change in elected public officials."

(29) Leading Age Texas

George Linial, President & CEO
2205 Hancock Drive | Austin, TX 78756
p 512.467.2242 | f 512.467.2275
www.leadingagetexas.org

October 14, 2016

Ms. Sharon Gamble
Tax Credit Program Manager
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Re**: Recommendations on the 2017 Qualified Allocation Plan (QAP)**

Ms. Gamble,

Thank you for the opportunity to present recommendations to the 2017 Qualified Allocation Plan (QAP). Please consider the below recommendations by LeadingAge Texas. LeadingAge Texas is a trade association representing the full continuum of mission-driven, not-for-profit aging services providers including over 100 senior housing developments in Texas.

1. **Criteria to Serve Texans most in need – Tenant Services**
   We applaud TDHCA for recognizing the importance of local service providers for low-income households. However, to effectively pair local service providers to affordable housing, a dedicated service coordinator must be present at the property.

   Service coordinators serve as the bridge to services for seniors including; meal delivery, home health based services, health education, transportation, healthcare system navigation and social activities. Service coordinators work directly with residents to determine their needs so they can best coordinate and tailor the services that are most appropriate for the individual.

   Furthermore, service coordinators in Elderly developments have proven to reduce Medicaid and Medicare spending by enabling elderly to remain living independently, out of high-cost skilled living and hospitals and improving their overall quality of life. *Affordable Senior Housing Plus Services: What's the Value?,* a recent study released by the LeadingAge Center for Housing Plus Services found:
   - The presence of a service coordinator was found to decrease the odds of having at least one acute inpatient admission by 18%.
   - Medication management was associated with a lower average Medicaid monthly payment by 21% compared to properties without this service.
   - Health education services were also associated with a decrease of 8% in Medicare Part D payments per enrolled month.

   We recommend the following language:
   (B) The Applicant certifies that the Development <u>will have a dedicated service coordinator to</u> contact local service providers, and will make development community space available to them

George Linial, President & CEO
2205 Hancock Drive | Austin, TX 78756
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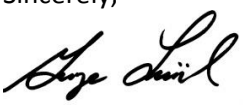
on a regularly-scheduled basis to provide outreach services and education to the tenants. The Service Coordinator will pro-actively engage and assess residents' needs through direct communication and tailor services appropriately. A Development selecting these points will also provide:

- Minimum of 1 monthly program on-site provided by a local service provider; AND
- Minimum of 3 local service providers engaged to provide services to residents; OR
- The applicant is a non-profit and is self-providing services to residents of the Development.

Sincerely,



George Linial
President & CEO
LeadingAge Texas
george@leadingagetexas.org

(30) Uplift Education

uplifteducation

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October 7, 2016

By fax: (512) 475-0764, Attn: Teresa Morales.

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

Re: 2017 Qualified Allocation Plan – Comments and Suggested Changes

Dear Ms. Morales:

Uplift Education appreciates the opportunity to submit these comments regarding the proposed 2017 Qualified Allocation Plan (QAP).

Our comments are in relation to two sections in the QAP: Section 11.9(d)(7) – Concerted Revitalization Plan, and Section 11.9(c)(5) – Educational Quality.

11.9(d)(7) – Concerted Revitalization Plan

We support this section and the intent for developments which are part of concerted revitalization plans to be able to achieve up to seven (7) points, but want to amend a typo in the 2017 QAP. We suggest that the first sentence in section 11.9(d)(7)(A)(i), which currently reads...

> "an Application may qualify to receive up to six (6) points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed and executed."

Be amended to read...

> "an Application may qualify to receive up to **seven (7)** points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed and executed."

Amending this sentence to seven points would be consistent with the number of points available further down in section 11.9(d)(7)(A)(ii), which reads...

> "up to seven (7) points will be awarded based on:"

We would also like to suggest that the sentence in section 11.9(d)(7)(A)(ii)(III) which reads...

> "Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, 11.9(c)(4)"

Be amended to...

> "Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, 11.9(c)(4)**(B) but for the criteria found in 11.9(c)(4)(A) and subparagraphs 11.9(c)(4)(A)(i) and 11.9(c)(4)(A)(ii)"**

Revitalization of once vital neighborhoods improves quality of life and makes our communities and the State stronger. However, achieving true revitalization is not easy and is accomplished with sustained effort over a number of years. Successful revitalization initiatives must consider the full range of factors that impact resident quality of life. This definitely includes housing – as a neighborhood is being revitalized, and becomes more attractive to a range of incomes, housing can become more expensive and ultimately inaccessible to lower income children, families, and individuals. Ideally, concerted neighborhood revitalization includes housing accessible to a range of incomes so that all, especially those most in need, benefit from the investment. These worthy initiatives cannot adequately navigate this challenge without 9% tax credits.

Clarifying Language to 11.9(c)(5) – Educational Quality

We agree with the importance Educational Quality, and we support that a goal of the QAP is to consider the schools that will be accessible to tenants. However, we believe that the language in the 2017 QAP is potentially problematic, and should be clarified, because almost all, if not all, schools have some registration/application process and capacity or enrollment limit. We therefore suggest that the fourth sentence of Section 11.9(c)(5) Educational Quality which currently reads...

> "Schools with an application process for admittance, limited enrollment or other requirements that may prevent a tenant from attending will not be considered as the closest school or the school which attendance zone contains the site."

Be amended to read...

> "Schools with an application process for admittance **that include academic achievement or other potentially restrictive requirements** that may prevent a tenant from attending will not be considered as the closest school or the school which attendance zone contains the site."

Amending the QAP in this manner better aligns with the TDHCA objective of considering only those schools which are accessible to tenants of the proposed housing development.

Additional Components to 11.9(c)(5) – Educational Quality

We believe that the QAP should award points for schools that (1) serve students living in an area that is a part of a concerted revitalization plan and (2) have shown sustained multi-year progress. The reality is that, even with vigorous focus on improvement for schools in underserved areas coupled with concerted revitalization efforts, educational improvement is incremental. Improved scholastic performance is impacted by a number of factors outside of the classroom – such as having enough to eat, having a safe home life, having before- and after-school activities, living in a healthy environment, etc. Affordable housing should not be the last component of a concerted revitalization effort, but unfortunately, that is currently the likely outcome based on existing QAP provisions.

We therefore suggest Section 11.9(c)(5)(A)-(E) be amended to read:

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score (5 points); **or**

(B) **The Development Site is part of a concerted revitalization plan that meets the requirements in section 11.9(d)(7) and is within the attendance zone of an elementary school, a middle school and a high school with an Index 1 score that has improved for three consecutive years prior to application (5 points); or**

(C) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (3 points, or 2 points for a Supportive Housing Development); or

(D) **The Development Site is part of a concerted revitalization plan that meets the requirements in section 11.9(d)(7) and is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with an Index 1 score that has improved for three consecutive years prior to application (3 points, or 2 points for a Supportive Housing Development); or**

(E) The Development Site is within the attendance zone of a middle school or a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (1 point); or

(F) The Development Site is within the attendance zone of an elementary school with an Index 1 score in the first quartile of all elementary schools statewide.(1 point); or

(G) If the Development Site is able to score one or three points under clauses (B) - **(F)** above, two additional points or 1 point for a Supportive Housing Development may be added if one or more of the features described in subclause (1) - (4) is present:

In Summary

We applaud TDHCA for Section 11.9(d)(7) which appreciates the importance and the urgent need for thoughtful, well executed revitalization efforts. High-quality mixed-income affordable housing, made possible by 9% tax credits, helps these worthy initiatives accelerate progress while ensuring the neighborhood remains accessible to a range of incomes.

Additionally, we encourage TDHCA to amend and expand Section 11.9(c)(5). We share the belief that quality neighborhood schools are a critical factor achieving measurable improvements in the quality of life for residents within an undergoing neighborhood revitalization. We also believe that affordable housing is also a critical component toward driving successful outcomes. We therefore recommend that additional recognition of the need for affordable housing should be given for concerted revitalization programs where educational improvements are being realized on a year-by-year basis.

We thank you for your consideration.

Sincerely,

Ann Stevenson
Chief Administrative Officer

cc: TDHCA Board of Directors

(31) Structure Development

October 14, 2016

Via Email

Ms. Sharon Gamble
TDHCA
221 East 11th Street
Austin, TX 78701

RE: Comments on 2017 QAP and 2017 Multi Family Rules

Dear Ms. Gamble:

I am writing to comment on the proposed QAP and Multifamily Rules for 2017. I have been active in two group comment sessions. The comments herein are limited to the individual thoughts of my company, staff, and the clients we serve. I also have a list of requested clarifications on the last page.

QAP

Legislative letters. Please do not allow legislators to rescind their support. This opens the door for nimbyism and political pressure to affect the legislator after support has been provided.

Educational quality. Please allow all development sites the opportunity to obtain the supplementary 2 points that can be reached by 4 different methods identified in section 11.9 (c)(5)(E) rather than restricting to only sites that have a base of 1 or 3 points. Suggested language is ~~If the Development Site is able to score one or three points under clauses (B) – (D) above,~~ two additional points or 1 point for Supportive Housing Development may be ~~added~~ utilized if one or more of the features described in clause (i) – (iv) is present for a maximum of 5 points.

Concerted Revitalization Plan. The population threshold of 100,000 is inconsistent with a city's desire and ability to revitalize an area of their town. I recommend you open up this constraint to include Qualified Census Tracts in revitalization areas, which is consistent with Section 42 of the Internal Revenue Code. Also, please clarify that the additional point from 6 to 7 is available without having the first prong of demographic characteristics. Suggested language is "Applications will receive (1) point in addition to those under sub clause (I) and (II) if the development is in a location that ~~would score at least 4 points~~ meets 4 factors under Opportunity Index 11.9 (c)(4)." Finally, please consider that the public actually participate in the public input process. The adoption of a plan where there were no interested stakeholders participating is clearly not an area of concern to the general public or in need of revitalization.

Deficiencies. Please maintain the 5 business day 2016 deficiency response deadline. Within minutes of receiving a deficiency, I assess it and assign tasks for the responsible party. I send out a group email and get on the phone to each team member, or a group call, whichever is most

viable at the time. I literally *drop* all other tasks - non 9% work, any and all meetings, family events, and personal care events such as doctor's appointments, to work on the deficiency. Many times I receive these Friday afternoon, which means MOST people have left for the weekend which results in 1 lost work day. We set an internal deadline of three days and are able to complete many of the tasks the day the deficiency comes in OR shortly thereafter. If a team member is out of town, on vacation, is sick, has a sick child, is in meetings (with a city council, a lender or otherwise), at a conference or otherwise unavailable we often do not have anyone else who can provide the item, especially if it involves a signature. Many times the signature authorities on a project are busy civic leaders and have very busy schedules and are often unreachable on short notice.

Moreover, architects, engineers and third party report providers do not work on a TDHCA-dominated schedule. They go about their business without any concern for these types of deadlines. An architect may be at another job site, or working on a deadline for another client, or an ESA provider may be in the field for a week and unable to respond. Or they may simply be on vacation and no one else in the office has any knowledge of the item or a concern for the deadline. Many of the deficiencies are simple - an architect has a different parking count than the application. But without access to the CAD files, I simply cannot make their parking count match.

The nature of the deficiency process is that it is unpredictable AND lasts 5 months from March to July. There is not a single day between March 7 and July 28 (or there about) in which staff in our office are not on "high alert". We do rotate and assign tasks to one another, but deficiencies are our highest priority and may require the input of several people.

As a consultant working on multiple applications, we may receive several deficiencies in one day. I realize that that is not TDHCA's problem, but it simply becomes impossible to manage the volume. A development assistant with one year of experience simply does not substitute for a 10-year veteran of the program when making decisions on how to respond. Unfortunately, the quantity of deficiencies is a symptom of the short and compressed application period. Accordingly, our clients, and our firm puts far too much time, effort, and money into a proposed project to have it "tanked" by a point reduction because we can't get a signature or a parking plan corrected in 3 days. Please leave the deficiency response time to 5 business days.

Multi Family Rules

Railroad. Please exempt rehabilitation deals from the railroad distance separation requirement since it is impossible or cost prohibitive to move an existing building.

Poverty. 30% is onerous for a bond deal. Census tracts can be as small as 1200 people and have an artificial perception of high poverty based on both small geographical and capita size. I request you revert to the 2016 40% value.

High voltage power line easement. Please revert to 2016 requirements, since easements on other people's property will not be revealed in a survey.

Points of Clarification

There are a number of items in the QAP that are either unclear or need further explanation. Additional clarity in these areas will be beneficial to TDHCA because it will eliminate assumptions and misunderstandings that lead to challenges during the process. Fully vetting these items and providing clear direction has the added benefit of reducing deficiency items. Per my conversations with Tim Irvine and Marni Holloway, TDHCA wants these inquiries during this public comment period.

Underserved. To get the full 5 underserved points, the development must be in a census tract that has not received an LIHTC award in 15 years, and be surrounded by census tracts that have not received an LIHTC award in 15 years, and be within the city limits of a city with a population over 500,000. How will you handle census tracts that fit that description, but straddle the city boundaries? To not penalize city areas that only contain a portion of the census tract, I recommend a wording change from "A Census tract within the boundaries of an incorporated area and …" to "An incorporated area in a census tract…"

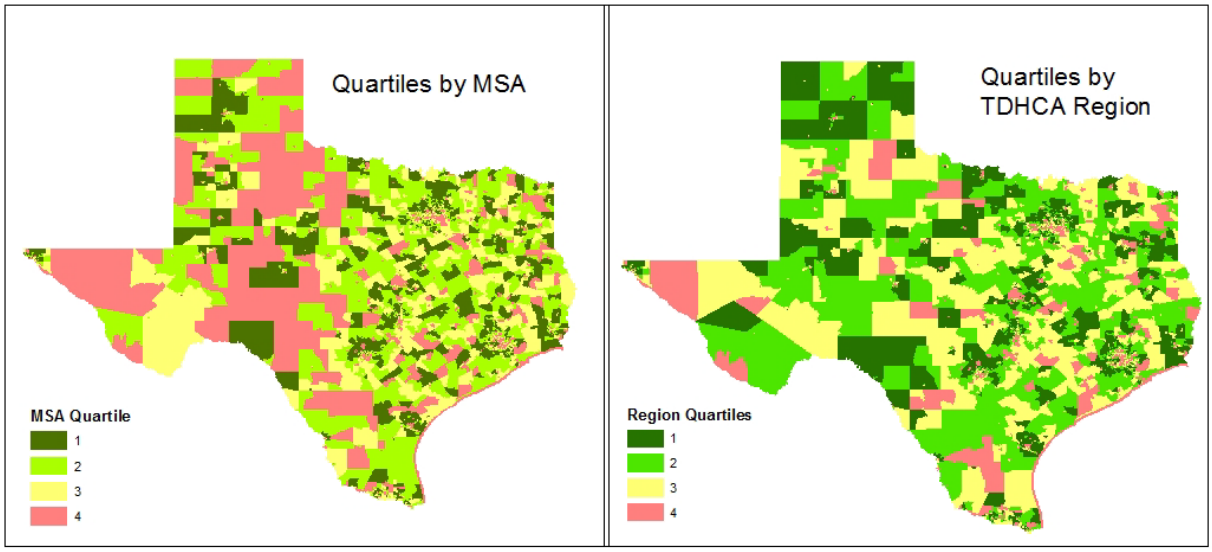
Parks with accessible playground on an accessible route. How do you define accessible playground, access, play equipment, from the perspective of the child and/or the caregiver?

Graduation rate. Suggest using "Graduates" in lieu of "Graduates + GED+ Recipients + Continuers".

Big Box Retail. Four big boxes are preferred over 1 million square feet. What is the proximity measure of big boxes to each other? I suggest using the walkable standard of ¼ mile from building corner to building corner to qualify for the 4 box big cluster.

Extended Day Pre-K. Recommend using a full school day for "Extended Day" as it is an extension of many pre-k programs that end before the traditional school day ends. Does a pre-k that is available to the development site but is NOT in the same building as the elementary school, such as an Early Childhood Education Center, qualify? We suggest changing this language to provide points if Pre-K is offered at all for the development site, regardless of the length of the day, and not required to be within the elementary school.

High Opportunity. The language for calculating High Opportunity areas in 2017 is by ***region***, rather than ***MSA***, as done in the past. Calculating the Quartiles by region pushes the High Opportunity areas into agricultural and lower populated areas. Using the MSAs, high opportunity is greater in the urbanized area, where people are and housing is needed. See the graphic below to demonstrate the differences. I recommend quartiles be calculated by MSA to better serve Texans in need.



Thank you for your consideration. Please feel free to contact me if you have any questions.

Sincerely,

Sarah Andre

From: Sallie Burchett
To: Sharon Gamble
Cc: Marni Holloway; Tim Irvine
Subject: QAP Input Community College, College, and Univeristy
Date: Friday, October 14, 2016 5:10:15 PM

I realize I am 9 minutes late, but want to request clarification on High Opportunity menu item for higher education. It is currently listed as University or Community College. I would like to verify that this would also include the higher education option that exists between the two - Colleges. Thank you.

Sallie Burchett, AICP

(32) Anderson Development and Construction, LLC

From:	TERRI ANDERSON
To:	Brent Stewart; Tim Irvine; Marni Holloway; Sharon Gamble; Andrew Sinnott
Subject:	Comments to the 2017 Proposed Rules
Date:	Friday, October 14, 2016 4:56:48 PM
Attachments:	ADC 2017 Rules - Comments.pdf

Good evening,

Please see the attached document containing my public comments to the proposed rules. It is my hope the Department will consider modification to the proposed rules to ensure fair and equitable distribution of our affordable housing resources, and not engage in policies that perpetuate racial inequality across the State of Texas.

Have a great weekend!

Sincerely,
Terri

Terri L. Anderson, President
Anderson Development & Construction, LLC
347 Walnut Grove Ln
Coppell, TX 75019
Phone: (972) 567-4630
Fax: (972) 462-8715

10 TAC Chapter 10

Subchapter A

10.4(6) – Resolution Delivery Date – The new language regarding Direct Loan Applications "not layered with Housing Tax Credits" implies resolutions will be required in the future. As they are not currently required by statue, this additional requirement makes development more difficult, which works in contradiction to Affirmatively Furthering Fair Housing.

Subchapter B

10.101(a)(2) – Undesirable Site Features – The new language requiring documentation "such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application" is unduly burdensome and creates opportunities for capricious challenges if a developer is unaware of a particular ordinance after reasonable due diligence on the matter. Additionally, TDHCA should adopt HUD's acceptable distances for applicable hazards as the distance requirements appear to be arbitrary without reason.

10.101(a)(3)(B)(i) – Undesirable Neighborhood Characteristics - The poverty rate should be set at 40% to allow inclusion of Revitalization areas worthy of redevelopment and reinvestment and to prevent unlawful redlining of certain neighborhoods.

10.101(a)(3)(B)(iii) – Blight should be expected in revitalization areas.

10.101(a)(3)(C) &(D) – The mitigation of undesirable neighborhood characteristic s is highly subjective and creates an undue burden on the development community and TDHCA for review, with the likelihood of inconsistency on application of opinions.

10.101(b)(4)(D) – Mandatory Development Amenities – Solar Screens are very unattractive and may not be allowed on commercial buildings in many jurisdictions; this item should remain as a Green Building Features as an amenity option and not be mandatory.

10.101(b)(7) 0 Tenant Supportive Serivces – Requiring the intent that services are "to be provided by a qualified and reputable provider in the specified industry...on-site leasing staff or property maintenance staff would not be considered a qualified provider…" adds undue cost to every development escalating operating costs by $30,000 or more a year. Affordable operating margins will become unduly burdened by this requirement.

Subchapter C

10.201 – Procedural Requirements for Application Submission – Restricting only one application for assistance relating to a specific Development Site across all programs is arbitrary and capricious, and does not allow for maximizing the likelihood of successful development on proposed sites. This rule appears to be directly targeting the successful application of a Direct Loan while a non-competitive 9% application was pending. There should be no restriction on applying for different types of funding if the goal of the Department is to develop high quality affordable housing in high opportunity areas.

10.201(5) – Evaluation Process – Posting of a scoring log should not trigger appeal rights. There must be a formal notification process by the Department in order to ensure fair and equitable distribution of program funds. Additionally, the posted scoring logs are untimely and often wrong.

10.201(6)(B) – General Review Priority – Disallowing approval of 4% Bond transactions during May, June or July is not good practice and shuts down many opportunities for development and economic growth in the State of Texas. The Department should maintain an open application calendar as this valuable resource remains grossly under-subscribed.

10.201(7)(B) – Administrative Deficiencies must remain at a five business day response time without penalty, due to other business obligations, travel, vacations, etc. It is unfair to expect every developer to wait for the phone to ring in the office for seven months out of the year. Revert to prior years five day rule.

10.202(1)(K) – Applicant - removing the term knowingly does not allow for due process for the burden placed on an applicant for information submitted as the developer does not fabricate the majority of the documentation required in the application. Please add knowingly back to the requirement.

10.203 – Public Notifications – the 14 day timeframe is too short as the developer may be unaware of any change in public office. Notice should be required within 30 days of the applicant becomes aware of a newly elected (or appointed) official.

10.204(11) – Zoning – Requiring the applicant to provide a release to hold a jurisdiction harmless for zoning change requests is not the burden of a developer if the Political Subdivision is in violation of the Fair Housing Act. Individuals cannot exempt anyone from accountability to the Department of Justice. All applicable language should be removed and revert to the previous language.

10.204(16) – Section 811 Project Rental Assistance Program – This should not be a threshold requirement and should be a point scoring item.

Subchapter D

10.302(d)(4)(D)(i)(I) – Transactions with zero developer fee are more risky and the threshold should be a 50% deferred developer fee to provide for reductions to the interest rate and an increase in amortization.

10.302(e)(7) – Developer Fee – The maximum allowable deferred developer fee should be 50% before an application in deemed infeasible.

10.307(a)(2) – Direct Loan terms should not exceed the loan amortizations and both the term and amortization must be greater than the first lien debt term not to exceed 40 years and 6 months.

10 TAC Chapter 11

11.8(b) – Pre-Application Threshold Criteria – Disclosure of Undesirable Neighborhood Characteristics was provided in the past and TDHCA staff was unable to respond to the voluminous request for waivers

and review. Unless adequate time can be dedicated by TDHCA Staff to provide meaningful feedback and timely presentation to the Board if necessary, this threshold requirement adds undue burden to the developer should the Department disagree with the disclosure or lack thereof, which could subsequently result in inconsistency and subjective termination of applications.

11.9(c)(4)(A)(i) &(ii) – A 20% poverty rate limitation unfairly limits financing in certain neighborhoods.

11.9(c)(4)(A)(ii) - Including "without physical barriers…and the Development Site is no more than 2 miles from the boundary…" is the prime definition of the unlawful Redlining that blatantly violates the Fair Housing Act. Either a census tract is eligible or it isn't. Refusing the same financing across the highway or railroad tracks where minorities historically live is perpetuating racial discrimination. The physical barrier and distance language must be removed.

11.9(c)(8) – Proximity to Urban Core should be located within seven (7) miles to allow more site availability with reasonably priced land that is more feasible for responsible use of the limited tax credit and program resources.

11.9(d)(5) – Community Support from State Representative – Allowing rescission of a letter after submission provides for NIMBYism, which is a violation of the Fair Housing Act. Once a letter of support is submitted, it should not be allowed for removal.

11.9(d)(7)(A)(II) – Concerted Revitalization Plan – Requiring the plan to "include the limited availability of safe, decent, affordable housing" prevents real plans that has been duly adopted from being considered. The goal of the Department should be to seek real plans with real investment and not those procured strictly for the proposed application. Furthermore, the QAP rules may change next year and a city or county should not be required to revise this plan according to TDHCA's narrow prescription for what acceptable on an annual basis.

11.9(e)(4) – Leveraging of Private, State and Federal Resources – The language should revert to prior years percentages. TDHCA Staff admitted in the past the lower percentages caused developments to be too thin and raised them accordingly. Costs have not decreased, so it is unclear why the percentages would. It should be the Department's goal to have well capitalized applications that are able to sustain rises in interest rates and costs.

10 TAC Chapter 10

Subchapter A

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10.201(7)(B) – Administrative Deficiencies must remain at a five business day response time without penalty, due to other business obligations, travel, vacations, etc. It is unfair to expect every developer to wait for the phone to ring in the office for seven months out of the year. Revert to prior years five day rule.

10.202(1)(K) – Applicant - removing the term knowingly does not allow for due process for the burden placed on an applicant for information submitted as the developer does not fabricate the majority of the documentation required in the application. Please add knowingly back to the requirement.

10.203 – Public Notifications – the 14 day timeframe is too short as the developer may be unaware of any change in public office. Notice should be required within 30 days of the applicant becomes aware of a newly elected (or appointed) official.

10.204(11) – Zoning – Requiring the applicant to provide a release to hold a jurisdiction harmless for zoning change requests is not the burden of a developer if the Political Subdivision is in violation of the Fair Housing Act. Individuals cannot exempt anyone from accountability to the Department of Justice. All applicable language should be removed and revert to the previous language.

10.204(16) – Section 811 Project Rental Assistance Program – This should not be a threshold requirement and should be a point scoring item.

Subchapter D

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11.9(c)(4)(A)(i) &(ii) – A 20% poverty rate limitation unfairly limits financing in certain neighborhoods.

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11.9(d)(5) – Community Support from State Representative – Allowing rescission of a letter after submission provides for NIMBYism, which is a violation of the Fair Housing Act. Once a letter of support is submitted, it should not be allowed for removal.

11.9(d)(7)(A)(II) – Concerted Revitalization Plan – Requiring the plan to "include the limited availability of safe, decent, affordable housing" prevents real plans that has been duly adopted from being considered. The goal of the Department should be to seek real plans with real investment and not those procured strictly for the proposed application. Furthermore, the QAP rules may change next year and a city or county should not be required to revise this plan according to TDHCA's narrow prescription for what acceptable on an annual basis.

11.9(e)(4) – Leveraging of Private, State and Federal Resources – The language should revert to prior years percentages. TDHCA Staff admitted in the past the lower percentages caused developments to be too thin and raised them accordingly. Costs have not decreased, so it is unclear why the percentages would. It should be the Department's goal to have well capitalized applications that are able to sustain rises in interest rates and costs.

(33) BETCO Consulting, LLC

October 11, 2016

Mr. Tim Irvine, Executive Director
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, Texas 78701

Re: 2017 Draft Qualified Allocation Plan (QAP) and Uniform Multifamily Rules

Dear Mr. Irvine,

We appreciate the opportunity to provide comments to the Draft 2017 QAP and Multifamily Rules. After attending all the roundtables and reviewing the latest draft of the rules, as published in the Texas Register on September 23, 2016, there are items that we do not agree with and we offer the following comments for staff consideration.

Subchapter B – Site and Development Requirements and Restrictions

Section 10.101(a)(3) – Undesirable Neighborhood Characteristics

We recommend that this section be stricken in its entirety. With the recent dismissal of the ICP lawsuit, the state is not longer bound by the requirements of the remedial plan. These requirements have had a negative impact to areas that need and want new housing opportunities. We have heard that people should have choice on where they live. We agree. We further believe that we should help those who choose to stay in their neighborhoods where many of these requirements tell them that their neighborhoods are not fit for new investments in housing. They chose to stay because this is their home and community. This is their neighborhood where these families have their roots and support systems. In addition, the newly added requirement of an applicant submitting a report that outlines a myriad of disclosures and in-depth research of the area for staff review is a laborious exercise for both the applicant and Department staff. Finally, these requirements, added report and mitigation can interfere with transactional timelines that may jeopardize a housing development unnecessarily.

Subchapter C – Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules or Pre-Clearance for Applications

Section 10.201(7)(B) – Administrative Deficiencies for Competitive HTC Applications

We recommend the five-day timeframe for responding to Administrative Deficiencies issued by Department staff be restored. In the current draft, the response timeframe for an applicant has been shortened to three days. It unclear as to why there is this reduction in response time, as this was not discussed during the numerous roundtables.

Lora Myrick (512) 785-3710
lora@betcohousinglab.com | 2201 Northland Drive Austin, Texas 78756 | 120 Joe Wimberley Blvd, Suite 104 Wimberley TX 78676

Section 10.201(16)(A) – Section 811 Project Rental Program.

We recommend that this criterion be removed from this section of the Uniform Multifamily Rules and re-inserted into the QAP, since the QAP discusses the 811 Program. In the event that it can not be moved, we would ask that the requirement for a specific number of units to be set aside for the 811 program be modified to be a percentage of units. In smaller developments, 49 units or less, it is very difficult to set aside 10 units, as this really equals 20 percent of the development, which is significant and can greatly impact a new construction development that is working to meet lease up timelines and requirements for equity partners. We would recommend 10% rather than 10 units.

Qualified Allocation Plan

Section 11.7 – Tie Breaker Factors

We recommend removing (1), (4), and (6) and re-adjusting the tie breakers as follows:

(1) Applications scoring higher on the Opportunity Index Score under 11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.
(2) Applications having achieved the maximum Opportunity Index Score and the highest number of point items on the Opportunity Index menu that they were unable to claim because of the 7 point cap on that item.
(3) Applications with the highest average rating for the elementary, middle school and high school designated for the attendance by the Development Site.
(4) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development awarded Housing Credits but do not have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Development for the purposes of this paragraph. The linear measurement will be performed from the closest boundary to closest boundary.

Section 11.8 – Pre-Application Requirements (Competitive HTC Only)

We recommend the Disclosure of any Undesirable Neighborhood Characteristics requirement for the Pre-Application be removed. First, it is in line with our earlier recommendation to remove the aforementioned section of the rule in its entirety. Second, due to the conflicting nature of the language in Section 10.101(a)(3)(A) and Section 11.9(e)(3)(G) regarding the disclosure of such characteristics, it is unclear as to whether an applicant will be penalized if disclosures are not made a Pre-Application rather than choosing to disclose at full Application.

Section 11.9 (c)(4) – Opportunity Index

We concur with TAAHP recommendation of excluding rural developments from (i) and (ii) in (A) of this section. Due to the manner in which the quartiles are assigned, rural communities would be at a significant disadvantage in meeting this criteria and providing needed new housing opportunities for the community. Staying in the same rural vein, we

Lora Myrick (512) 785-3710
lora@betcohousinglab.com | 2201 Northland Drive Austin, Texas 78756 | 120 Joe Wimberley Blvd, Suite 104 Wimberley TX 78676

also recommend expanding the distance requirements to the menu items offered in Opp Index for stacking points. Because rural areas do not have the transportation infrastructure in place that an urban/metro place has, residents in a rural community depend on personal transportation to reach amenities and services. Rural residents travel between 3-5 miles to reach such amenities and services. Therefore, we recommend the following modifications:

- 3 miles from a full service grocery store or pharmacy;
- 15 miles from a university or community college;
- 20 percentage of persons 25 years and older having an associates degree or higher;
- at least three retail establishments in the community rather than the retail being tied to square footage;
- 3 miles from an indoor and outdoor recreational facilities of the development site;
- 3 miles from a community, civic, or service organization that provide regularly scheduled and reoccurring services to the public.
- 3 miles of a non-profit sponsored museum rather than a government sponsored facility.

Section 11.9(c)(5) - Educational Quality

We recommend removing this section in its entirety. Education has been the driving force for site selection the past four cycles and highly likely to be the winning applications, and it has had significant impact and not always to the benefit of the residents we are serving. This category alone has prevented more communities from having the ability to provide new housing opportunities to its citizens. While we believe that education is an important factor that should be considered in the placement of housing, we do not believe that it should dwarf other factors that are just as important to residents. Education has a place and it is in the menu of items that are being considered when determining a "good real estate transaction". There are a myriad of factors that make a good real estate transaction, not just one. Which leads into a second point. Development sites that are placed in high income and low poverty rate areas will, more than likely, already benefit from good schools. Education is tied to opportunity, so let's include it in Opportunity Index.

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

As mentioned earlier under our comments to Subpart B of the Uniform Multifamily Rules, we recommend Section 811 be restored to this section of the QAP as a scoring item.

Section 11.9 (c)(8) – Proximity to Urban Core

Should Educational Quality be removed, we would recommend this section be removed in its entirety, as this would give an advantage to Urban Core applications. While we want there to be room for developments to be successful in the urban core, we also want there to be opportunities outside the urban core. We believe that with the Educational Quality and Proximity to Urban Core categories being removed together, urban core and outside the urban core can compete equally.

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Section 11.9 (d)(5) – Community Support from State Representative

The new added language to this section is very problematic. To allow representatives to pull their letter of support will just make it easier for the NIMBYs in the area to pressure representatives to pull their support with any little rumor or mischaracterization about the development or the developer to jeopardize the development. Typically, the "inaccurate and misleading" statement and characterizations come from the NIMBY groups and they should not be allowed to benefit from this additional barrier to the developer. We recommend revising the following language in this section as follows:

"Once a letter is submitted to the Department it may not be changed or withdrawn. ~~*except in the instance where a representative who has provided a letter provides an additional letter to the Department, on or before April 3, 2017, stating that in their estimation the factual representations made to them to secure their original letter have proven to have been inaccurate, misleading, or otherwise insufficient to form a basis for their support, neutrality, or opposition and, accordingly, their letter is withdrawn.*~~

We thank you for the consideration of these recommendations. We look forward to our continued partnership and collaboration with the Department. Should you have any questions on our recommendations, please do not hesitate to contact me any time.

Sincerely,

Lora Myrick

Lora Myrick, Principal
BETCO Consulting, LLC.

cc: Marni Holloway, Multifamily Director
Sharon Gamble, 9% Competitive Housing Tax Credit Administrator

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lora@**betcohousinglab**.com | 2201 Northland Drive Austin, Texas 78756 | 120 Joe Wimberley Blvd, Suite 104 Wimberley TX 78676

(34) Savage, William

William J. Savage

P.O. Box 93983
Southlake, Tx 76092
432-770-0913
bsavage@amtexenergy.com

10/10/2016

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

By fax: (512) 475-0764, attn: Teresa Morales.

Re: 2017 Qualified Allocation Plan – Comments and Suggested Changes

Dear Ms. Morales:

I appreciate the opportunity to submit these comments regarding the proposed 2017 Qualified Allocation Plan (QAP).

My comments are in relation to two sections in the QAP: Section 11.9(d)(7) – Concerted Revitalization Plan, and Section 11.9(c)(5) – Educational Quality.

11.9(d)(7) – Concerted Revitalization Plan

I support this section and the intent for developments which are part of concerted revitalization plans to be able to achieve up to seven (7) points, but want to amend a typo in the 2017 QAP. I suggest that the first sentence in section 11.9(d)(7)(A)(i), which currently reads...

> "an Application may qualify to receive up to six (6) points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed and executed."

Be amended to read...

> "an Application may qualify to receive up to **seven (7)** points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed and executed."

Amending this sentence to seven points would be consistent with the number of points available further down in section 11.9(d)(7)(A)(ii), which reads...

> "up to seven (7) points will be awarded based on:"

I would also like to suggest that the sentence in section 11.9(d)(7)(A)(ii)(III) which reads...

> "Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, 11.9(c)(4)"

Be amended to...

> "Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, 11.9(c)(4)**(B) but for the criteria found in 11.9(c)(4)(A) and subparagraphs 11.9(c)(4)(A)(i) and 11.9(c)(4)(A)(ii)"**

Revitalization of once vital neighborhoods improves quality of life and makes our communities and the State stronger. However, achieving true revitalization is not easy and is accomplished with sustained effort over a number of years. Successful revitalization initiatives must consider the full range of factors that impact resident quality of life. This definitely includes housing – as a neighborhood is being revitalized, and becomes more attractive to a range of incomes, housing can become more expensive and ultimately inaccessible to lower income children, families, and individuals. Ideally, concerted neighborhood revitalization includes housing accessible to a range of incomes so that all, especially those most in need, benefit from the investment. These worthy initiatives cannot adequately navigate this challenge without 9% tax credits.

Clarifying Language to 11.9(c)(5) – Educational Quality

I agree with the importance Educational Quality, and we support that a goal of the QAP is to consider the schools that will be accessible to tenants. However, I believe that the language in the 2017 QAP is potentially problematic, and should be clarified, because

almost all, if not all, schools have some registration/application process and capacity or enrollment limit. I therefore suggest that the fourth sentence of Section 11.9(c)(5) Educational Quality which currently reads...

> "Schools with an application process for admittance, limited enrollment or other requirements that may prevent a tenant from attending will not be considered as the closest school or the school which attendance zone contains the site."

Be amended to read...

> "Schools with an application process for admittance **that include academic achievement or other potentially restrictive requirements** that may prevent a tenant from attending will not be considered as the closest school or the school which attendance zone contains the site."

Amending the QAP in this manner better aligns with the TDHCA objective of considering only those schools which are accessible to tenants of the proposed housing development.

Additional Components to 11.9(c)(5) – Educational Quality

I believe that the QAP should award points for schools that (1) serve students living in an area that is a part of a concerted revitalization plan and (2) have shown sustained multi-year progress. The reality is that, even with vigorous focus on improvement for schools in underserved areas coupled with concerted revitalization efforts, educational improvement is incremental. Improved scholastic performance is impacted by a number of factors outside of the classroom – such as having enough to eat, having a safe home life, having before- and after-school activities, living in a healthy environment, etc. Affordable housing should not be the last component of a concerted revitalization effort, but unfortunately, that is currently the likely outcome based on existing QAP provisions.

We therefore suggest Section 11.9(c)(5)(A)-(E) be amended to read:

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score (5 points); **or**

(B) **The Development Site is part of a concerted revitalization plan that meets the requirements in section 11.9(d)(7) and is within the attendance zone of an elementary school, a middle school and a high school with an Index 1 score that has improved for three consecutive years prior to application (5 points); or**

(C) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (3 points, or 2 points for a Supportive Housing Development); or

(D) **The Development Site is part of a concerted revitalization plan that meets the requirements in section 11.9(d)(7) and is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with an Index 1 score that has improved for three consecutive years prior to application (3 points, or 2 points for a Supportive Housing Development); or**

(E) The Development Site is within the attendance zone of a middle school or a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (1 point); or

(F) The Development Site is within the attendance zone of an elementary school with an Index 1 score in the first quartile of all elementary schools statewide.(1 point); or

(G) If the Development Site is able to score one or three points under clauses (B) - **(F)** above, two additional points or 1 point for a Supportive Housing Development may be added if one or more of the features described in subclause (1) - (4) is present:

In Summary

I applaud TDHCA for Section 11.9(d)(7) which appreciates the importance and the urgent need for thoughtful, well executed revitalization efforts. High-quality mixed-income affordable housing, made possible by 9% tax credits, helps these worthy initiatives accelerate progress while ensuring the neighborhood remains accessible to a range of incomes.

Additionally, I encourage TDHCA to amend and expand Section 11.9(c)(5). I share the belief that quality neighborhood schools are a critical factor achieving measurable improvements in the quality of life for residents within an undergoing neighborhood revitalization. I also believe that affordable housing is also a critical component toward driving successful outcomes. I therefore recommend that additional recognition of the need for affordable housing should be given for concerted revitalization programs where educational improvements are being realized on a year-by-year basis.

Thank you for your consideration.

Sincerely,

William J. Savage

William J. Savage

cc: TDHCA Board of Directors

(35) Casa Linda Development Corporation

Casa Linda Development Corporation

VIA EMAIL

October 14, 2016

Sharon Gamble
9% Competitive Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Dear Sharon:

Below are our comments related to the proposed 2017 Housing Tax Credit Program Qualified Allocation Plan (QAP). We have carefully reviewed the proposed 2017 QAP and Multifamily Rules and have summarized our comments to reflect the most important points for your thoughtful consideration

§11.7. Tie Breaker Factors.
(3) Applications having achieved the maximum Opportunity Index Score and the highest number of point items on the Opportunity Index menu that they were unable to claim because of the 7 point cap on that item.
~~(4) Applications having achieved the maximum Educational Quality score and the highest number of point items on the Educational Quality menu that they were unable to claim because of the 5 point cap on that item.~~

The Statutory purpose of the Pre-Application is to give Applicants the ability to judge their potential competition in order "to prevent unnecessary filing cost." At the September Board meeting, public comment was made that Opportunity Index menu items above the point cap-Items (3) and (4) above should be disclosed at Pre-Application. This comment was not incorporated into the QAP that was published in the Texas Register and consequently there is no enforcement mechanism by which to require disclosure. Tie breaker item (3) makes it nearly impossible to judge potential competition. An Applicant would need to drive each competitive site to see the additional items a competing Applicant could claim. We would like to rely on Google Maps(earth) but many times the maps are not up to date and do not show new construction nor does it note establishments that have closed.

Proposed Language:
(3) Applications having achieved the maximum Opportunity Index Score and have four (4) additional point items on the Opportunity Index menu that they were unable to claim because of the 7 point cap on that item..

TAAHP has proposed to strike the Educational Quality scoring item in its entirety. We support this position and therefore recommend item (4) above be removed from tie-breaker category.

§11.9 (c)(5) Educational Quality
We agree with TAAHP's position to strike this item.

2010 Kessler Parkway, Dallas, Texas 75208
Phone: 214-941-0090; Email: sreidy@ess-email.com

Casa Linda Development Corporation

§11.9 (c)(6) Underserved Area.

(C) A census tract within the boundaries of an incorporated area, **not including the ETJ,** that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development within the past 15 years (3 points);
(E) A census tract within the boundaries of an incorporated area, **not including the ETJ,** and all contiguous census tracts for which neither the census tract in which the Development is located nor the contiguous census tracts have received an award or HTC allocation within the past 15 years and continues to appear on the Department's inventory. This item will apply to cities with a population of 500,000 or more, and will not apply in the At-Risk Set-Aside (5 points).

Underserved points should only be eligible for sites within the corporate city limits of a municipality at Application. This will further the goal of attracting affordable housing to the urban centers of a region. Please note we do not agree with TAAHP's recommendations on this rule.

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

We agree with TAAHP's recommendation.

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

We agree with TAAHP's recommendation to revert back to the percentages in the 2016 QAP i.e., 8, 9 and 10. In our analysis of the 2016 REA underwriting reports Applications are not feasible with a 7% leveraging. In most cases Applicants would have to defer between 75% and 100% of the developer fee making the transaction financially infeasible.

Take you in advance for your consideration. If you should have any questions please contact Sara Reidy at 214-941-0089 or sreidy@ess-email.com.

Sincerely,

Linda S Brown
President
Casa Linda Development Corporation

2010 Kessler Parkway, Dallas, Texas 75208
Phone: 214-941-0090; Email: sreidy@ess-email.com

(36) Churchill Residential

From:	Tony Sisk
To:	Sharon Gamble
Cc:	Marni Holloway
Subject:	Revised comments
Date:	Monday, September 19, 2016 1:48:18 PM
Attachments:	Rev-Comments to 9-19-16 QAP draft approved by TDHCA Board.doc

Sharon/Marni-

Please accept these 2 additional comments on the QAP and rules. The first 2 are the most important from our perspective.

Thanks

Tony

Churchill RESIDENTIAL

Comments on QAP draft approved by TDHCA Board on 9/8/16

Leveraging of Private, State and Federal Resources- 2306.6725 (a)(3) 4 (A)ii. We have run models for Urban Region 3 that are not feasible at 7% of Total Housing Development Costs. It is necessary to obtain these 3 points to have a competitive application, especially with senior living. This rule requires too many market rate units at rental rates that are not achievable in a mixed income environment. The deferred development fee does not meet TDHCA minimum underwriting standards using achievable market rents.

Underserved Area - 2306.6725(b)(2) 11.9(C)(6). If the 2016 definition cannot be adopted at this point (no existing tax credit properties serving the same target population for the City or Place), then we think it is extremely important to add the same language that was added in this process a year ago, i.e. no existing tax credit properties less than 15 years old in the same and contiguous census tracts **serving the same target population.**

Cost of Development per S.F.- (e)(3)iii- increase by 8% versus 4% due to large construction cost increases in Texas.

Urban Core- Dallas and Fort Worth already have somewhat of a set aside for the top scoring application. Remove or score 1 versus 5.

We are unsure how to access the information and scoring related to educational service centers. Where is this information?

High Opportunity Point (10) - Proximity of concentrated retailers. We request that this concentration be allowed is scattered locations within 3 miles of subject site.

Rules- Administrative Deficiency- This allowed time frame should definitely not be reduced to 3 days. 5 days is very difficult in many situations.

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(37) Columbia Residential

October 7, 2016

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

By fax: (512) 475-0764, attn: Teresa Morales.

Re: 2017 Qualified Allocation Plan – Comments and Suggested Changes

Dear Ms. Morales:

Columbia Residential appreciates the opportunity to submit these comments regarding the proposed 2017 Qualified Allocation Plan (QAP).

Our comments are in relation to two sections in the QAP: Section 11.9(d)(7) – Concerted Revitalization Plan, and Section 11.9(c)(5) – Educational Quality.

11.9(d)(7) – Concerted Revitalization Plan

We support this section and the intent for developments which are part of concerted revitalization plans to be able to achieve up to seven (7) points, but want to amend a typo in the 2017 QAP. We suggest that the first sentence in section 11.9(d)(7)(A)(i), which currently reads...

> "an Application may qualify to receive up to six (6) points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed and executed."

Be amended to read...

> "an Application may qualify to receive up to **seven (7)** points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed and executed."

Amending this sentence to seven points would be consistent with the number of points available further down in section 11.9(d)(7)(A)(ii), which reads...

> "up to seven (7) points will be awarded based on:"

We would also like to suggest that the sentence in section 11.9(d)(7)(A)(ii)(III) which reads...

"Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, 11.9(c)(4)"

Be amended to...

"Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, 11.9(c)(4)**(B) but for the criteria found in 11.9(c)(4)(A) and subparagraphs 11.9(c)(4)(A)(i) and 11.9(c)(4)(A)(ii)"**

Revitalization of once vital neighborhoods improves quality of life and makes our communities and the State stronger. However, achieving true revitalization is not easy and is accomplished with sustained effort over a number of years. Successful revitalization initiatives must consider the full range of factors that impact resident quality of life. This definitely includes housing – as a neighborhood is being revitalized, and becomes more attractive to a range of incomes, housing can become more expensive and ultimately inaccessible to lower income children, families, and individuals. Ideally, concerted neighborhood revitalization includes housing accessible to a range of incomes so that all, especially those most in need, benefit from the investment. These worthy initiatives cannot adequately navigate this challenge without 9% tax credits.

Clarifying Language to 11.9(c)(5) – Educational Quality

We agree with the importance Educational Quality, and we support that a goal of the QAP is to consider the schools that will be accessible to tenants. However, we believe that the language in the 2017 QAP is potentially problematic, and should be clarified, because almost all, if not all, schools have some registration/application process and capacity or enrollment limit. We therefore suggest that the fourth sentence of Section 11.9(c)(5) Educational Quality which currently reads...

"Schools with an application process for admittance, limited enrollment or other requirements that may prevent a tenant from attending will not be considered as the closest school or the school which attendance zone contains the site."

Be amended to read...

"Schools with an application process for admittance **that include academic achievement or other potentially restrictive requirements** that may prevent a tenant from attending will not be considered as the closest school or the school which attendance zone contains the site."

Amending the QAP in this manner better aligns with the TDHCA objective of considering only those schools which are accessible to tenants of the proposed housing development.

Additional Components to 11.9(c)(5) – Educational Quality

We believe that the QAP should award points for schools that (1) serve students living in an area that is a part of a concerted revitalization plan and (2) have shown sustained multi-year progress. The reality is that, even with vigorous focus on improvement for schools in underserved areas coupled with concerted

revitalization efforts, educational improvement is incremental. Improved scholastic performance is impacted by a number of factors outside of the classroom – such as having enough to eat, having a safe home life, having before- and after-school activities, living in a healthy environment, etc. Affordable housing should not be the last component of a concerted revitalization effort, but unfortunately, that is currently the likely outcome based on existing QAP provisions.

We therefore suggest Section 11.9(c)(5)(A)-(E) be amended to read:

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score (5 points); **or**

(B) **The Development Site is part of a concerted revitalization plan that meets the requirements in section 11.9(d)(7) and is within the attendance zone of an elementary school, a middle school and a high school with an Index 1 score that has improved for three consecutive years prior to application (5 points); or**

(C) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (3 points, or 2 points for a Supportive Housing Development); or

(D) **The Development Site is part of a concerted revitalization plan that meets the requirements in section 11.9(d)(7) and is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with an Index 1 score that has improved for three consecutive years prior to application (3 points, or 2 points for a Supportive Housing Development); or**

(E) The Development Site is within the attendance zone of a middle school or a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (1 point); or

(F) The Development Site is within the attendance zone of an elementary school with an Index 1 score in the first quartile of all elementary schools statewide.(1 point); or

(G) If the Development Site is able to score one or three points under clauses (B) - **(F)** above, two additional points or 1 point for a Supportive Housing Development may be added if one or more of the features described in subclause (1) - (4) is present:

In Summary

We applaud TDHCA for Section 11.9(d)(7) which appreciates the importance and the urgent need for thoughtful, well executed revitalization efforts. High-quality mixed-income affordable housing, made possible by 9% tax credits, helps these worthy initiatives accelerate progress while ensuring the neighborhood remains accessible to a range of incomes.

Additionally, we encourage TDHCA to amend and expand Section 11.9(c)(5). We share the belief that quality neighborhood schools are a critical factor achieving measurable improvements in the quality of life for residents within an undergoing neighborhood revitalization. We also believe that affordable housing is also a critical component toward driving successful outcomes. We therefore recommend that additional recognition of the need for affordable housing should be given for concerted revitalization programs where educational improvements are being realized on a year-by-year basis.

We thank you for your consideration.

Sincerely,

Jim Grauley
President and Chief Operating Officer, Columbia Residential

cc: TDHCA Board of Directors

(38) Dharma Development, LLC

Dharma Development, LLC

11312 Conchos River Tr., Austin, TX 78717

October 14, 2016

Marni Holloway – MF Finance Director
Sharon Gamble – HTC Program Administrator
Texas Departments of Housing and Community Affairs
211 East 11th Street
Austin, Texas 78701

RE: Comment Period for the 2017 QAP and Rules

Dear Marni and Sharon,

Thank you for the opportunity to comment on the upcoming 2017 QAP and Rules. I would like to comment on just a few items which are as follows:

Subchapter C

- **§10.203. Public Notifications – Notifying a newly elected official within fourteen (14) days of when they take office. –** This should be state this way: "Applicants are required to notify the newly elected (or appointed) official **by the time the full Application is submitted**.". The reason for this is sometimes Applicants are not aware of a change in office or that a newly elected (or appointed) official has occurred.

Qualified Allocation Plan

- **§11.2 Program Calendar –** The Application Acceptance Period Begins on 1/05/2017 which is a Thursday and the Pre-Application Final Delivery Date is on 01/09/2017 which is the following Monday. Did you mean for this time period to fall over a weekend? Shouldn't this time period fall within the work week? Developers should have the work week available to work on their pre-applications and make sure everything is in order for the pre-app deadline.
- **§11.9 (c)(4)(B) Opportunity Index –** Please clarify the definition of an "accessible playground". An accessible route should be leading to the playground area but not necessarily have to go directly to the playground equipment. Also, the Development should be able to install an accessible route from the development to the existing accessible route.
- **§11.9 (c)(6)(C) Underserved Area** – Please clarify the statement "A census tract within the boundaries of an incorporated area…". Some areas will have a census tract large enough that it will fall within the boundaries of an incorporated area and also outside the boundaries of an incorporated area.
- **§11.9 (c)(6)(C, D & E) Underserved Area** – Please add the language "serving the same Target Population" to all of the rulings. This was used in the past and it makes sense.
- **§11.9 (e)(4)(A) Leveraging of Private, State, and Federal Resources** – Keep the threshold for scoring for this section at 8 percent for 3 points, 9 percent for 2 points and 10 percent for 1 points. This will allow developments to be feasible in more areas of the State. Good developments that were successfully underwritten for the 2016 round, would not be financially feasible if the proposed changes were in place last year.

Thank you for your consideration and iff you have any questions or need additional information, please contact me at (512) 257-0054 or dru@dharmadevelop.com.

Sincerely,

Dru Childre
Dharma Development, LLC

(39) DMA Companies

DMA COMPANIES

October 14, 2016

Marni Holloway
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, TX 78701

Re: 2017 Qualified Allocation Plan and Uniform Multifamily Rules Comments

Dear Ms. Holloway,

The comments below are presented on behalf of DMA Development Company, LLC (DMA). Overall, we believe the draft QAP and multifamily rules are greatly improved from last year's rules, and we appreciate your time and efforts working with the development community through the rule making process.

DMA supports the new Proximity to Urban Core scoring category and its rank as the first tie breaker.

DMA supports TAAHP's recommendation to remove educational quality as a separate scoring item and incorporate school quality into the High Opportunity menu.

DMA supports TAAHP's revised language for Concerted Revitalization Plan.

DMA supports TAAHP's proposed changes to Undesirable Site Features and Undesirable Neighborhood Features.

DMA supports TAAHP's proposed change to the Cost of Development per Square foot, and specifically adding the concept of "costs voluntarily included in eligible basis" to both Building Costs and Hard Costs.

DMA supports TAAHP's proposed changes to mandatory unit amenities, and specifically allowing PTAC units in Rehabilitation developments.

Again, we thank you for your time and consideration.

DMA DEVELOPMENT COMPANY, LLC

Diana McIver
President

(40) Dominium

DOMINIUM SM

To: TDHCA, Sharon Gamble

From: Dominium

Date: October 14, 2016

Re: Dominium's Comments to Proposed 2017 Rules

Dominium has carefully reviewed the proposed 2017 rules and requests the Department consider the following comments. These comments are in addition to the comments of TAAHP, which we fully support. It should be noted that Dominium has representatives serving on the TAAHP Board and also on their QAP Committee, which provided input to help inform TAAHP's comments.

The below comments of Dominium are generally created through the lens of tax-exempt bond financed transactions, and in particular preservation of existing affordable housing (either Section 42 or project based Section 8). Dominium operates in 23 different states and is primarily a 4% bond shop that does very little 9% work, so we submit these comments with the goal of helping to efficiently preserve and rehab, or construct, affordable housing, utilizing tax-exempt bond and 4% low-income housing tax credits. We believe our broad work with affordable housing financed with tax-exempt bonds provides valuable input to the rules proposed by TDHCA.

New Proposed Rule at 10 Texas Administrative Code ("TAC"), Chapter 11

- 11.4(c) Increase in Eligible Basis—the existing language is ambiguous as it pertains to tax exempt bond financed transactions. We suggest that changes be made to make it clear that 11.4(c)(1) does not apply to 4% bond deals, particularly 4% bond deals that are preservation of existing affordable housing (project based S8 or existing S42).
    - If a 4% bond deals is otherwise eligible for a 30% basis boost under Section 42 of the code there should not be further restrictions on the ability of those transactions to qualify for the basis boost.

- Proposed change:
  (1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20 percent Housing Tax Credit Units per total households in the tract as established by the U.S. Census Bureau for the 5-year American Community Survey. New Construction or Adaptive Reuse Developments **seeking Competitive Housing Tax Credits** located in a QCT that has in excess of 20 percent Housing Tax Credit Units per total households in the tract are not eligible to qualify for a 30 percent increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code. For Tax-Exempt Bond Developments, as a general rule, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. For New Construction or Adaptive Reuse Developments **seeking Competitive Housing Tax Credits that are** located in a QCT with 20 percent or greater Housing Tax Credit Units per total households, the Development is eligible for the boost if the Application includes a resolution stating that the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and referencing this rule. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable. Applicants must submit a copy of the census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT. **For Tax-Exempt Bond Developments of existing affordable housing, either Section 42 or HUD-assisted, located in a Q CT the 30 percent increase in Eligible Basis would still apply even if the QCT had in excess of 20 percent Housing Tax Credits Units per total houseold.**

New Proposed Rule at 10 Texas Administrative Code ("TAC"), Chapter 10, Subchapter A

- Subchapter A -- Definitions
  - (10) Bedroom— 'has at least one window that provides exterior access.' Per the international building code a bedroom in a new construction building that is fully sprinkled with a NFPA 13 sprinkler system does not require a window by code.
    - This is especially problematic in new construction mid-rise buildings that are served by an elevator and double-loaded corridor as many times an 'internal' bedroom is built.
    - This is also problematic in Adaptive-Reuse Developments where the existing building does not necessarily allow for a feasible redevelopment if all bedrooms had to be located on an exterior wall with a window. Buried bedrooms are not only allowed under the code but are well accepted in the market.
    - This reduces the feasibility of certain new construction and historic Adaptive-Reuse developments.

New Proposed Rule at 10 Texas Administrative Code ("TAC"), Chapter 10, Subchapter B

- We support TAAHP's comments as well, but if those are not accepted we believe the following comments would be beneficial to be made in order to facilitate tax-exempt bond financed transactions of existing affordable housing (either Section 42 or project-based Section 8).
- (a)(2) Undesirable Site Features: Suggest 4% bond deals for Existing Residential Developments that are also affordable housing should be exempted; like existing HUD project based S8 and existing Section 42 developments.
    - Preservation and rehabilitation of existing affordable housing utilizing tax-exempt bonds should be encouraged, especially considering it is not feasible or practical to relocate existing affordable housing.
    - This is certainly appropriate for Competitive Housing Tax Credits, but should not apply to 4% bond deals.
- (a)(3) Undesirable Neighborhood Characteristics:
    - In general, this should not apply to HUD assisted project based S8 deals financed with 4% bonds and recommend adding language that would make it not apply to those developments. We further believe that existing Section 42 developments financed with tax-exempt bonds be exempted from this requirement as well. Preservation of existing affordable housing stock utilizing 4% bonds should be encouraged.
    - (A) Strike "where the Department is the Issuer" in the first paragraph. Where using a local issuer still need the same determination that for 4% credits the department will allow the development to proceed on a preliminary basis.
        - Tax-Exempt Bond Developments utilizing local issuers should not have to wait to find out if the deal will be approved or not. This puts local issuers and Department staff at a disadvantage as it would not provide local issuers, developers and the Department the ability to properly evaluate any Tax-Exempt Bond Development regardless of who the issuer is.
    - Further, this section shouldn't apply to deals that are HUD project based S8; or existing S42 deals being rehabbed. Preservation of existing affordable housing utilizing tax-exempt bonds should be exempted.
    - (D)(i): "Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility." This comment is particularly concerning as it makes it seems like preservation of existing affordable housing is not a priority of the Department.
- (b)(3) Rehab Costs: This should be changed to a minimum of $15k/unit regardless of age.
    - This effectively will encourage long-term owners of affordable housing to not maintain their property at high levels.
    - This also will encourage a waste of scarce resources (9% credits and/or 4% bonds) for developments that don't need more than $15k to $20k/unit of rehab.
    - Let the lender and investors who are the long-term partners determine. The existing lenders and investors already adequately scrutinize the level of rehab needed to move forward on proposed transactions and owners/developers are providing sufficient

financial incentive, or risk, should the level of rehab not be adequate throughout the 15-year compliance period.
    - Think minimums for 9% deals has merit; but should encourage preservation through the use of more readily available tax-exempt bonds and 4% low-income housing tax credits.
    - Would likely encourage existing Section 42 deals that have completed their initial 15-year compliance period to go market, versus preservation through re-syndication. This would make existing affordable housing that is well-maintained not financially feasible at that level of rehabilitation.
- (b)(4) Mandatory Development Amenities
    - (D) Solar Screens:
        - This should be defined with more detail.
        - This should not be required on existing affordable housing, especially where windows are in good condition and are not being replaced.
    - (I) Ceilings fans: Suggest this not be required on existing affordable housing where ceilings fans never existed.
- (b)(5) Common Amenities
    - There is no differentiation for "Rehabilitation" of existing affordable housing. Suggest that rehabilitation of existing affordable housing be treated differently with lower required amenities or provide more points for rehabilitation deals of existing affordable housing utilizing tax-exempt bonds. Further, deals utilizing Competitive Housing Tax Credits are treated the same as Tax-Exempt Bond Developments.
    - If no changes are made to rehab deals, suggest some of the point categories be reconsidered.
        - (xii) Furnished Community Room should be 2 points or more.
            - For example; Community Theater Room (xxvi) is worth 3 points, but yet a Community Room is only 1 point—will dissuade from developments having a Furnished Community Room. A Furnished Community Room receives the same points as a Horseshoe Pit or Bicycle Parking.
        - (xxi) Community Dining Room not defined, it's not clear if this is a separate room or could be included in the community room. Is this as simple as a few tables people could eat dinner at?
        - (xxxiii) Green Building Features
            - (I)(f): individually metered water and electric—suggest that rehabilitation deals be eligible for these points. If the deal was built with individual meters, or is changing to individual meters, rehabilitation deals should be treated to the same points as new construction.
            - (I)(o): radiant barrier—suggest this be modified to allow rehabilitation deals to be eligible for these same points. This can effectively be added to the underside of roof sheathing in renovation deals or where roofs are being replaced.

- (b)(6)(B) Unit and Development Construction Features
    - 7 points for rehabs may be hard to meet. Suggest this be lowered for rehabilitation deals utilizing 4% bonds.
    - (xii) "High Speed Internet" not defined. Is this able to be charged for? Or does the owner have to just provide the ability for the resident to have high-speed internet?
    - (xiv) What about built-up or 4-ply flat roof? Doesn't provide any points for a quality flat roof. Suggest points be added for flat roof developments to make even with shingles.

New Proposed Rule at 10 Texas Administrative Code ("TAC"), Chapter 10, Subchapter C

- Section 10.201(3)(A)—consider adding the word "material" before "development costs" or make this sentence read "as long as the financing structure and terms remain unchanged**, or such changes are not material.**"
    - This will help avoid an administrative burden to staff and the developer for something that is truly not material.
- Section 10.202—consider a fee payment by the 'challenger' to help dissuade bogus or disingenuous challenges. We would recommend that any 'challenge' be treated as Administrative Deficiency with a fee of $500. This would not only offset the time the Department staff spend on the challenge, but would hopefully dissuade challenges without merit.
- Section 10.204(17) Section 811—Why would this apply to 4% bond deals; seems this should apply to competitive 9% housing tax credits only. Also, project based S8 should be exempt. We further agree with TAAHP comments that this should apply only to 9% deals and not threshold for tax-exempt bond financed transactions.
- Section 10.205—We recommend that this be exempt on project based S8 deals or existing Section 42 deals that are 95% or greater occupied at the time of application from completing a market study—it is an inefficient use of time and money to provide when it has no meaningful value. This would also relieve department staff of some administrative burden in reviewing applications that are proposing to renovate existing affordable housing.
    - Dominium understands this might be to substantive to modify now, but would like the Department to consider this in the future should it be unable to be modified now. Further, we understand that by statute a market analysis is required, but think a full market study is too much, where a less intense version of a market analysis could suffice.

New Proposed Rule at 10 Texas Administrative Code ("TAC"), Chapter 10, Subchapter D

- Section 10.302(d)(4)(D) <p. 5>—DSCR, we suggest the Department consider adding language for tax-exempt bond deals that are 80% or greater project based S8 as many lenders and investors may require a higher DSCR than 1.35, or even 1.50, if there are contract rents above S42 limits, etc.

    - There is a different risk profile on HUD project based Section 8 developments that many investors and lenders underwrite more conservatively, so this is really to allow flexibility to make it easier to preserve HUD-assisted developments.
    - Dominium understands this might be to substantive to modify now, but would like the Department to consider this in the future.
- Section 10.303—market study. Suggest this not be required on existing S42 and S8 deals that are not moving rents more than 5% and that are 90% occupied or greater over the past 12-months. It is an inefficient use of time, Department staff, and money on project based S8 deals and S42 re-syndications that are not significantly moving NOI and are not displacing tenants.
    - Dominium understands this might be to substantive to modify now, but would like the Department to consider this in the future.

(41) Endeavor Real Estate Group

ENDEAVOR

October 14, 2016

Marni Holloway
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, TX 78701

Re: 2017 Qualified Allocation Plan and Uniform Multifamily Rules Comments

Dear Ms. Holloway:

The comments below are presented on behalf of the Endeavor Real Estate Group ("Endeavor"). The proposed language changes are relative to the Draft 2017 Qualified Allocation Plan (QAP).

Qualified Allocation Plan

Section 11.7 Tie Breaker Factors

Endeavor supports TAAHP's comments and supports TDHCA placing Proximity to the Urban Core as the first tie breaker factor. Endeavor supports eliminating tie breaker factors #4 related educational quality and #6 related to census tracts with lowest poverty rate.

Section 11.9(c)(5) Educational Quality

Endeavor supports the deletion of this scoring category.

Section 11.9 (c)(8) Proximity to the Urban Core

Endeavor supports the new Proximity to Urban Core scoring item.

Section 11.9(d)(7) Concerted Revitalization Plan.

Endeavor support TAAHP's revised language to this scoring item.

Section 10.1.0(a)(2) Undesirable Site Features

Endeavor supports TAAHP's comments, and specifically with regard following HUD's guidelines on proximity to active railroad tracks.

Endeavor Real Estate Group T 512-682-5500
500 West 5th Street, Suite 700 | Austin, TX 78701
endeavor-re.com

Thank you for your consideration of our comments. Please contact me at jasont@endeavor-re.com or (512) 682-5523 with any questions.

Sincerely,

Jason Thumlert

Endeavor Real Estate Group

(42) Evolie Housing Partners

EVOLIE HOUSING PARTNERS
404 E WORTH STREET
GRAPEVINE, TEXAS 76051
(817) 424-3908

October 14, 2016

Via email htc.public-comment@tdhca.state.tx.us

Ms. Sharon Gamble
9% Competitive Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

Re: Public Comment on QAP and MF Rules

Dear Sharon:

Attached is our comment on the proposed 2017 QAP and Multifamily Rules, submitted in accordance with the notice published in the September 23, 2016, edition of the Texas Register.

If you have any questions or need additional information, please feel free to contact me at (817) 424-3908 or evon@holleman-associates.com.

Sincerely,

Evon Harris
Manager

enclosures

11.1(b) Due Diligence and Applicant Responsibility

New language has been added to the end of this section (as well as to 10.201(5)), which raises a number of procedural questions. The language states "appeal rights are triggered by the publication on the Department's website of the results of the evaluation process. Individual Scoring notices or similar communications are a courtesy only." In the 2016 Round, there were only 6 logs published from the date of Application submission through date the awards were made by the Board in late July. This is less than half the number of logs that were published in the previous two years (2015: 15 logs, 2014: 13 logs). Furthermore, of the 6 logs that were published, only 3 were announced via Department listserv. Does this new language mean the Department intends to move away from issuing scoring notices? If a courtesy scoring notice is issued, but a log is not published until two weeks later, is an Applicant able to submit an appeal prior to the official "trigger date?" If no scoring notice is issued, and a log is published but not announced, how would the Department hand an Applicant who then misses their appeal window? We recommend striking this language, as it adds ambiguity to a process, which up until this point has been very clear. Furthermore, this language is unnecessary as there is an entire section related to Appeal rights in Subchapter G.

11.6(2) Credit Returned and National Pool

"if sufficient credits are available to meet the requirement of the Application after underwriting review."

The addition of this new language limits the Department's ability to allocate the entire credit ceiling in any given year. There was a sizable amount of credit left over in 2015, which if not allocated in the current round, will go into the 2017 National Pool, and will make Texas ineligible for a National Pool allocation. We recommend striking this language.

11.6(3)(C)(ii) – statutory reference missing (2306.6711(g))

11.7 Tie Break Factors

We agree with the TAAHP recommendation to remove the 4th tie break factor, related to Educational Quality score, which is concurrent with the TAAHP recommendation that the Education Quality scoring item be removed from the QAP.

Additionally, we make the following recommendation to the 3rd tie break factor, related to the Opportunity Index menu items above the maximum Opportunity Index Score. We believe that great strides have been made in the 2017 QAP to deconcentrate the allocation of tax credits by allow more ways to achieve a maximum score, and we commend these efforts. However, this progress is undone with the 3rd tie break factor, and could likely have the effect of creating another Alton or Whitehouse. There are a limited number of sites that have the necessary demographics and proximity to achieve all of the menu items, so with the current language, this tie break factor perpetuates the problem of developers going after the same sites, driving up land prices and further concentrating the allocation of tax credits. It is the confluence of factors from the menu that equate to High Opportunity, not any one individual menu item. Therefore, breaking a tie based on one item, when another site might have a different positive attribute which is not part of the menu, seems myopic (for example a senior center, which would likely not count as "an indoor recreation facility available to the public" because use of the facilities is age restricted). We recommend limiting the number of above the point cap menu items that can be claimed on this tie break factor to no more than 4 (suggested language below). This still incentivizes finding High Opportunity sites, but follows the general trend in the QAP to expand the idea of what High Opportunity means.

Furthermore, there is a procedural problem with the construct of this tie break factor. The Statutory purpose of the Pre-Application is to give Applicants the ability to judge their potential competition in order "to prevent unnecessary filing cost." At the September Board meeting, public comment was made that Opportunity Index menu items above the point cap should be disclosed at Pre-Application; however, this comment was not incorporated into the QAP that was publish in the Texas Register and consequently, there is no enforcement mechanism by which to require disclosure. Creating such an enforcement mechanism at this point in time would seem be beyond the scope of changes allowed under the Administrative Procedures Act. If such a mechanism could be incorporated into the QAP, we would recommend that it function in a similar fashion to the Pre-Application scoring item, specifically, an Applicant must disclose their menu items at Pre-App, and those menu items cannot swing more than 4 items up or down at Full Application.

(3) Applications having achieved the maximum Opportunity Index Score and ~~the highest number of~~ have at least four (4) additional point items on the Opportunity index menu that they were unable to claim because of the 7 point cap on that item.

11.9(c)(3)(B) Tenant Services

"The Applicant certifies that the Development will contact local service providers, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. (1 point)"

There is a lot of ambiguity with this language. What is the point for, the certification? What constitutes a service provider? How is local defined? How will compliance be verified? What if no service providers are available or interested? Also, there is nothing precluding an Applicant from using one or more of the items under 10.101(7) to meet this requirement. If the area Planned Parenthood does an annual health fair at the Development, under the current language, that one event would count for 2 points: 1 point for a health fair under 10.101(7), plus the point under this scoring item (space made available to a local service provider on an annual basis, meaning "regularly-scheduled"). We recommend striking this language from 11.9(c)(3) and adding it as an option under 10.101(7) in more clearly defined terms.

11.9(c)(4) Opportunity Index

We commend TDHCA on its efforts to expand the definition of High Opportunity, and believe these changes help to deconcentrate the allocation of tax credits. We offer the following recommendations to this section, some of which are self-explanatory. A more detailed explanation of some of these recommendations is offered below the blackline of this section.

(A) A ~~P~~proposed Development is eligible for a maximum of seven (7) opportunity index points if it is located in a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and ~~meets the requirements in (i) or (ii) below.~~ has:

(i) ~~The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and~~ an income rate in the two highest quartiles within the uniform service region~~.~~; (2 points)

(ii) ~~The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with~~ an income rate in the third quartile within the region, ~~and~~ is contiguous to a census tract in the first or second quartile~~,~~ without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the first or second quartile census tract~~s~~. and, (1 point)

(B) An application that meets the foregoing criteria may qualify for additional points up ~~to seven (7) points~~ for any one or more of the following factors. Each facility or amenity may be used only

once for scoring purposes, regardless of the number of categories it fits~~:~~.

(i) For Developments located in an Urban Area:~~, an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIV) of this subparagraph.~~

(I) The Development site is located less than 1/2 mile on an ~~accessible route~~ from a public park with an ~~accessible~~ playground (1 point);

(II) The Development Site is located less than ½ mile ~~on an accessible route~~ from Public Transportation with a route schedule that provides regular service to employment and basic services (1 point);

(III) The Development site is located within 1 mile of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items~~.~~ (1 point);

(IV) The Development is located within 3 miles of either an emergency room or an urgent care facility (1 point);

(V) The Development Site is within 2 miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten (1 point);

(VI) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less, as defined by neighborhoodscout.com (1 point);

(VII) The development site is located within 1 mile of a public library (1 point);

(VIII) The Development Site is located within 5 miles of a University or Community College campus (1 point);

(IX) The Development Site is located within 3 miles of a concentrated retail shopping center ~~of at least 1 million square feet or~~ that includes at least 4 ~~big box~~ national retail stores (1 point);

(X) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher exceeds that of the State-wide average ~~is 27% or higher.~~ (1 point);

(XI) Development site is within 2 miles of a ~~government-sponsored~~ non-profit museum (1 point);

(XII) Development site is within 1 mile of an indoor recreation facility available to the public (1 point);

(XIII) Development site is within 1 mile of an outdoor recreation facility available to the public (1 point); and

(XIV) Development site is within 1 mile of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point).

(ii) For Developments located in a Rural Area:~~, an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIII) of this subparagraph.~~

(I) The Development site is located within ~~2~~5 miles of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide

variety of household goods, paper goods and toiletry items~~.~~ (1 point);
(II) The Development is located within 4 miles of health~~—~~related facility, such a full service hospital, community health center, or minor emergency center. Physician specialty offices are not considered in this category~~.~~ (1 point);
(III) The Development Site is within 3 miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten (1 point);
(IV) The Development Site is located in a census tract with a property crime rate 26 per 1,000 or less, as defined by neighborhoodscout.com (1 point);
(V) The development site is located within 3 miles of a public library (1 point);
(VI) The development site is located within 3 miles of a public park (1 point);
(VII) The Development Site is located within ~~7~~15 miles of a University or Community College campus (1 point);
(VIII) The Development Site is located within 5 miles of a retail shopping center with ~~XX square feet of stores~~ at least 3 retail stores (1point);
(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher exceeds that of the State-wide average ~~is 27% or higher.~~ (1 point);
(X) Development site is within 2 miles of a ~~government sponsored~~ non-profit museum (1 point);
(XI) Development site is within ~~1~~3 mile of an indoor recreation facility available to the public (1 point);
(XII) Development site is within ~~1~~3 mile of an outdoor recreation facility available to the public (1 point); and
(XIII) Development site is within ~~1~~3 mile of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point).

For item (B)(i)(I) & (II), we recommend removing the accessible route language because the accessibility of a public path is difficult to prove and will be very hard for the Department to administer. The term "accessible" is not specific and could mean compliance with a variety of laws dealing with accessibility. We have included an informational guide published by the Federal Highway Administration on accessible sidewalks and street crossings which goes into great detail about all the factors that need to be taken into account when designing an accessible path. Even paths that have been carefully designed as accessible can overtime create barriers to accessibility (shifting soil, tree roots, etc.). This language also invites Third Party Requests for Administrative Deficiencies, creating a further administrative burden for the Department. Given the vague language, if an Applicant takes the point for this item, a Third Party could hire an engineer to find one defect with the route based on a specific set of standards. The Applicant could then hire their own engineer to certify that the route is accessible based on a different set of standards, creating dueling professional opinions. The same argument can be made for an accessible playground. Furthermore, if an Application proposes a family deal, they will in all likelihood include a playground on the development site, which must be accessible.

For items (B)(i)(VI) & (ii)(IV), we recommend clarifying that the property crime rate must be based on neighborhoodscout.com data, so as to compare apples to apples.

For item (B)(i)(IX), we recommend striking the square footage requirement (also on the Rural side for item (ii)(VIII)). One million square feet limits this point item to only the largest shopping malls. Of the 23 Simon brand malls in the State of Texas almost half wouldn't qualify for this point (see attached list).

Notably, neither of the Simon shopping complexes in Fort Worth would qualify for the point. Furthermore, given that shopping malls encourage spending money as a form of recreation, perhaps this is not the best thing to incentivize for an affordable housing development. We also recommend striking "big-box" as this is not a defined term.

For items (B)(i)(X) &(ii)(IX), the language we have proposed above ties the point to exceeding the State-wide average of adults 25 and older with associates degrees or higher, which according to the 2014 American Community Survey is 24.5%.

For items (B)(i)(XI) & (ii)(X), the phrase "government-sponsored" is vague and would require an examination of a museum's IRS Forms 990 for information on its funding sources. What constitutes sponsorship and how much would be required? If a museum received a single government grant ten years ago, would that count? What about an annual contribution of $1? We believe substituting the word "non-profit" achieves the intended goal, while using objective data point.

11.9(c)(5) Educational Quality

We agree with the TAAHP recommendation that the Educational Quality scoring item should be removed from the QAP, and further recommend that each school with a Met Standard (elementary, middle, and high) should be worth one point on the Opportunity Index menu.

11.9(c)(8) Proximity to the Urban Core

We recommend that this scoring item not apply to the At-Risk/USDA set-asides, as those are State-wide competitions and this item is only available in 5 cities.

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

This section is missing a statutory citation (2306.6725(e)). We question why terms would be necessary on a de minimis contribution.

11.9(d)(5) Community Support from State Representative

We agree with TAAHP's recommendations on this section.

11.9(d)(7) Concerted Revitalization Plan

For Urban areas, we recommend striking the language "and in a city with a population of 100,000 or more." With this population limitation, all of Region 4 would be ineligible for points under this scoring criteria. Sherman, which is in its own MSA, would also be ineligible. The attached list shows all of the Urban cities with populations of less than 100K. Many, like Texarkana, have existing plans in place which would likely qualify for points but for this population limitation. If a limitation must be included, we recommend 25,000 or more.

For Rural areas, we are supportive of the recommendations made by Rural Rental Housing.

11.9(e)(2) Cost of Development per Square Foot

We agree with the recommendations made by the Texas Coalition of Affordable Housing Developers.

11.9(e)(3) Pre-application Participation

We have concerns with the new language under subparagraph (F). As previously mentioned, the statutory purpose of the pre-application process is to allow Applicants to judge their potential competition in order

"to prevent unnecessary filing cost." If an Applicant submits a Pre-App with one piece of property, but then submits a Full App with an entirely different piece of property, but the two pieces happen to share a boundary, why wouldn't this be considered a completely new application? Why would this type of bait and switch be incentivized? We recommend the following language.

> (F) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number listed at pre-application is the same at Application;

11.9(e)(4) Leveraging of Private, State and Federal Resources

We recommend that the leveraging percentages outlined in clauses (ii) – (iv) should be increased to eight, nine and ten. Lower levels will result in deals with deferred fees in excess of that allowable in Subchapter D, related to Underwriting and Loan Policy.

Subchapter A

10.3 Definitions

We agree with the recommendations made by The Brownstone Group to the definitions of Control and Principal.

The current definition of Elderly Preference Development does not preclude an Application from choosing this type of Elderly Development even if HUD funding (or other federal assistance) is not used; however, the 2016 Application conflicted with this plain language and did not allow for that type of a choice to be made. If the intention of the Elderly Preference Development definition is that it only apply to developments with HUD funding or other types of federal assistance, that should be clearly articulated in the definition.

Subchapter B

10.101(a)(2) Undesirable Site Features

Much of the new language in paragraph (2) is far too subjective. How do does the Department intend to define "high speed roads" which are listed separately from highways? If an "intervening barrier" exists between the development site and a railroad track 490 feet away, does this mean the railroad track is no longer a concern? We offer the following proposed language (with explanatory remarks below).

(2) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph maybe considered ineligible as determined by the Board. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs ("VA") may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application and must include a letter stating the Rehabilitation of the existing units is consistent with achieving at least one or more of the stated goals as outlined in the State of Texas Analysis of Impediments to Fair Housing Choice or, if within the boundaries of a participating jurisdiction or entitlement community, as outlined in the local analysis of impediments to fair housing choice and identified in the participating jurisdiction's Action Plan. The distances are to be measured from the nearest boundary of the Development Site to the ~~nearest boundary of the property or easement containing the~~ undesirable feature. ~~The minimum distances noted assume that the land between the proposed Development Site and the particular undesirable feature has no significant intervening barriers or obstacles such as waterways or bodies of water, major high speed roads, park land, or walls, such as noise suppression walls adjacent to railways or highways.~~ Where there is a local ordinance that ~~regulates the~~ for closer proximity ~~of~~ to such undesirable feature ~~to a multifamily development that differs from~~ than the minimum distances noted below, documentation, such as a copy of the local ordinance identifying such distances relative to the Development Site, must be included in the Application. ~~The distances identified in subparagraphs (A) - (J) of this paragraph are intended primarily to address sensory concerns such as noise or smell, social factors making it inappropriate to locate residential housing in proximity to certain businesses. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes.~~ If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (K) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

(A) Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Transportation Code, §396.001;

(B) Development Sites located within 300 feet of a solid waste or sanitary landfills;

(C) Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local Government Code, §243.002, or as zoned, licensed and regulated as such by the local municipality;

(D) Development Sites in which the buildings are located within 100 feet of the easement of any overhead high voltage transmission line, or support structures for high voltage transmission lines~~, or other similar structures~~. This does not apply to local service electric lines and poles;

(E) Development Sites located within ~~500~~100 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail;

(F) Development Sites located within 500 feet of heavy industrial (i.e. facilities that require extensive capital investment in land and machinery, are not easily relocated and produce high levels of external noise such as manufacturing plants, fuel storage facilities (excluding gas stations) etc.);
(G) Development Sites located within 10 miles of a nuclear plant;
(H) Development Sites in which the buildings are located within one-quarter mile of the accident zones or clear zones of any airport;
(I) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids. Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance ("PIPA");
(J) Development Sites located within 2 miles of refineries capable of refining more than 100,000 barrels of oil daily; or
(K) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated.

Our recommendation to strike the language about the primary purpose of the list is due to the fact that a number of items on the list relate to safety: nuclear power plants, airport accident zones. We support the change in subparagraph (D) because fires burning near high voltage power lines can create electrical arcs or "flashovers" which could endanger near-by residents. In subparagraph (E), we recommend returning to the 100 foot distance of previous years. If sound is the concern, there is significant mitigation that can be done during construction, and would likely be recommended in the Phase I ESA. Anytime the Phase I ESA makes a recommendation, the Department's Real Estate Analysis division places a related condition in the Underwriting Report. We are supportive of the change in subparagraph (G). Ten 10 miles is in line with the Nuclear Regulatory Commission's first (of two) Emergency Planning Zone around nuclear power plants (plume exposure pathway zone).

10.101(a)(3) Undesirable Neighborhood Characteristics

While we believe that this section is largely irrelevant for 9% Tax Credits (due to the competitive nature of the program and QAP's scoring incentives for High Opportunity sites), we believe this section is still necessary as threshold to ensure 4% transactions are not placed in undesirable locations. Therefore, we agree with the language recommendations made by TAAHP.

10.101(b)(4) Mandatory Development Amenities

We agree with TAAHP's recommendation to strike the requirement for solar screens.

10.101(b)(5) Common Amenities

We recommend increasing the point value assigned to a furnished community room to 2 points, as this is a costly item.

10.101(b)(6)(B) Unit and Development ~~Construction~~ Features (not all these features are construction related)

We recommend increasing the point value assigned to in-unit laundry equipment to at least 2 points, if not 3 points. Under Common Amenities, a community laundry room is worth 3 points, when it is far less desirable to tenants than having laundry equipment provided to them in their units. Also, the words "and metal" should be stricken from item (xv) related to stucco and masonry exteriors.

10.101(b)(7) Tenant Supportive Services

We agree with TAAHP's recommendation to this section of the Rule. We also recommend that the point value should be increased for item (K) related to scholastic tutoring, because the requirements have increased. We recommend at least 6 points, given the cost to the Development to provide such a service, and the enormous benefit gained by the tenants.

Subchapter C

10.201 Procedural Requirement for Application Submissions

> "Only one Applicant may have an Application or Applications for assistance related to a specific Development Site at any given time."

Because Site Control is a threshold item, it would not be possible for multiple Applicants to submit Applications for the same Development Site. This second sentence should revert back to its previous construct, which read "only one Application may be submitted for a Development Site in an Application Round."

10.201(1) General Requirements

There has been a provision added to allow for errors in the calculation of applicable fees to be cured via the Administrative Deficiency process. In a highly competitive environment, we believe this is a slippery slope and the language should be removed. The Application fee due is not a difficult calculation to perform. The Department has long standing precedent of terminating Applications that make unfortunate mistakes like this precisely because of the highly competitive nature of the program. How is this different from submitting the wrong electronic Application file/third party report, thereby missing the deadline? The Department has on numerous occasions, terminated Application for that very mistake. Another simple calculation mistake that the Department has never let Applicants correct is exceeding the $3 million cap. Again, on numerous occasions, awards have been lost because an Applicant exceeded the cap by a very small dollar amount. Again, we believe this to be a slippery slope, and goes against years of precedent. In order to maintain the integrity of the Rule, this language should be removed.

10.201(7) Administrative Deficiency Process

The Administrative Deficiency deadline for should be increased to 5 days. This is not an extraordinarily long period of time, and historically not unduly slowed the review process. Often times, Administrative Deficiencies *are* resolved immediately, but there are situations when more time may be needed. Five days is an appropriate amount of time.

10.203 Public Notifications

We agree with TAAHP's recommendation on this section.

10.204(6) Experience Requirement

Because the criteria for an experience certificate in 2014 was exactly the same as the criteria in 2015 and 2016, there is no reason that a 2014 experience certificate should not count. Additionally, we believe that the term "natural Person" used in subparagraph (A) should be changed to "natural person" as the capitalized term Person includes entities.

10.204(8)(E) Financing Narrative

Language has been added requiring that the financing narrative include "(dates and deadlines) for application, approvals and closings, etc. associated with the commitments for all funding sources." We do not see the benefit of requiring this information to be including in the financing narrative. The debt and equity terms submitted at Application are very preliminary in nature and highly dependent on numerous factors (whether an allocation is even made, changes in market conditions, changes to the proposed debt

and equity providers, the Developer's pipeline, etc.). At very best, any dates and deadlines that could be included in the narrative would be an educated guess. We recommend that this language be removed.

10.204(16) Section 811 Project Rental Assistance Program

We agree with TAAHP's recommendations on this item.

Subchapter D

10.302(e)(9) Reserves

New language has been added to the 5th sentence of this section, and we recommend the following changes.

> In no instance at initial underwriting will total reserves exceed twelve (12) months of stabilized operating expenses plus debt service (and only for USDA or HUD financed rehabilitation transactions the initial deposits to replacement reserves, initial deposits to required voucher reserves and transferred replacement reserves ~~for USDA or HUD financed rehabilitation transactions~~).

Subchapter G

10.901(5) Third Party Underwriting Fee

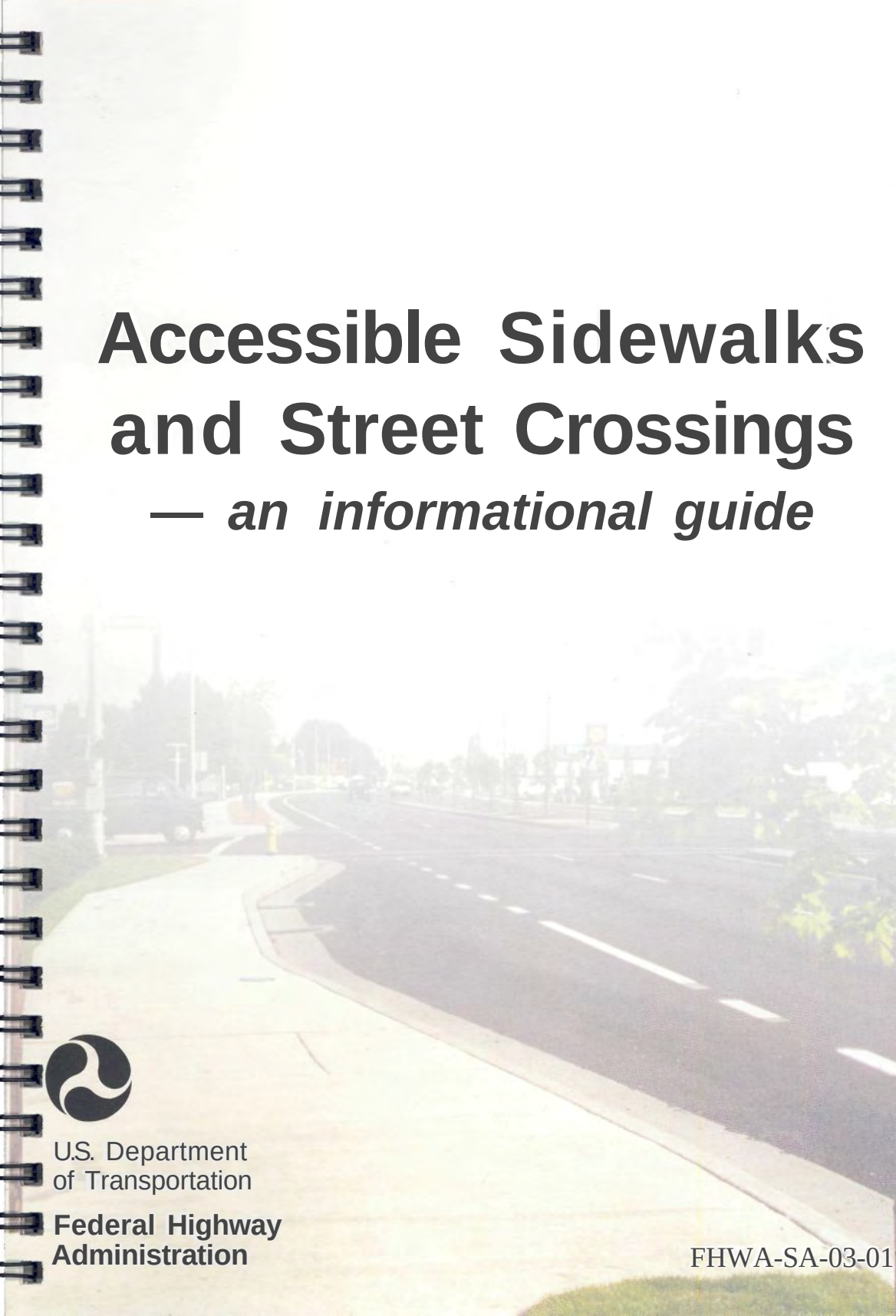
Because the language allowing for a third party underwriter has been removed from 10.201(5), related to Evaluation Process, this associated fee should also be removed.

10.901(12) Extension Fees

We believe the addition of Construction Status Reports to the Extension Fee section is unnecessary and should be removed. The Construction Status Report is simply a report updating the Department on the status of construction progress. We cannot see a reason why an Owner would need an extension on this type of simple reporting. Furthermore, we fear this language may be used to collect $2,500 for submitting a late Construction Status Report. If it is the intension of the Department to find a penalty for late reporting, this is not the appropriate place or method. We recommend removing the reference to Construction Status Reports from this section.

Accessible Sidewalks and Street Crossings

— *an informational guide*



U.S. Department of Transportation

Federal Highway Administration

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Content

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Introduction

Providing Accessible Sidewalks and Street Crossings

In order to meet the needs of all sidewalk users, designers must have a clear understanding of the wide range of abilities that occur within the population. Sidewalks, like roadways, should be designed to serve all users. This includes children, older people, parents with strollers, pedestrians who have vision impairments, and people using wheelchairs and other assistive devices. Just as a roadway will not be designed for one type of vehicle, the design of sidewalks should not be limited to only a single type of pedestrian user. Because the sidewalk is the basic unit of mobility within our overall system of transportation, every route and facility must be usable.

Pedestrian facility design and operation must comply with the accessibility standards in the *Architectural Barriers Act (ABA) of 1968, the Rehabilitation Act of1973 (Section 504), and the Americans with Disabilities Act (ADA) of 1990.* Implementing regulations for Title II of the ADA, which covers State and local governments, also address "communications and information access," requiring 'effective communications' with persons with disabilities. In the sidewalk/street crossing environment, this would include accessible pedestrian signals, markings, and signage. The latest version of the Manual on Uniform Traffic Control Devices (MUTCD) contains standards on Accessible Pedestrian Signals (APS) that have audible, visual, and vibrotactile features. These standards represent the minimum; designers should use more conservative design parameters whenever possible.

Temporary and alternate pedestrian routes where sidewalks are obstructed by work zones must meet accessibility standards, as well. Pedestrians who must cross the street and then cross back again in order to continue on their destination will be exposed to significantly increased risk from vehicles.

The intent of this guide is to focus on some of the emerging accessibility issues and the design parameters that affect sidewalk and street crossing design and operation.

The Legal Framework:

During the 1990s, several key pieces of legislation were passed that impacted transportation planning. The first, the Americans with Disabilities Act (ADA) of 1990, protects the civil rights of people with disabilities. Secondly, the 1991 reauthorization of the Federal transportation legislation, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), specifically called for integrating pedestrian travel into the transportation system. ISTEA increased the Federal-aid funding options for pedestrian facilities and programs. In 1998, the Transportation Equity Act for the 21st Century (TEA-21) extended the opportunities established in ISTEA and increased funding available for pedestrian facilities. These laws complimented more than 40 years of legislation aimed at guaranteeing the rights of people with disabilities. Following is a brief chronological summary of the laws and regulations mandating accessible environments and programs:

Americans National Standards Institute (ANSI A117.1), 1961: The first building standard to address issues of accessibility.

Architectural Barriers Act (ABA) of 1968 (Public Law 90-480): This was the first Federal law requiring new facilities constructed for Federal agencies or with Federal funding to meet accessibility standards (UFAS).

Rehabilitation Act of 1973, Title V, Section 504 (Public Law 93-112, amended by PL 516 and PL 95-602): Section 504 requires federally funded facilities and programs to be accessible to people with disabilities.

Education of All Handicapped Children Act of 1975 (now The Individuals with Disabilities Education Act (IDEA)): This Act greatly expanded educational opportunities by requiring school accommodations for children with disabilities.

Uniform Federal Accessibility Standards (UFAS, Federal Standard 795): The UFAS defined the minimum standards for design, construction, and alteration of buildings to meet the requirements of the ABA. UFAS derived from ANSI A 117.1-1980 and the Access Board's 1982 Minimum Guidelines and Requirements for Accessible Design (MGRAD).

Americans with Disabilities Act of 1990 (ADA): ADA extends the coverage of the ABA, and the Rehabilitation Act, Section 504 to include all public facilities regardless of funding. The Title II implementing regulations for the ADA require all newly constructed and altered facilities to be readily accessible to persons with disabilities. Transportation agencies are responsible for developing a transition plan for removing the structural barriers, including communication barriers, and providing access to existing pedestrian facilities.

State Laws: In some States, codes have been adopted that exceed the requirements set forth in the ADA guidelines. In these States, both the ADA and the State code must be satisfied.

2 Understanding Sidewalk Users:

People have differing abilities: A variety of users need to access the sidewalk system. Their abilities vary in agility, balance, cognition, coordination, endurance, flexibility, hearing, problem solving, strength, vision, and walking speed.

Designing for all abilities: The design of sidewalk environments is important to all pedestrians, but is particularly important to those with disabilities who have limited travel choices and rely most on the pedestrian environment. For example, older adults, persons with vision impairments, and children frequently rely on the sidewalk to travel independently within their community for shopping, recreation, exercise, and walking to school.

Traditionally, design parameters have been based on the "standard pedestrian," an agile person with good vision, hearing, and mobility. These design parameters do not meet the needs of the growing disabled population. The Bureau of Census data indicates that:

- Approximately 20 percent of all Americans have a disability, and that percentage is increasing.
- By the year 2030, one in five Americans will be 65 years or older.

Universal design principles are based on creating an environment that is usable for people of all abilities. Incorporating these principles into all aspects of sidewalk development can eliminate the barriers and create a truly functional sidewalk system.

Movement and Informational barriers may limit an individual's access to the sidewalk environment:

Movement barriers restrict an individual's ability to physically move along or within an environment. They may limit the individual's movement from one side of the intersection to the other, or ability to use the push button to activate the pedestrian signal. Movement barriers within the pedestrian environment include curbs, steep slopes, obstacles within the path (poles, etc.), and widths too narrow to pass through.

Information barriers restrict an individual's use of information contained in the pedestrian environment. These barriers limit the pedestrian's ability to recognize and receive information (e.g., loss of vision prevents the individual from utilizing visual signs), or understand the information received and decide on a course of action. Information barriers within the environment include complex intersections, diverted paths (e.g., in work zones), and lack of street crossing information.

***Conflicting Pedestrian** Needs*

To create a truly accessible sidewalk network that is usable by all pedestrians, designers need to understand how the users' abilities are impacted by their design decisions. Pedestrians have varying needs, therefore, changing a design to enhance access for one group can create additional barriers for other individuals. The goal should be to make all sidewalks accessible to the largest possible number of pedestrian users by incorporating the principles of universal design.

Assistive Technology:

Assistive technologies play a valuable role in enhancing the ability of people with disabilities to travel independently through the environment. These devices may be used to minimize and eliminate the activity limitations and participation restrictions that exist within the sidewalk environment. Technologies may be personal, activity-specific, or environmental. Following are examples of personal technologies:

- A manual wheelchair provides easy mobility on flat, firm, obstacle free surfaces. However, it is difficult to maneuver on steep grades or cross slopes, and across uneven transition points like street to sidewalk.
- A prosthetic leg allows an individual to retain some mobility. However, a prosthetic leg does not provide the sensory feedback that is needed to ensure stable foot placement, detect obstacles, or maintain balance.
- A white cane used by individuals with severe vision loss provides advance warning about obstacles on the path ahead 0.6 m-0.9 m (2 ft—3 ft), but is not effective at detecting obstacles above 0.7 m (2.3 ft).
- Motorized wheelchairs and scooters can maneuver on steeper grades and travel longer distances than manual wheelchairs.
- Service dogs are trained to respond to specific commands and to avoid obstacles. Service dogs require care and maintenance.
- A hearing aid can be used to amplify the traffic sounds. The magnification is not selective, so the sounds of traffic and Audible Pedestrian Signal (APS) are all magnified.

Environmental technologies include APS, and engineering treatments like curb ramps and detectable warnings. **(See Section 9).**

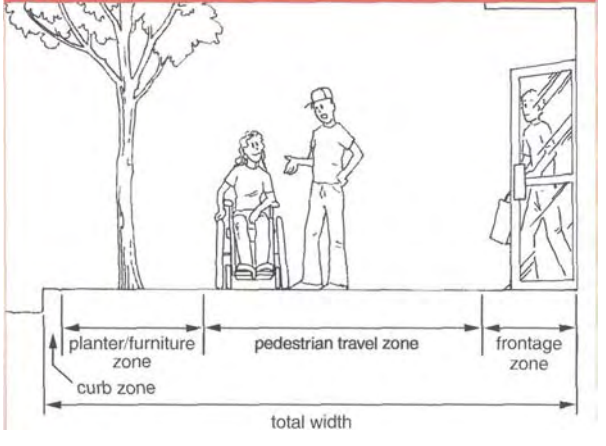
3 Sidewalk Corridors:

The "Sidewalk Corridor" is the portion of the pedestrian system from the edge of the roadway to the edge of the right-of-way (property line or building edge), generally parallel to the street. Attributes of good sidewalk corridor design include:

- Accessibility by ALL users.
- Adequate width.
- Safe to use (sidewalk users should not feel threatened by adjacent traffic or by the environment).
- Continuity and connectivity.
- Landscaping to create a buffer space between pedestrians and traffic and also provide shade.
- Social space (area where pedestrians can safely participate in public life).

The Zone System
(See Figure 1): Sidewalks in central business districts and downtown areas need to be designed to accommodate larger volumes of pedestrian traffic than in residential areas. Streetscapes in these areas often function for multiple purposes, and generally consist of the following zones: the building frontage zone, the pedestrian zone, the planter/furniture zone, and the curb zone.

Figure 1



The zone system divides the sidewalk corridor into four zones to ensure that pedestrians have a sufficient amount of clear space to travel.

Building Frontage Zone: The building frontage zone is the area between the building wall and the pedestrian zone. Pedestrians don't feel comfortable walking directly adjacent to a building wall or fence. At a minimum pedestrians prefer to keep at least 0.6 m (2 ft) of "shy" distance away from the building wall.

Depending on the use of this area, the frontage width should be increased and physically separated from the pedestrian zone (example, allow extra space for a door opening into the frontage area, sidewalk cafes, etc.). People with vision impairments often travel in the frontage zone and use the sound from the adjacent building for orientation. Some use the building edge as a guide for a white cane, traveling between 0.3 m-1.2 m (1 ft-4 ft) from the building. The frontage zone should be free of obstacles and protruding objects. If not,

obstacles in the frontage zone should be detectable by people who use long white canes. Level landings are required at building entrances and around sidewalk furnishings such as drinking fountains, benches, etc.

Pedestrian Travel Zone: The pedestrian zone is the area of the sidewalk corridor that is specifically reserved for pedestrian travel. This area should be free of all obstacles, protruding objects, and any vertical obstructions hazardous to pedestrians, particularly for individuals with vision impairments. The pedestrian zone should be at least 1.8 m-3.0 m (6-10 ft) wide or greater to meet the desired level of service in areas with higher pedestrian volumes. This allows pedestrians to walk side by side or for pedestrians going in the opposite direction to pass each other. The pedestrian zone should never be less than 1.2 m (4 ft), which is the minimum width required for people using a guide dog, crutches, and walkers. Wheelchair users need about 1.5 m (5 ft) to turn around and 1.8 m (6 ft) to pass other wheelchairs.

Planter/Furniture Zone: The planter/furniture zone lies between the curb and the pedestrian travel zone. This area provides a buffer from the street traffic and allows for the consolidation of elements like utilities (poles, hydrants, telephone kiosks, etc), and street furniture (benches, signs, etc). *The intent is to ensure that the pedestrian travel zone is free of ALL obstacles.* On local and collector streets, 1.2 m (4 ft) is preferred and on arterial and major streets 1.8 m (6 ft) is preferred. Additional space will be required for transit stops and bus shelters which may include a boarding pad typically 1.5 m x 2.4 m (5 ft—8 ft). States that have significant accumulations of snow during the winter months will require wider planter/furniture zones. This allows the snow to be stored in the planter/furniture zone and keeps the pedestrian zone obstacle free.

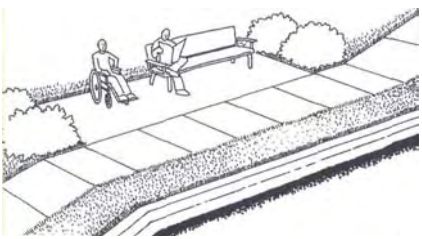
Curb Zone: The curb zone is the first 0.15 m (6 in) of the sidewalk corridor, located adjacent to the roadway. It is an integral part of the road/drainage system and keeps excess water off the sidewalk corridor. The curb zone also discourages motor vehicles from entering/exiting the sidewalk corridor except at designated locations and is a valuable safety and guide cue for pedestrians with vision impairments.

4 Sidewalk Grades and Cross Slopes:

Steep grades and cross slopes should be avoided where possible or integrated with level rest areas. Both powered and manual wheelchairs can become very unstable and/or difficult to control on sloped surfaces. When areas with steep sidewalks and ramps are wet, icy, or covered with snow, they have little or no slip resistance and a slide will usually end in the street.

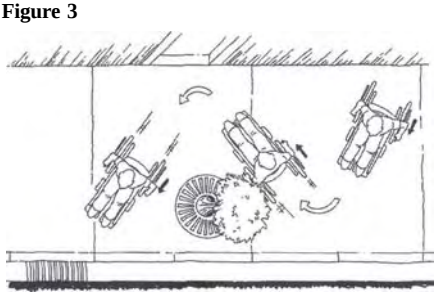
Grade: Grades are often difficult to control in the sidewalk environment because sidewalks follow the path of the street. The sidewalk grade ideally should not exceed 5 percent. Design parameters developed for ramps on buildings and sites, permit a maximum grade of 8.3 percent for a distance of 9.1 m (30 ft) before a level landing must be installed. Where the sidewalk grade approaches or exceeds that of the maximum permitted for a ramp, it is good practice to provide a level rest area. The slope of the level landing should not exceed 2 percent in any direction **(See Figure 2).** The dimensions of the level landing should be at least 1.5 m x 1.5 m (5 ft x 5 ft) to allow wheelchair users to stop and rest without blocking the flow of pedestrians. This area can be greater with the inclusion of other amenities such as benches, hand rails, and drinking fountains. In areas with steep slopes, consider installing wide sidewalk corridors that permit the wheelchair user to travel in a zig-zag motion **(See Figure 3).**

Figure 2



Level landing with benches provide a resting point that will not impede the flow of pedestrian traffic.

Figure 3



In areas of steep terrain, a wide sidewalk allows wheelchair users to travel in a zigzag motion which reduces the grade they must travel, although the overall distance of their trip is increased.

*Cross **Slope:*** The maximum cross slope permitted by ADA Accessibility Guidelines (ADAAG) is 2 percent. Severe cross slopes require wheelchair users and other pedestrians to work against the effects of gravity to maintain their lateral balance. Pedestrians using crutches or canes may be forced to turn sideways in order to keep their base of support at a manageable angle. Severe cross slopes can cause wheelchair users to veer towards the curb and into the street **(See Figure 4).** The impact of cross slopes are compounded when combined with steep grades and uneven surfaces. Designers and those constructing

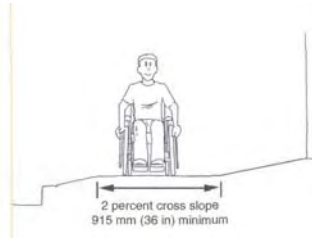
facilities need to understand the impact of grades and cross slopes and take particular care to stay within construction tolerances as well as within design standards. For example, Portland Cement Concrete has a construction tolerance of 1/4 in per 10 ft.

For ***sidewalks with steep cross slopes*** the designer can create a level area of at least 915 mm (3 ft) within the pedestrian zone **(See Figure 5)** or increase the height of the curb **(See Figure 6)** The latter case can create problems for curb ramp design and on-street parking (car doors may not be able to swing over the curb).

Figure 4

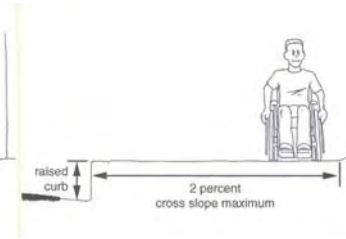
PROBLEM Wheelchair users traveling on a sidewalk with a cross slope greater than 2% use more energy to to offset the force of gravity that directs them towards the curb and into the street

Figure 5



GOOD DESIGN A level area at least 915 mm (36 in) wide improves access when the street elevation is lower than the building elevation

Figure 6



ACCEPTABLE DESIGN Increasing the height of the curb provides a level pathway when the street elevation is lower that the building elevation This solution may not be ideal if sidewalks are not wide enough to install well-designed curb ramps

5 Sidewalk Surfaces:

Factors that affect the usability of the sidewalk surface include:

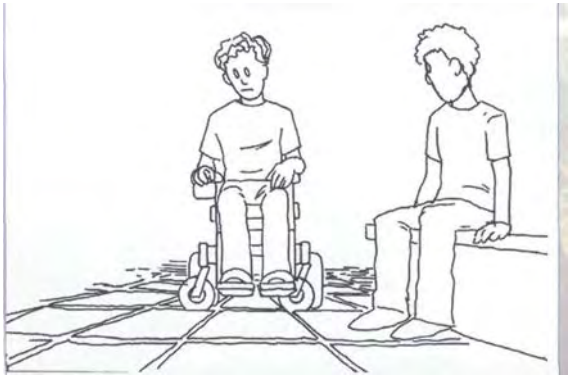
- Surface materials
- Changes in level
- Firmness, stability, and slip resistance
- Dimensions of gaps, grates and openings
- Visual consistency

Surface materials generally consist of concrete or asphalt; however, tile, stone, and brick are also used. Typically, sidewalks of concrete and asphalt are firm, stable, and fairly slip resistant when dry. A broom finish used on concrete sidewalks increases the slip resistance. Surfaces that are not slip resistant are especially difficult for people who use wheelchairs or walking aids to travel across. Crutch users, for example, rely on being able to securely plant their crutch tip to travel effectively on the sidewalk. Surfaces that are not visually consistent (all one color and texture) can make it difficult for pedestrians with vision disabilities to distinguish the difference between a change in color and pattern on the sidewalk and a drop off or change in level.

Decorative surface materials such as paints and surface materials, polished stones or exposed aggregate rock, are not as slip resistant and should be avoided. Paint and thermoplastic materials, commonly used to mark crosswalks, are generally not as slip resistant when wet. Slip resistant contact is more difficult to achieve when the sidewalk material is wet or icy. Texture added to the thermoplastic will improve the slip resistance.

Brick and cobblestone may improve the aesthetic quality of the sidewalk, but may also increase the amount of work required by pedestrians with mobility impairments. For example, tiles that are not tightly spaced together can create grooves that catch wheelchair casters **(See Figure 7).** These decorative surfaces may also create a vibrating bumpy ride that can be uncomfortable and painful for those in wheelchairs. The surface texture should not include more than a 1/4 inch rise every 30 inch. Brick and cobblestone may heave or settle, creating unsafe changes in level or become a tripping hazard for pedestrians, especially those with vision and mobility disabilities. Decorative textured surface materials can make it more difficult for pedestrians with vision impairments to identify

Figure 7



The space between the jointed surface causes wheelchair casters to swivel and catch and greatly increases the rolling resistance.

detectable warnings, which provide critical information about the transition **from** the sidewalk to the street. For these reasons, brick and cobblestone are not recommended. Creative alternatives include smooth walkways with brick trim, and colored concrete.

Changes in level/elevation are vertical rises between adjacent surfaces. Causes of changes in level include:

- Tree roots pushing upwards.
- Uneven transitions from street to gutter to ramp.
- Heaving and settling due to frost.
- Buckling due to improper sub-base preparation.

Changes in level/elevation can cause major problems for:

- Pedestrians with mobility impairments-difficulty lifting feet, or crutches (causing tripping).
- Pedestrians with vision impairments-difficulty detecting elevation changes, (causing tripping).
- Pedestrian using wheelchairs-small front caster wheels swivel sideways and cannot climb over.
- Pedestrian using wheelchairs-difficult time rolling over large changes in elevation.

Changes in level/elevation requirements:

- Up to 6 mm (0.25 in)-can remain without beveling.
- 6-13 mm (0.25 in-0.5 in)-bevel the surface with a maximum grade of 50 percent (1:2).
- Greater than 13 mm (0.5 in)-remove or install a ramp with a maximum grade of 8.3 percent.

Gaps, grates and other openings occur at railroad tracks, drainage inlets, air vents, tree grates, etc. Wheelchair casters, inline skating wheels, as well as bicycle wheels often get caught in openings and gaps wider than 1/2 inch or which are incorrectly aligned. In these cases there is potential for the person to be suddenly pitched forward. Walking aids such as canes and crutches can also get caught in grates and gaps. When the cane tip slips through an opening, the pedestrian can become unstable and risk falling. Grates should be placed within the planter/furniture zone **(See Figure 1)** away from the pedestrian travel area, **and** also away from the bottom of crosswalks and curb ramps.

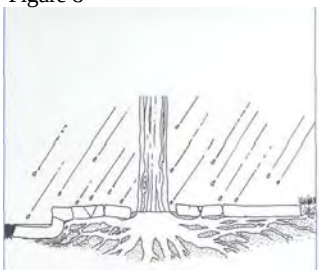
Gaps and grates should be designed so that:

- Openings do not allow the passage of a 13 mm (0.5 in) sphere.
- The long dimension of the opening is perpendicular or diagonal to the dominant direction of travel.

The impact of trees on the sidewalk corridor-- trees are generally planted because they improve the pedestrian experience, improve the aesthetic appearance of the streetscape, serve as a visual and auditory buffer between pedestrians and traffic, provide shade, and may have a traffic calming effect. Trees need a minimum of 1.2 m x 1.2 m (4 ft x 4 ft). They are also one of the

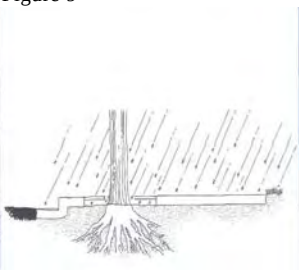
most common causes of sidewalk cracks and changes in level. When water is limited, tree roots tend to push through the surface **(See Figure 8)** and spread out rather than down **(See Figure 9)** to look for new water sources. Tree branches should be maintained to hang no lower than 2.0 m (6.7 ft) (See **Figure 10).** Low hanging branches can be a safety hazard, especially for pedestrians with vision impairments who may not detect them. Other pedestrians with mobility impairments may have difficulty bending under them. Careful selections of tree type, their placement and maintenance can provide a comfortable and safer environment for all road users including pedestrians.

Figure 8



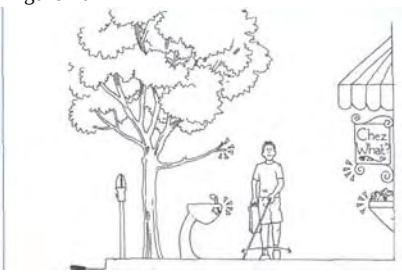
When trees do not get enough water they tend to spread their roots out, which can break up the surface of the sidewalk.

Figure 9



Trees planted with grates are less likely to cause sidewalk cracks than trees planted without grates because the grate allows a sufficient amount of water to reach the tree roots.

Figure 10



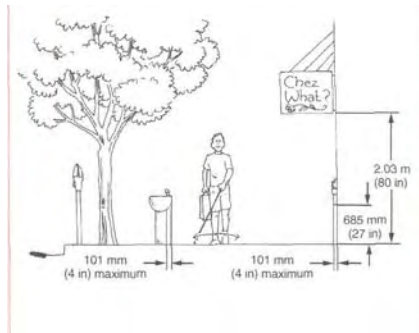
This pedestrian, who is blind is walking down a sidewalk that contains a number of obstacles that are difficult to detect using a long white cane, because they protrude into the path of travel between 685 mm (2.3 ft) up from ground level and below 2.03 m (6.7 ft) in height.

6 Protruding Objects:

Objects that protrude into the sidewalk corridor above 2 m (6.7 ft) are not generally a problem for pedestrians with vision impairments (See **Figure** 11). Pedestrians who use long canes will usually detect and avoid objects on the sidewalk that extend below 0.69 m (2.3 ft). However, obstacles that protrude into the sidewalk corridor between 0.69 m-2 m (2.3 ft—6.7 ft) and do not extend to the ground **(See Figure 10)** are more difficult to detect and avoid.

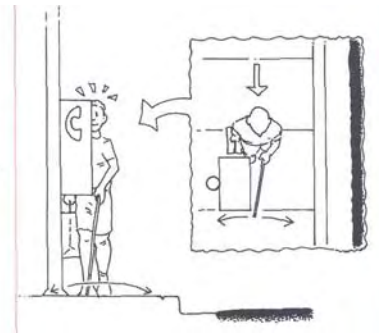
Pedestrians with vision impairments often travel using the edge of the building line. Objects mounted on the wall, post, or side of a building, should therefore not protrude more than 0.1 m (4 in) into the sidewalk corridor (See **Figure** 12).

Figure 11



This pedestrian. who is blind, will have a much easier time traveling on this sidewalk because there are no walls or post-mounted obstacles that protrude more than 101 mm (4 in)

Figure 12

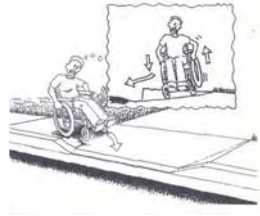


POTENTIAL PROBLEM:
When obstacles mounted on posts can be approached from the side they should not protrude more than 101mm (4 in). This pedestrian who is blind does not detect the pole, which could cause him to collide with the obstacle.

7 Driveway Crossings:

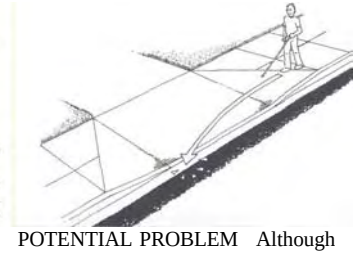
Driveway crossings serve the same purpose for cars as curb ramps serve for pedestrians. They consist of many of the same components found in curb ramps. Designers need to remember that as they change the grade to allow cars to effectively negotiate the elevation change between the street and the sidewalk, they **must not** compromise good pedestrian design practice. Unfortunately, this happens quite often and pedestrians using wheelchairs and other walking aids are sometimes put at risk of becoming unstable and falling. ADAAG does not permit the cross slope of the sidewalk to exceed 2 percent. Driveway crossings are often built with grade changes in the sidewalk corridor that have cross slopes greater than 2 percent. Driveway crossings without level landings force users to travel over the sidewalk flare. This design results in rapid changes in grade and cross slope **(See Figure 13),** wheelchair users can lose control and possibly tip over as the front wheel loses contact with the ground followed by the opposing back wheel. Pedestrians with vision impairments may not detect the difference in slope of the driveway flare and veer towards the street and may enter the street without realizing it **(See Figure 14).**

Figure 13



PROBLEM This driveway design is not allowed by ADAAG Driveway crossings must be level and not force users to travel over the sidewalk flare This design results in rapid changes in cross slope, which compromises balance and stability for people who use wheelchairs The right front wheel loses contact with the ground followed by the opposing back wheel

Figure 14



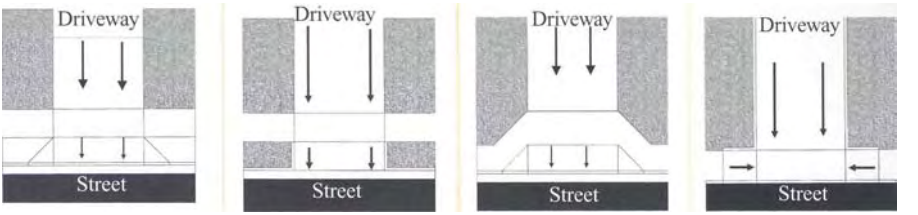
POTENTIAL PROBLEM Although gradually sloped driveway crossings are beneficial to people with mobility impairments, they can be problematic for people with vision impairments unless there is a detectable difference in slope at the edge of the street If a visually impaired person veers toward the street and isn't able to recognize where the driveway ends and the street begins, he or she may enter the street without realizing it

Driveway crossings should be designed with the following guidance:

- Cross slope = 2.0 percent maximum
- Level maneuvering space
- Changes in level = flush (1/4 inch maximum)
- Flare slope =10 percent maximum

Figure 15 illustrates good or acceptable design practice

Figure 15 Driveway Crossings



Good Design
Driveway crossings with wide level sidewalks

Good Design
Driveway crossings with level sidewalk

Acceptable Design
Driveway crossing with a level landing jogged away from the street
see *1

Acceptable Design
Driveway crossing with ramps parallel to the sidewalk and sidewalk at grade with the street
see *2

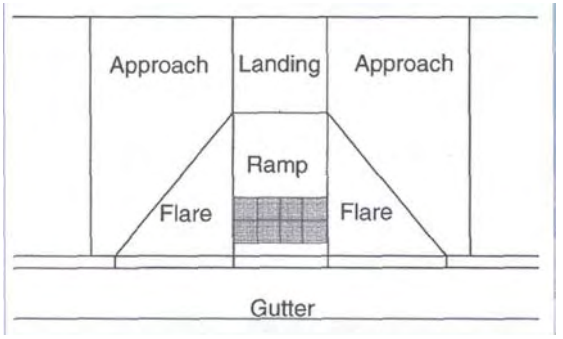
*1 Potential tripping problem for pedestrians traveling over flare

*2 May have drainage problems There needs to be a detectable edge or lip for pedestrians with vision impairments to distinguish the sidewalk and street boundary at the base of the driveway

8 Curb Ramps:

Curb ramps are necessary for access between the sidewalk and the street for people who use wheelchairs **(See Figure 16).** Title II of the ADA specifically requires curb ramps for existing facilities, as well as all new construction or altered facilities. However, curb ramps can create a barrier for people with vision impairments who use the curb to identify the transition point between the sidewalk and the street. Because curb ramps eliminate the vertical edge of the curb used by pedestrians with vision impairments, it is necessary to install detectable warnings **(Section 9)** to mark the boundary between the sidewalk and street. For some pedestrians who use walking aids such as canes, walkers or crutches, curb ramps may be difficult to access. The pedestrian must have strength to lift his or her body up over the supporting device. A wider crosswalk to allow use of curb and curb ramp **(See Figure 17)** will enhance access for all users

Figure 16

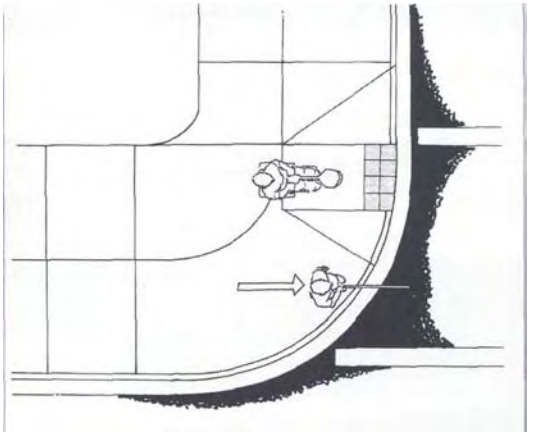


Curb ramp components.

***Curb ramp** types:*

Curb ramp types are usually categorized by their structural design and how they are positioned relative to the sidewalk or street. Selecting a curb ramp design depends on site conditions. Curb ramp types include perpendicular, diagonal, parallel, combination, and depressed corners. Table 1 discussed the advantages and disadvantages of each curb ramp types.

Figure 17

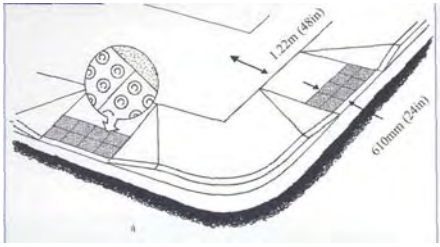


GOOD DESIGN:
When a portion of the curb is included in the crosswalk, it is easier for people with vision impairment to detect the transition between the sidewalk and the street

Table 2: Advantages and disadvantages of curb ramp types

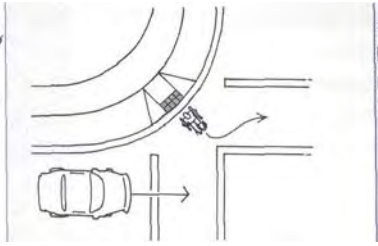
Ramp Type	Advantage to Pedestrian	Disadvantage to Pedestrian
Perpendicular **See Figure 17,18**	1) Ramp aligned with the crosswalk. 2) Straight path of travel on tight radius. 3) Two ramps per corner.	1) May not provide a straight path of travel on larger radius corners.
Diagonal **See Figure 19**	Not recommended	1) Pedestrian with a vision impairment can mistake a diagonal ramp for a perpendicular ramp and unintentionally travel into the intersection because it is not aligned with the crossing direction. 2) May conflict with motorists who are traveling straight or turning if corner radius is small. 3) Directs wheelchair users into the intersections. Requires wheelchair turning at the top and bottom of the ramp. A 1.2 m x 1.2 m (4 ft x 4 ft) bottom landing is required. **(See Figure 19).**
Parallel **See Figure 20, 21, 22**	1) Requires minimal right-of-way. 2) Provides an area to align with the crossing. The bottom landing is contained in the sidewalk and not the street. 3) Allows ramps to be extended to reduce ramp grade. 4) Provides edges on the side of the ramp that are clearly defined for pedestrians with vision impairments.	1) Pedestrians need to negotiate two or more ramp grades (makes it more difficult for wheelchair users). 2) Improper design can result in the accumulation of water or debris on the landing at the bottom of the ramp.
Combined Parallel and Perpendicular **See Figure 23**	1) Does not require turning or maneuvering on the ramp. 2) Ramp aligned perpendicular to the crosswalk. 3) Level maneuvering area at the top and bottom of ramps.	1) Visually impaired pedestrians need to negotiate sidewalk ramps.
Depressed Corners See **Figure** 24, 25	1) Eliminates the need for a curb ramp.	1) Pedestrians with cognitive impairments may have the illusions that the sidewalk and street are unified pedestrian space (i.e., safe). 2) Improper design can allow large vehicles to travel onto the sidewalk to make tight turns which puts the pedestrian at risk. 3) More difficult to detect the boundary between the sidewalk and the street for persons with vision impairments. 4) Service dogs may not distinguish the boundary between the sidewalk and the street and continue walking. 5) The design may encourage motorist to turn faster by traveling onto the sidewalk.

Figure 18



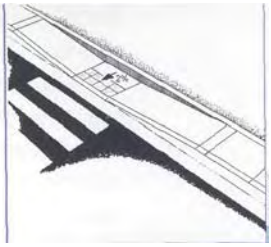
GOOD DESIGN:
A level landing at the top of the ramp of at least 1.2 m (4 ft). A 610 mm (2 ft) strip of detectable warnings must be installed at the bottom of a perpendicular curb ramp.

Figure 19



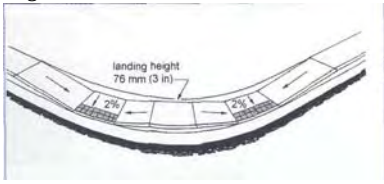
Diagonal curb ramps arc not recommended. However, users must have enough room to maneuver towards the direction of the crosswalk. There must be a 1.2 m x 1.2 m (4 ft x 4 ft) bottom level landing of clear space outside the direction of motor vehicle travel.

Figure 20



Parallel curb ramps won't well on narrow sidewalks but require users continuing on the pathway to negotiate two ramp grades

Figure 21

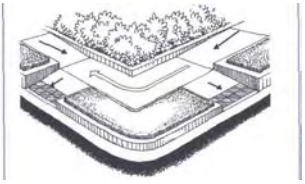


At intersections with narrow sidewalks and wide turning radii, two parallel curb ramps should be considered.

Figure 22

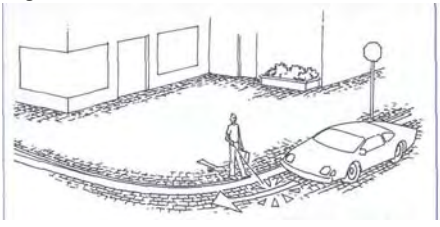
NOT RECOMMENDED

Figure 23



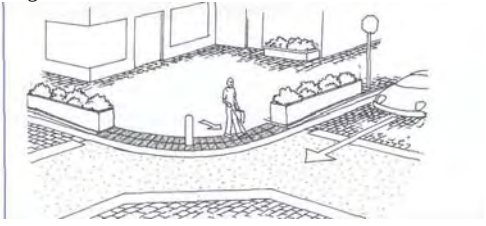
Combined parallel and perpendicular curb ramps lowers the elevation of level landings while bridging the remaining elevation gap.

Figure 24



PROBLEM: Decorative patterns used at depressed corners, such as this brick pattern, create a continuous pathway. People with vision and cognitive impairments have difficulty detecting where the street begins and ends.

Figure 25



Detectable warnings, contracting surface materials, and barrier posts are measures that can be used to convey the transition between the street and sidewalk at depressed corners. This corner would be a good location for accessible signals.

Curb Ramp Specifications:

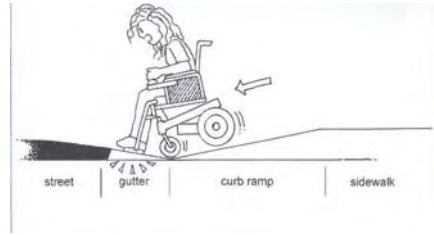
- ***Ramp Grade:*** ADAAG permits a maximum curb ramp slope of 8.3 percent (preferred 7 1 percent to allow for construction tolerance)
- ***Cross slope*** on the ramp may not exceed 2 0 percent.

[1] Minimum ***ramp width*** should be 1.2 m (4 ft) in new construction. In restricted spaces only, the minimum width should not be less than 915 mm (3 ft).

Significant ***changes of grade*** as the pedestrians travel from the down slope of the ramp to the up slope of the gutter can cause wheelchair users to fall forward **(See Figure 26)** and should be 13 percent or less. Counterslope should not exceed 5 percent.

Curb ramp alignment should be perpendicular to the curb face. The ramp needs to be aligned within the crosswalk with a straight path of travel from the top of the ramp to the roadway to the curb ramp on the other side.

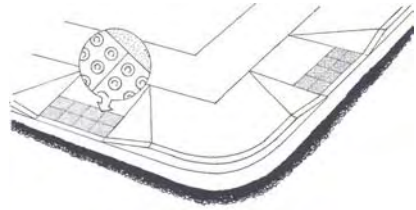
Figure 26



A wheelchair can bottom out at areas of rapid change of grade (greater than 13 percent). The wheelchair can be pitched forward or thrown backwards.

[1] ***Detectable warnings*** **(See Figure 27)** across the lower part of the ramp are required. Ramps make it difficult for pedestrians with vision impairments to detect the transition between the sidewalk and the street. Detectable warnings should have a visual contrast with the adjacent walking surfaces. **(See Section 9)**

Figure 27

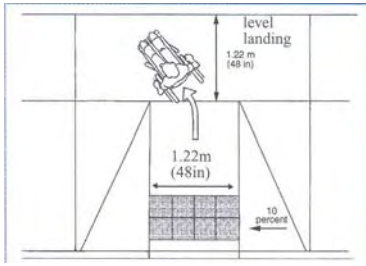


GOOD DESIGN

A 610 mm (2 ft) strip of detectable warnings shall be installed at the bottom of a curb ramp to indicate the transition from the sidewalk to the street.

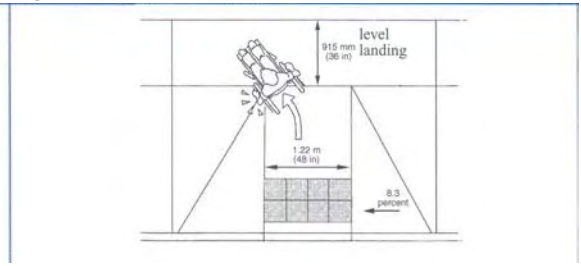
- ***Transition points*** between adjacent curb ramp surfaces should be flush. Even a 13 mm (0.5 in) change in level combined with a change in grade can complicate access for wheelchair users. Curb ramp lips are not allowed by ADAAG.
- ***Sidewalk approach width*** should have a minimum of 1.2 m (4 ft). (See previous discussion in Section 3, Sidewalk Corridors.)
- ***Level landing*** at the top and bottom of the curb ramp should be 1.2 m x 1.2 m (4 ft x 4 ft) and the cross slope should not exceed 2 percent in any direction. This is necessary to allow wheelchair users to maneuver off the ramp

Figure 28



The 1.2 m (4 ft) width of this curb ramp provides sufficient turning space for this wheelchair user. The maximum slope of the flares at this curb ramp should be 10 percent. Measured at the face of the curb.

Figure 29



The 915 mm (3 ft) width of this landing forces this wheelchair user to travel over a portion of the flare to maneuver onto the narrow landing. For this reason, the maximum slope of the flare should not exceed 8.3 percent and should be blended at the top appex. The ramp width should be widened up to 1.2 m (4 ft) to allow for a tighter turn onto the landing.

and onto the path of travel within the pedestrian zone. **(See Figure 28).** If space is limited, the absolute minimum level landing width should not be less than 915 mm (3 ft). **(See Figure 29).** However, in such a case, wheelchair users may have to travel over a portion of the flare in order to move off the ramp onto the path of travel. To compensate, the warping of the slope at the top area of the *flare* should be blended for easier travel across, and the ramp width should not be less than 1.2 m (4 ft). The maximum slope of the flare should not exceed 8.3 percent if the landing is between 0.9m-1.2m(3 ft-4 ft).

Table 2. Ramp length for perpendicular curb ramps based on ramp slope

Change in Elevation	Ramp Length for 7.1 Percent Slope	Ramp Length for 8.3 Percent Slope
203 mm (8 m)	**4.0 m (13.1 ft)**	**3.2 m (10.7 ft)**
178 mm (7 in)	**3.5 m (11.4 ft)**	**2.8 m (9.3 ft)**
152 mm (6 m)	**3.0 m (9.8 ft)**	**2.4 m (7.9 ft)**
127 mm (5 in)	**2.5 m (8.2 ft)**	**2.0 m (6.6 ft)**
101 mm (4 in)	**2.0m (6.5 ft)**	**1.6 m (5.3 ft)**

This table assumes that the sidewalk corridor has a 2 percent slope and that the corner is level. The length is for the ramp only and does not include sidewalk width required for level landing.

Curb ramp length is determined by the vertical height of the curb between the roadway and the sidewalk. Assuming the cross slope of the corridor is constant at 2 percent, the formula for determining ramp length is:

$$\text{ramp length} = \frac{\text{curb height}}{(\text{ramp slope/percent} - \text{sidewalk corridor cross slope/percent})}$$

Table 2 calculates the minimum ramp length required for a 7.1 percent ramp and an 8.3 percent ramp, based on the height of the required vertical change.

Additional good practice curb ramp *design:*

- Align the curb ramp within the marked crosswalk, so there is a straight path of travel to the curb ramp on the other side.
- Provide adequate drainage to prevent the accumulation of water and debris on or at the bottom of the ramp.
- Minimize ramp length by lowering the sidewalk to reduce the curb height. Applicable in areas with narrow sidewalks.

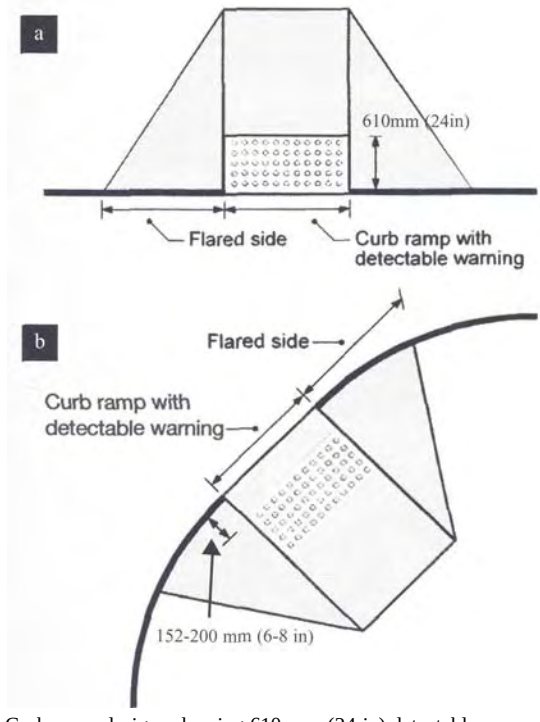
9 Providing Information to Pedestrians:

Pedestrians with vision impairments rely on nonvisual audible and tactile cues to travel. Cues in the environment include the sound of traffic, presence of curb ramps, verbal messages and audible tones in pedestrian signals, and detectable warnings.

To accommodate the information needs of all pedestrians, it is important to provide information in formats that can be assimilated using more than one sense. Pedestrian information includes pedestrian signage, Accessible Pedestrian Signals (APS) - audible tones, verbal messages, and vibrotactile information, and detectable warnings.

Detectable warnings **(See Figure 30)** are a standardized surface feature built in or applied to walking surfaces or other elements to warn visually impaired people of potential hazards.

Figure 30



Curb ramp designs showing 610 mm (24 in) detectable warning (U.S. Access Board-Detectable Warnings: Synthesis).

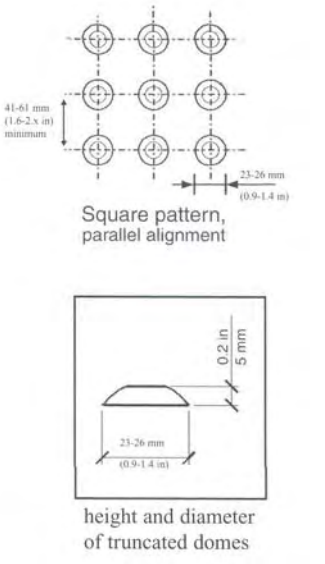
Detectable warnings shall consist of a surface of truncated domes aligned in a square grid pattern **(See Figure 31):**

- Base diameter of 23mm-26 mm (0.9in-1.4in).
- Top diameter of 50-60 percent of base diameter.
- Height of 5 mm (0.2 in).
- Center-to-center spacing of 41 mm-61 mm (1.6 in-2.4 in).
- Visual contrast of light-on-dark or dark-on-light with adjacent walking surfaces.

ADAAG Appendix, Section A, 29.2 recommends that the materials used provide a contrast of at least 70 percent.

Contrast = [(Bl- B 2) / Bl] x 100
B1 = light reflectance value of lighter area (LRV)
B2 = light reflectance value of darker area (LRV)

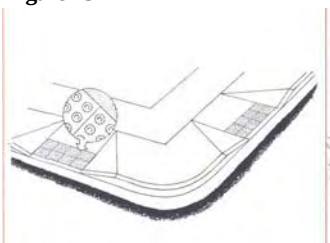
Figure 31



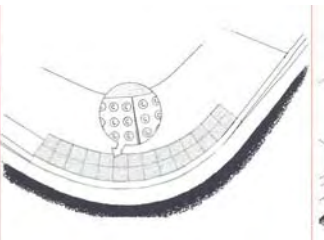
Truncated domes aligned so that wheels may pass between them arc easier for some wheelchair users to negotiate (Bentzen, Barlow, & Tabor, 2000.)

Detectable Warning Design Applications

Figure 32

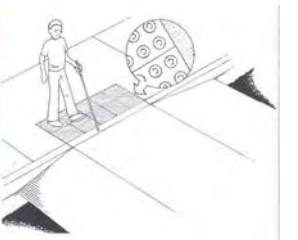


A 610 mm (2 ft) strip of detectable warnings shall be installed at the bottom of a curb ramp to indicate the transition from the sidewalk to the street.



A 610 mm (2 ft) strip of warnings shall be installed at the border of a depressed corner to identify the transition between the sidewalk and the street.

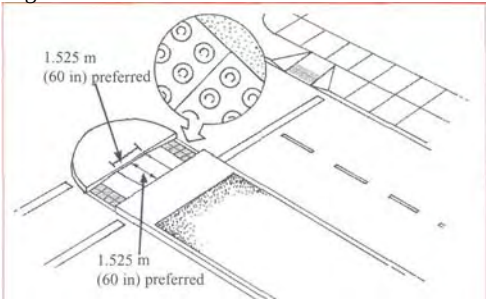
Figure 34



A 610 mm (2 ft) strip of warnings shall be installed at the edge of a raised crosswalk to identify the transition between the sidewalk and street.

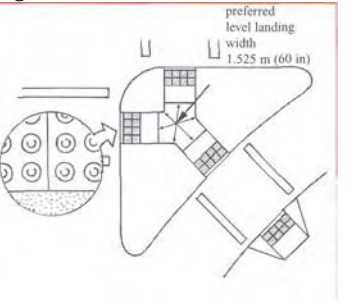
Detectable warnings shall be placed at the bottom of curb ramps **(See Figure 32)** and other locations such as depressed corners **(See Figure 33),** raised crosswalks and raised intersections **(See Figure 34),** borders of medians and islands **(See Figures 35 and 36),** and at the edge of transit platforms and where railroad tracks cross the sidewalk to warn people with visual impairments of potential hazards. Detectable warnings must be installed across the full width of ramps, and 610 mm (2 ft) in length up the ramp. The detectable warning

Figure 35



A ramped median should have a level landing that is 1.5 m (5 ft) level landing.

Figure 36

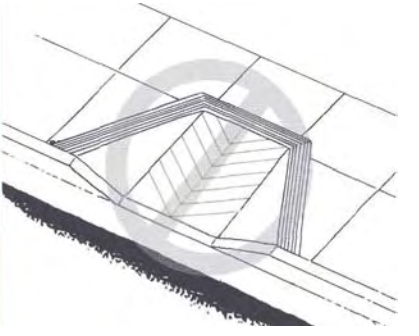


Ramped islands shall include detectable warnings and have a level landing.

should be set back 152 mm-200 mm (6 in-8 in) from the bottom of the curb **(refer to Figure 30 b above).** This allows wheelchair users to gain momentum before traveling over the truncated domes. It provides pedestrians with vision impairments additional time to react to the detectable warning or advanced warning before they reach the street. Smooth surfaces should be provided adjoining the detectable warning to maximize contrast. Bricks and other textured surfaces affect the ability of the pedestrian to detect the truncated dome warnings.

Grooves do not provide a detectable warning and pedestrians can easily confuse them with sidewalk expansion joints or cracks in the sidewalk **(See Figure 37).** They are not allowed as a detectable warning by ADAAG.

Figure 37



Potential Problem:
Grooves are not the equivalent of a detectable warning because they are not detectable underfoot.

Accessible Pedestrian Signals:

The implementing regulation under Title II of the ADA requires that all facilities constructed or altered after January 1992 be designed and constructed to be accessible to people with disabilities.

Audible tones and speech messages can provide standard information about the status of the signal cycle (WALK, DON'T WALK). Information on the location, direction of travel, and the name of the street to be crossed can also be included. Infrared or Light Emitting Diodes (LED) transmitters can send speech messages to personal receivers. In addition to providing information in multiple formats, the physical design, placement, and location of the pedestrian signal device need to be accessible to pedestrians with vision and mobility impairments.

Accessible Pedestrian Signal (APS)

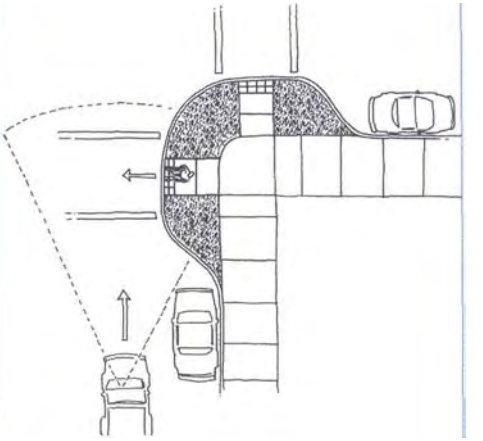
- Locate the push button as close as possible to the curb ramp without interfering with clear space.
- The device should be operated from a level landing.
- Mount the device no higher than 1.0 m (3.5 ft) above the sidewalk.
- The control face of the button shall be parallel to the direction of the marked crosswalk.
- One button per pole, each separated by 3 m (10 ft) is preferred.
- Place the device no closer than 760 mm (2.5 ft) to the curb, and no more than 1.5 m (5 ft) from the crosswalk.
- The button should be a minimum of 50 mm (2 in) in diameter to be easily operated by pedestrians with limited hand function. Avoid activation buttons that require conductivity (unusable by pedestrians with prosthetic hands).
- The force to actuate the button should require a minimum amount of force no greater than 15.5 N or 3 lbf to activate.

(For more information on Accessible Pedestrian Signals visit the Web sites at http://www.mutcd.gov, www.access-board.gov and www.accessforblind.org)

Pedestrian Crossings:

Designing an effective pedestrian crossing involves the correct layout of pedestrian elements including: information (signs, accessible pedestrian/traffic signals, markings), turning radius, visible crosswalks (including raised crosswalks), adequate crossing times, medians **(See Figure 35),** refuge islands, corner island (See **Figure 36),** curb ramps with detectable warnings, and curb extensions **(See Figure 38).** It also involves careful consideration of adequate sight lines, traffic patterns, and traffic signal phasing. Other techniques such as restrictions on right turns, pedestrian lead times, and traffic calming measures will benefit all pedestrians. Regulations that prohibit parking at the corner can also improve blocked sight lines.

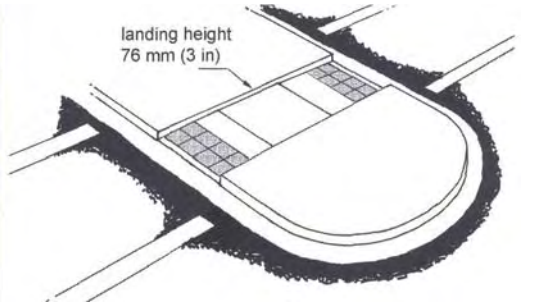
Figure 38



Curb extensions improve visibility between pedestrians and motorists and make it easier to install perpendicular curb ramps with level landing. Regulations that prohibit parking at the corner can also improve blocked sight lines

Medians: Medians generally reduce crossing exposure and allow pedestrians to negotiate vehicle traffic one direction at a time. Medians should be curbed or barrier medians to physically separate pedestrians and motorists rather than painted flush. Furthermore, all medians should be accessible to pedestrians. The nose of the median should be extended beyond the crosswalk (See **Figure** 39). If a cut through **(See Figure 40)** is provided, it should be at least 1.8 m (6 ft) long and 1.5 m (5 ft) wide. This allows 2 wheelchair users to pass each other. In addition the edges of the cut through must be perpendicular to the street being crossed.

Figure 39



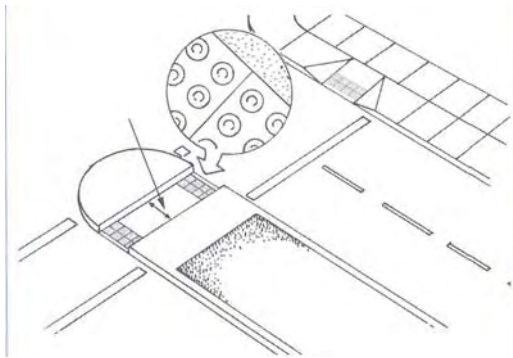
GOOD DESIGN: The height of this median does not exceed 76 mm (3 in). This design allows for the construction of shorter curb ramps and a longer level landing.

Ramped medians **(See Figure 35),** should have a curb ramp at either end and a level landing at least 1.5 m x 1.5 m (5 ft x 5 ft). For all medians, cut through or ramped, a 0.6 m (2 ft) strip of detectable warnings should be located at the entrance and exit.

Corner Island: The design guidance for the island itself is similar to those of the median. The island should be raised and designed with curb ramps **(See Figure 36)** or a pedestrian cut-through **(See Figure 41).** If a cut-through design is selected, it should provide at least 1.5 m (5 ft) of clear space in all directions. In addition, a 0.6 m (2 ft) strip of detectable warning should be included at every exit point on the island.

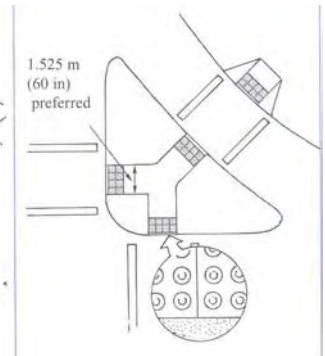
Ramped Corner Island **(See Figure 36):** The design should include curb ramps that are at least 1.5 m (5 ft) wide (preferred), 1.5 m x 1.5 m (5 ft x 5 ft) level landing and detectable warnings.

Figure 40



Cut-through medians should be at least 1.525 m (60 in) wide and should include 610 mm (24 in) strips of detectable warnings at both ends.

Figure 41



Corner islands with cut-throughs should be at least 1.525 m (60 in) wide at all locations and include 610 mm (24 in) strips of detectable warnings

CITIES INELIGIBLE FOR CRP DUE TO POPULATION LIMITATION

Tyler	98335	Tyler, TX	Urban	4
Lewisville	97462	Dallas-Fort Worth-Arlington, TX	Urban	3
College Station	96000	College Station-Bryan, TX	Urban	8
San Angelo	94812	San Angelo, TX	Urban	12
Pearland	94098	Land, TX	Urban	6
Allen	87213	Dallas-Fort Worth-Arlington, TX	Urban	3
League City	86136	Land, TX	Urban	6
Longview	81435	Longview, TX	Urban	4
Sugar Land	80755	Land, TX	Urban	6
Mission	78707	McAllen-Edinburg-Mission, TX	Urban	11
Edinburg	77415	McAllen-Edinburg-Mission, TX	Urban	11
Bryan	77139	College Station-Bryan, TX	Urban	8
Baytown	73043	Land, TX	Urban	6
Pharr	71634	McAllen-Edinburg-Mission, TX	Urban	11
Missouri City	68244	Land, TX	Urban	6
Temple	67669	Killeen-Temple, TX	Urban	8
Atascocita	66879	Land, TX	Urban	6
Flower Mound	66523	Dallas-Fort Worth-Arlington, TX	Urban	3
Harlingen	65296	Brownsville-Harlingen, TX	Urban	11
North Richland Hills	64677	Fort Worth-Arlington, TX	Urban	3
Victoria	63571	Victoria, TX	Urban	10
New Braunfels	59620	San Antonio-New Braunfels, TX	Urban	9
Conroe	59429	Land, TX	Urban	6
Mansfield	57529	Fort Worth-Arlington, TX	Urban	3
Rowlett	56856	Dallas-Fort Worth-Arlington, TX	Urban	3
Spring	55458	Land, TX	Urban	6
Cedar Park	54874	Austin-Round Rock, TX	Urban	7
Port Arthur	54193	Beaumont-Port Arthur, TX	Urban	5
Euless	52127	Fort Worth-Arlington, TX	Urban	3
Georgetown	50380	Austin-Round Rock, TX	Urban	7
Pflugerville	50127	Austin-Round Rock, TX	Urban	7
DeSoto	50014	Dallas-Fort Worth-Arlington, TX	Urban	3
San Marcos	48291	Austin-Round Rock, TX	Urban	7
Galveston	48178	Land, TX	Urban	6
Bedford	47727	Fort Worth-Arlington, TX	Urban	3
Grapevine	47688	Dallas-Fort Worth-Arlington, TX	Urban	3
Cedar Hill	45505	Dallas-Fort Worth-Arlington, TX	Urban	3
Texas City	45363	Land, TX	Urban	6
Haltom City	42906	Fort Worth-Arlington, TX	Urban	3
Wylie	42384	Dallas-Fort Worth-Arlington, TX	Urban	3
Keller	40872	Fort Worth-Arlington, TX	Urban	3
Coppell	39551	Dallas-Fort Worth-Arlington, TX	Urban	3
Duncanville	39000	Dallas-Fort Worth-Arlington, TX	Urban	3
Rockwall	38958	Dallas-Fort Worth-Arlington, TX	Urban	3
Channelview	38919	Land, TX	Urban	6
Sherman	38805	Sherman-Denison, TX	Urban	3

Burleson	38165	Fort Worth-Arlington, TX	Urban	3
Hurst	37822	Fort Worth-Arlington, TX	Urban	3
The Colony	37614	Dallas-Fort Worth-Arlington, TX	Urban	3
Lancaster	37087	Dallas-Fort Worth-Arlington, TX	Urban	3
Texarkana	36851	Texarkana, TX-AR	Urban	4
Friendswood	36375	Land, TX	Urban	6
Weslaco	36273	McAllen-Edinburg-Mission, TX	Urban	11
Mission Bend	36072	Land, TX	Urban	6
San Juan	34556	McAllen-Edinburg-Mission, TX	Urban	11
La Porte	34127	Land, TX	Urban	6
Schertz	33758	San Antonio-New Braunfels, TX	Urban	9
Fort Hood	32902	Killeen-Temple, TX	Urban	8
Copperas Cove	32869	Killeen-Temple, TX	Urban	8
Deer Park	32517	Land, TX	Urban	6
Socorro	32227	El Paso, TX	Urban	13
Rosenberg	31908	Land, TX	Urban	6
Waxahachie	30412	Dallas-Fort Worth-Arlington, TX	Urban	3
Cleburne	29677	Fort Worth-Arlington, TX	Urban	3
Farmers Branch	29405	Dallas-Fort Worth-Arlington, TX	Urban	3
Kyle	29396	Austin-Round Rock, TX	Urban	7
Leander	28281	Austin-Round Rock, TX	Urban	7
Little Elm	27966	Dallas-Fort Worth-Arlington, TX	Urban	3
Harker Heights	27163	Killeen-Temple, TX	Urban	8
Lake Jackson	27107	Land, TX	Urban	6
Southlake	27006	Fort Worth-Arlington, TX	Urban	3
Weatherford	25971	Fort Worth-Arlington, TX	Urban	3
Seguin	25848	San Antonio-New Braunfels, TX	Urban	9
Greenville	25729	Dallas-Fort Worth-Arlington, TX	Urban	3
Alvin	24708	Land, TX	Urban	6
San Benito	24347	Brownsville-Harlingen, TX	Urban	11
Balch Springs	24294	Dallas-Fort Worth-Arlington, TX	Urban	3
Cloverleaf	24150	Land, TX	Urban	6
Timberwood Park	23952	San Antonio-New Braunfels, TX	Urban	9
Brushy Creek	23908	Austin-Round Rock, TX	Urban	7
Watauga	23798	Fort Worth-Arlington, TX	Urban	3
Colleyville	23465	Fort Worth-Arlington, TX	Urban	3
University Park	23460	Dallas-Fort Worth-Arlington, TX	Urban	3
Denison	22697	Sherman-Denison, TX	Urban	3
West Odessa	22156	Odessa, TX	Urban	12
Benbrook	21655	Fort Worth-Arlington, TX	Urban	3
Sachse	20930	Dallas-Fort Worth-Arlington, TX	Urban	3
Cibolo	20564	San Antonio-New Braunfels, TX	Urban	9
Saginaw	20347	Fort Worth-Arlington, TX	Urban	3
Corinth	20126	Dallas-Fort Worth-Arlington, TX	Urban	3
Fresno	19467	Land, TX	Urban	6
Converse	19023	San Antonio-New Braunfels, TX	Urban	9
Dickinson	18879	Land, TX	Urban	6

Belton	18855	Killeen-Temple, TX	Urban	8
Universal	18844	San Antonio-New Braunfels, TX	Urban	9
Midlothian	18666	Dallas-Fort Worth-Arlington, TX	Urban	3
Alamo	18658	McAllen-Edinburg-Mission, TX	Urban	11
Murphy	18412	Dallas-Fort Worth-Arlington, TX	Urban	3
Cinco Ranch	17863	Land, TX	Urban	6
Stafford	17840	Land, TX	Urban	6
Horizon City	17736	El Paso, TX	Urban	13
Nederland	17530	Beaumont-Port Arthur, TX	Urban	5
Bellaire	17223	Land, TX	Urban	6
South Houston	17157	Land, TX	Urban	6
White Settlement	16372	Fort Worth-Arlington, TX	Urban	3
New Territory	16188	Land, TX	Urban	6
Donna	16010	McAllen-Edinburg-Mission, TX	Urban	11
Mercedes	15999	McAllen-Edinburg-Mission, TX	Urban	11
Groves	15954	Beaumont-Port Arthur, TX	Urban	5
Pecan Grove	15769	Land, TX	Urban	6
Highland Village	15364	Dallas-Fort Worth-Arlington, TX	Urban	3
Portland	15289	Corpus Christi, TX	Urban	10
Humble	15286	Land, TX	Urban	6
Seagoville	15099	Dallas-Fort Worth-Arlington, TX	Urban	3
West University Place	15033	Land, TX	Urban	6

Simon Malls in Texas

Name of Mall	Location	Gross Leasable Square Feet
The Galleria	Houston	2,237,000
Grapevine Mills	Grapevine	1,777,000
North East Mall	Hurst	1,669,736
Barton Creek Square	Austin	1,430,000
Galleria Dallas	Dallas	1,425,000
Cielo Vista	El Paso	1,242,000
La Plaza Mall	McAllen	1,215,000
The Domain	Austin	1,209,000
Katy Mills	Katy	1,201,104
Ingram Park Mall	San Antonio	1,125,000
Lakeline Mall	Cedar Park	1,098,000
Firewheel Town Center	Garland	1,000,000
San Marcos Premium Outlets	San Marcos	731,000
Brodway Square	Tyler	628,000
Midland Park Mall	Midland	615,000
Rio Grande Valley Premium Outl	Mercedes	604,000
Houston Premium Outlets	Cypress	542,000
Round Rock Premium Outlets	Round Rock	488,689
The Shops at Clearfork	Fort Worth	473,769
Allen Premium Outlets	Allen	442,000
Grand Prairie Premium Outlets	Grand Prairie	417,415
Tanger Outlets Houston	Texas City	352,705
University Park Village	Fort Worth	173,358

data from http://business.simon.com/

(43) Flores Residential, LLC

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FLORES RESIDENTIAL, L.C.
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Telephone 210-494-7944 210-494-5948
Cell Telephone 210-289-5952
Facsimile 210-494-0853
e-mail: nono62@swbell.net

October 14, 2016

Via email htc.public-comment@tdhca.state.tx.us

Ms. Sharon Gamble
9% Competitive Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

Re: Public Comment on QAP and MF Rules

Dear Sharon:

Attached is our comment on the proposed 2017 QAP and Multifamily Rules, submitted in accordance with the notice published in the September 23, 2016, edition of the Texas Register. Please let me know if you have any questions.

Sincerely,

Apolonio Flores

enclosures

Subchapter A

10.3 Definitions

We do not believe that Special Limited Partners generally possess factors or attributes that give them Control, although some may. Therefore, we offer the following recommendation to the definition of Control.

(29) Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. Controlling entities of a partnership include the general partners, may include special limited partners when applicable, but not investor limited partners or special limited partners who do not possess other factors or attributes that give them Control. Controlling entities of a limited liability company include but are not limited to the managers, managing members, any members with 10 percent or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership, but not investor members who do not possess other factors or attributes that give them Control. Controlling individuals or entities of a corporation, including non-profit corporations, include voting members of the corporation's board, whether or not any one member did not participate in a particular decision due to recusal or absence. Multiple Persons may be deemed to have Control simultaneously.

The current definition of Elderly Preference Development does not preclude an Application from choosing this type of Elderly Development even if HUD funding (or other federal assistance) is not used; however, the 2016 Application conflicted with this plain language and did not allow for that type of a choice to be made. If the intention of the Elderly Preference Development definition is that it only apply to developments with HUD funding or other types of federal assistance, that should be clearly articulated in the definition.

We offer the following recommendation for the definition of Principal. The first relates to the unclear nature of whether "Persons" is capitalized because it refers to the defined term, or simply because it is the first word in the sentence. The context leads us to believe that it is the generalized term, which informs our recommendation. The second relates to our earlier comment on the definition of Control.

(98) Principal--Any ~~P~~persons~~s~~ that will exercise Control (which includes voting board members pursuant to §10.3(a)(29) of this chapter) over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) partnerships, Principals include all General Partners, ~~special limited partners,~~ and Principals with ownership interest, and special limited partners with ownership interest who also possess factors or attributes that give them Control;

(B) corporations, Principals include any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation, and any individual who has Control with respect to such stock holder; and

(C) limited liability companies, Principals include all managers, managing members, members having a 10 percent or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.

Subchapter B

10.101(a)(2) Undesirable Site Features

We make the following recommendations to this section.

(2) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph maybe considered ineligible as determined by the Board. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs ("VA") may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application and must include a letter stating the Rehabilitation of the existing units is consistent with achieving at least one or more of the stated goals as outlined in the State of Texas Analysis of Impediments to Fair Housing Choice or, if within the boundaries of a participating jurisdiction or entitlement community, as outlined in the local analysis of impediments to fair housing choice and identified in the participating jurisdiction's Action Plan. The distances are to be measured from the nearest boundary of the Development Site to the ~~nearest boundary of the property or easement containing the~~ undesirable feature. ~~The minimum distances noted assume that the land between the proposed Development Site and the particular undesirable feature has no significant intervening barriers or obstacles such as waterways or bodies of water, major high speed roads, park land, or walls, such as noise suppression walls adjacent to railways or highways.~~ Where there is a local ordinance that ~~regulates the~~ for closer proximity ~~of~~ to such undesirable feature ~~to a multifamily development that differs from~~ than the minimum distances noted below, documentation, such as a copy of the local ordinance identifying such distances relative to the Development Site, must be included in the Application. ~~The distances identified in subparagraphs (A) - (J) of this paragraph are intended primarily to address sensory concerns such as noise or smell, social factors making it inappropriate to locate residential housing in proximity to certain businesses. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes.~~ If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (K) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

(A) Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Transportation Code, §396.001;

(B) Development Sites located within 300 feet of a solid waste or sanitary landfills;

(C) Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local Government Code, §243.002, or as zoned, licensed and regulated as such by the local municipality;

(D) Development Sites in which the buildings are located within 100 feet of the easement of any overhead high voltage transmission line, or support structures for high voltage transmission lines~~, or other similar structures~~. This does not apply to local service electric lines and poles;

(E) Development Sites located within ~~500~~100 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail;

(F) Development Sites located within 500 feet of heavy industrial (i.e. facilities that require extensive capital investment in land and machinery, are not easily relocated and produce high levels of external noise such as manufacturing plants, fuel storage facilities (excluding gas stations) etc.);

(G) Development Sites located within 10 miles of a nuclear plant;

(H) Development Sites in which the buildings are located within one-quarter mile of the accident zones or clear zones of any airport;

(I) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids. Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance ("PIPA");
(J) Development Sites located within 2 miles of refineries capable of refining more than 100,000 barrels of oil daily; or
(K) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated.

10.101(a)(3) Undesirable Neighborhood Characteristics

We agree with the language recommendations made by TAAHP.

10.101(b)(4) Mandatory Development Amenities

We agree with TAAHP's recommendation to strike the requirement for solar screens.

10.101(b)(5) Common Amenities

We recommend leaving furnished community room as a 2 points.

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

In-unit laundry equipment should be a 3 point item.

10.101(b)(7) Tenant Supportive Services

We agree with TAAHP's recommendation to this section of the Rule. We also recommend increasing scholastic tutoring 5 points.

Subchapter C

10.201(7) Administrative Deficiency Process

The Administrative Deficiency deadline should remain 5 days.

10.203 Public Notifications

We agree with TAAHP's recommendation on this section.

10.204(6) Experience Requirement

The 2014 criteria for experience certificates is exactly the same in 2015 and 2016, so 2014 certificates should still count.

10.204(16) Section 811 Project Rental Assistance Program

We agree with TAAHP's recommendations on this item.

Subchapter D

10.302(e)(1)(C) Acquisition from Seller without current Title

We agree with Oryx Compliance, LLC's comment on this section.

10.302(e)(9) Reserves

New language has been added to the 5th sentence of this section, and we recommend the following changes.

> In no instance at initial underwriting will total reserves exceed twelve (12) months of stabilized operating expenses plus debt service (and only for USDA or HUD financed rehabilitation transactions the initial deposits to replacement reserves, initial deposits to required voucher reserves and transferred replacement reserves ~~for USDA or HUD financed rehabilitation transactions~~).

Subchapter G

10.901(5) Third Party Underwriting Fee

The third party underwriter language has been removed from 10.201(5), so this fee is no longer applicable and should be removed.

10.901(12) Extension Fees

Construction Status Reports should not need to be extended. We recommend removing this reference from the Extension Fee section.

11.5 Competitive HTC Set-Asides

In the at-risk set aside, TDHCA limits the # of tax credits units for property where affordable units are being relocated to those being relocated. However, for an at-risk development on same site, TDHCA does not limit the # of tax credits units. For example, an Applicant could demolish 50 units and reconstruct 150 tax credit units. We believe the tax credit units should be limited to the same # of affordable units on the site, or perhaps not more than a minimum % of additional units.

11.7 Tie Break Factors

We agree with TAAHP that the tie break factor related to Educational Quality should be removed.

Additionally, we make the following recommendation to the 3rd tie break factor.

> (3) Applications having achieved the maximum Opportunity Index Score and ~~the highest number of~~ have at least four (4) additional point items on the Opportunity index menu that they were unable to claim because of the 7 point cap on that item.

11.9(c)(3)(B) Tenant Services

> "The Applicant certifies that the Development will contact local service providers, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. (1 point)"

We recommend striking this language from the QAP due to its ambiguity. We would be supportive of adding this item to as an option under 10.101(7) in more clearly defined terms.

11.9(c)(4) Opportunity Index

We offer the following recommendations to Opportunity Index

> (A) A ~~P~~proposed Development is eligible for a maximum of seven (7) opportunity index points if it is located in a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and ~~meets the requirements in (i) or (ii) below.~~ has:
>
> > (i) ~~The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and~~ an income rate in the two highest quartiles within the uniform service region~~.~~; (2 points)
> > (ii) ~~The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with~~ an income rate in the third quartile within the region, ~~and~~ is contiguous to a census tract in the first or second quartile~~,~~ without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the first or second quartile census tract~~s~~. and, (1 point)
>
> (B) An application that meets the foregoing criteria may qualify for additional points up ~~to seven (7) points~~ for any one or more of the following factors. Each facility or amenity may be used only once for scoring purposes, regardless of the number of categories it fits~~:~~.
>
> > (i) For Developments located in an Urban Area~~:, an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIV) of this subparagraph.~~
> >
> > > (I) The Development site is located less than 1/2 mile on an ~~accessible route~~ from a public park with an ~~accessible~~ playground (1 point);
> > >
> > > (II) The Development Site is located less than ½ mile ~~on an accessible route~~ from Public Transportation with a route schedule that provides regular service to employment and basic services (1 point);

(III) The Development site is located within 1 mile of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items~~.~~ (1 point);

(IV) The Development is located within 3 miles of either an emergency room or an urgent care facility (1 point);

(V) The Development Site is within 2 miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten (1 point);

(VI) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less, as defined by neighborhoodscout.com (1 point);

(VII) The development site is located within 1 mile of a public library (1 point);

(VIII) The Development Site is located within 5 miles of a University or Community College campus (1 point);

(IX) The Development Site is located within 3 miles of a concentrated retail shopping center ~~of at least 1 million square feet or~~ that includes at least 4 ~~big box~~ national retail stores (1 point);

(X) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher exceeds that of the State-wide average ~~is 27% or higher.~~ (1 point);

(XI) Development site is within 2 miles of a ~~government-sponsored~~ non-profit museum (1 point);

(XII) Development site is within 1 mile of an indoor recreation facility available to the public (1 point);

(XIII) Development site is within 1 mile of an outdoor recreation facility available to the public (1 point); and

(XIV) Development site is within 1 mile of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point).

(ii) For Developments located in a Rural Area:~~, an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIII) of this subparagraph.~~

(I) The Development site is located within ~~2~~5 miles of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items~~.~~ (1 point);

(II) The Development is located within 4 miles of health~~-~~related facility, such a full service hospital, community health center, or minor emergency center. Physician specialty offices are not considered in this category~~.~~ (1 point);

(III) The Development Site is within 3 miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten (1 point);

(IV) The Development Site is located in a census tract with a property crime rate 26 per

1,000 or less, as defined by neighborhoodscout.com (1 point);
(V) The development site is located within 3 miles of a public library (1 point);
(VI) The development site is located within 3 miles of a public park (1 point);
(VII) The Development Site is located within ~~7~~15 miles of a University or Community College campus (1 point);
(VIII) The Development Site is located within 5 miles of a retail shopping center with ~~XX square feet of stores~~ at least 3 retail stores (1point);
(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher exceeds that of the State-wide average ~~is 27% or higher.~~ (1 point);
(X) Development site is within 2 miles of a ~~government-sponsored~~ non-profit museum (1 point);
(XI) Development site is within ~~1~~3 mile of an indoor recreation facility available to the public (1 point);
(XII) Development site is within ~~1~~3 mile of an outdoor recreation facility available to the public (1 point); and
(XIII) Development site is within ~~1~~3 mile of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point).

11.9(c)(5) Educational Quality

We concur with the TAAHP recommendation to remove the scoring item, and add the schools to the Opportunity Index menu.

11.9(c)(8) Proximity to the Urban Core

We recommend that this scoring item not apply to the At-Risk.

11.9(d)(5) Community Support from State Representative

We concur with the TAAHP's recommendation on this section.

11.9(d)(7) Concerted Revitalization Plan

We recommend removing the population limitation of 100,000 in Urban areas.

11.9(e)(2) Cost of Development per Square Foot

We concur with the TAAHP recommendations on this section.

11.9(e)(3) Pre-application Participation

We recommend the flowing language under subparagraph (F).

(F) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number listed at pre-application is the same at Application;

11.9(e)(4) Leveraging of Private, State and Federal Resources

We recommend that the leveraging percentages be returned to the 2016 levels.

(44) Foundation Communities

FOUNDATION COMMUNITIES
creating housing where families succeed

3036 South First Street
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October 12, 2016

Marni Holloway
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941

Dear Marni,

Thank you for the opportunity to comment on the DRAFT 2017 Housing Tax Credit Draft Qualified Allocation Plan and Multifamily Rules. We very much appreciate the TDHCA staff for their careful thought and collaboration regarding potential changes to the QAP and Rules. We would also like to commend the TDHCA staff for the creative, as well as balanced, expansion of programs and systems that promote developments located in urban areas and targeted to those most in need.

Please find attached our comments on the 2017 DRAFT QAP and Multifamily Rules.

Sincerely,
Jennifer Hicks
Director of Housing Finance
Foundation Communities
3036 S. 1st Street
Austin, TX 78704
Office: 512.610.4025
Mobile: 512.203.4417
Email: jennifer.hicks@foundcom.org

QUALIFIED ALLOCATION PLAN

11.2 Program Calendar for Competitive Housing Tax Credits.

We strongly urge the Department to reconsider changing the Administrative Deficiency Response Deadline from 5 days to 3 days. While we can understand the importance of speeding up the deficiency process to get through the review of so many applications, we feel that cutting the response deadline and assigning point deductions for going over that deadline is overkill. Some very good applications by extremely competent and capable developers are bound to get caught by this change. If a deficiency requires getting numerous signatures, then accessing those persons might take longer than 3 days. If a deficiency requires information from a third party, then nailing down that third party and getting the required information may take longer than 3 days. We understand that extensions can be granted. As currently written, staff WILL be processing numerous extensions. Why not just leave the response deadline at 5 days and save that staff time?

11.7 Tiebreaker Factors

We are very supportive of the additions TDHCA made in the 2017 Draft QAP for tiebreaker factors. Specifically, "Proximity to Urban Core" as first tie breaker. We would encourage TDHCA to please consider adding proximity to public transportation versus one of the two current Educational Quality tie breakers. The property that is most accessible to public transportation is the project that will align with responsible development and broader appeal to the State's affordable housing residents living in urban areas.

11.9(c)(3) Tenant Services

We encourage TDHCA to add details to the following requirement in order to ensure value for the tenants.

(B) The Applicant certifies that the Development will have a dedicated Service Coordinator or Case Manager to contact local service providers, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. The Service Coordinator will pro-actively engage and assess residents' needs through direct communication and tailor services appropriately. A Development selecting these points will also provide:

- **Minimum of 1 monthly program on-site provided by a local service provider; AND**
- **Minimum of 3 local service providers engaged to provide services to residents; OR**
- **The applicant is a non-profit and is a self-providing services to residents of the Development.**

11.9(c)(4) Opportunity Index.

We strongly support TDHCA increasing the poverty rate to 20% and allowing second and third quartile census tracts to score on the Opportunity Index. These changes alone open up new areas that are excellent places to locate housing while also avoiding the consequence of all developers going for the few highest income and lowest poverty census tracts in the Region and driving up land prices.

We also commend the TDHCA staff for the creation of the "facility or amenity" list which further defines areas for the most advantageous location of housing which are areas accessible to a wide array of amenities and facilities. We just have the following comments on the Facility or Amenity for Developments located in an Urban Area

(I) The Development site is located less than ½ mile on an accessible route from a public park with an *accessible playground* (1 point)

We are concerned about the term "accessible playground." Does this mean the equipment itself has to be accessible or access to the playground? What accessibility standards will be used? We are concerned that if using 2010 ADA (which is relatively new), older playgrounds won't count. In the urban core, a majority of the parks and playgrounds will be older and may not meet this requirement. The accessible route makes good sense and easy and uniform to document. However, the playground equipment itself and access on the playground, might put urban parks and playgrounds at a disadvantage.

(II) The Development site is located less than ½ mile on an accessible route from Public Transportation with a route schedule that provides *regular service* to employment and basic services (1 point).

We urge TDHCA to define "regular." The FHLB San Francisco defines "regular" as service at least every 30 minutes between 7 and 9 a.m. and between 4 and 6 p.m., Monday through Friday.

(XII) Development site is within 1 mile of an *indoor recreation facility* available to the public (1 point.)

This point item seems too vague. What will TDHCA count as an "indoor recreation facility"? We suggest adding specific examples such as a City- or County-Operated Indoor Recreational Center", and/or specific features such as sport court, pool, running track. Also, please clarify whether these facilities must be free. Many facilities charge small entry and/or membership fees, but are still very affordable.

(XIII) Development site is within 1 mile of an *outdoor recreation facility* available to the public (1 point.)

This point item also seems vague. What will TDHCA count as an "outdoor recreation facility"? We suggest adding specific examples such as a City- or County-Operated Outdoor Recreational Center, and/or specific features such as sport court, pool, running track. Also, please clarify whether these facilities must be free. Many facilities charge small entry and/or membership fees, but are still very affordable.

(XIV) Development site is within 1 mile of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary) (1 point.)

We feel this point item is also too vague and not very meaningful. Services are already covered under Tenant Services. This section should strictly be access to amenities. Some suggestions for replacement are:

- Public Community Garden or Farmer's Market
- Proximity to full banking services (used by FHLB San Francisco)
- Proximity to Fire, Police or Post Office (used by FHLB San Francisco)

11.9(c)(5) Educational Quality

"….Schools with an application process for admittance*, limited enrollment* or other requirements that may prevent a tenant from attending will not be considered as the closest school or the school which attendance contains the site"

We urge TDHCA to include "*gender specific"* schools or *"optional attendance*" schools in this sentence. There are areas of Austin that feed into two gender specific schools with no application process; however, if the child chooses so, they can opt to attend another designated school which is of improved educational quality. In essence, the child has a choice.

11.9(c)(8) Proximity to Urban Core.

We strongly support the creation of Proximity to Urban Core as a scoring item in the 2017 Draft QAP. We feel that this point category will provide an opportunity to balance exurban and suburban housing siting with housing located in the Urban Core. One question we have is whether it was the intent of staff to exclude smaller municipalities that are in the urban core, but not part of the city. Examples for Austin Urban Core would be Rollingwood and Westlake.

11.9(d)(5) Community Support from State Representative.

"…..State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site."

If a state rep seat is vacated, allow developers an extension to request a letter after the seat is filled.

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

We are very supportive of the re-write of this section allowing excess development costs to be taken out of basis and essentially be fundraised for by other sources. TDHCA is still able to manage the credit ask and be resourceful with their distribution of credits. This method will also save underwriting countless hours of documenting increased costs during the Cost Certification process.

(iv) the Development Site qualifies for a minimum of five (5) points under subsection (c)(4) of this section, related to Opportunity Index, and is located in an Urban Area Or qualifies for points under subsection 11.9(c)(8) Proximity to Urban Core

One suggestion is to *include all projects that score on 11.9(c)(8) Proximity to Urban Core* in the definition of "high cost development" as those projects will experience the increased construction costs whether they score on the Opportunity Index or not.

UNIFORM MULTIFAMILY RULES: SUBCHAPTER B

10.101(a)(2) Undesirable Site Features

We support the inclusion of the following language that was added to the 2017 Draft that was posted for public comment: "Sites within the applicable distance of any undesirable features identified in subparagraphs (A) – (K) *may be* considered ineligible….."We like that the addition of "maybe considered ineligible as determined by the Board." We think it is paramount that Staff and Board have the flexibility to waive the presence of Undesirable Site Features if the Developer can prove that the feature would not negatively impact residents.

10.101(a)(3) Undesirable Neighborhood Characteristics

10.101(a)(3)(B)(i) The Development Site is located within a census tract that has a poverty rate of ~~30~~ 40 percent for individuals.

We urge TDHCA to change the poverty trigger from 30 to *40 percent*. We feel there are areas of Austin that are redeveloping where poverty may not have decreased below 30 percent just yet, but is very close. We imagine this is the same for other urban areas of the state. If the 30 percent threshold stays in, we imagine staff will spend an inordinate amount of time researching this characteristic as there will be quite a few apps that will trigger it.

10.101(a)(3)(B)(iv) "Development Sites subject to an Elderly Limitation or Single Room Occupancy are considered exempt and do not have to disclose the presence of this characteristic.

Single Room Occupancy developments have similar, if not more restrictive, occupancy standards as Elderly Limitation projects.

10.101(a)(3)(C) "Should ~~any~~ 3 or more of the undesirable neighborhood characteristics described in subparagraph (B) of this paragraph exist, the Applicant must submit the Undesirable Neighborhood Characteristics Report…."

We believe this required report is overkill and should not be required if just one characteristic is triggered. This report will not only take Applicants a very long time to compile, but will also take Staff a very long time to review. We understand that mitigation documentation needs to be included, but that documentation should be specific to the characteristic triggered. For example, if a site triggers the Educational Quality characteristics then information on the schools should be provided (i.e. the information contained in 10.101(a)(3)(D)(vii) and (iv).

10.101(b)(5) Common Amenities

~~(i) Full perimeter fencing that includes parking areas and all amenities (excludes guest or general public parking areas); (2 points);~~

Full perimeter fencing alone is not an amenity. If the goal of this point is security, we would suggest *combining* (i) fencing with (ii) controlled gate access for (2 points) rather than giving 2 points for both points.

(xi) Equipped and functioning business center or equipped computer learning center. Must be equipped with 1 computer for every 40 Units loaded with basic programs (maximum of 5 computers needed), 1 laser printer ~~for every 3 computers (minimum of one printer)~~ and at least one scanner which may be integrated with printer (2 points).

In our experience, 1 printer for every 3 computers is excessive and unnecessary. We suggest requiring 1 printer per computer lab.

(xxii) One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot (2 points). Must be covered with a shade from trees, canopy, or awning, intended to keep equipment cool, provide shade and ultraviolet protection. Can only select this item if clause (xxii) of this subparagraph is not selected; or

Please include shade from trees as a shade option. It would be counterproductive to install an awning when playground is adequately shaded by trees.

(xxiii) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each (4 points). Must be covered with a shade from trees, a canopy, or awning, intended to keep equipment cool, provide shade and ultraviolet protection. Can only select this item if clause (xxi) of this subparagraph is not selected.

Please include shade from trees as a shade option. It would be counterproductive to install an awning when playground is adequately shaded by trees.

(xxx) Bicycle parking within reasonable proximity to each residential building that allows for 1 bicycle per 5 units to be secured with lock (lock not required to be provided to tenant) (1 point).

More clarification should be provided regarding the amount of bicycle parking. We suggest 1 bicycle per 5 units.

(xxxiii) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Points may be selected from only one

of four categories: Limited Green Amenities, Enterprise Green Communities, Leadership in Energy and Environmental Design (LEED), and ICC 700 National Green Building Standard. A Development may qualify for no more than ~~four~~ (6) points total under this clause.

Green Building Features benefit everyone – the residents and the owners. We feel this point category should allow more than four points. We suggest 6 points. *We also suggest adding Solar Arrays as its own green category for 2 points.*

(I) Limited Green Amenities (~~2~~ 4 points). The items listed in subclauses (I) - (IV) of this clause constitute the minimum requirements for demonstrating green building of multifamily Developments. Six (6) of the twelve ~~twenty-two~~ (12 ~~22~~) items listed under items (-a-) - (-v-) of this subclause must be met in order to qualify for the maximum number of two (2) points under this subclause;

We are concerned that several of the items in this section are difficult to verify as constructed without a 3rd party consultant such as those used for Enterprise Green Communities and LEED. This is definitely beyond the means of TDHCA Construction Inspection Staff. We suggest limiting these options to items that are high impact and verifiable. We included some comments based on recent experience

~~**(a) a rain water harvesting/collection system and/or locally approved greywater collection system;**~~

Difficult to verify

~~**(b) newly installed native trees and plants that minimize irrigation requirements and are appropriate to the Development Site's soil and microclimate to allow for shading in the summer and heat gain in the winter. For Rehabilitation Developments this would be applicable to new landscaping planned as part of the scope of work;**~~

Difficult to verify

~~**(d) all of the HVAC condenser units located so they are fully shaded 75 percent of the time during summer months (i.e. May through August) as certified by the design team at cost certification;**~~

Difficult to verify

~~**(f) install individual or sub-metered utility meters for electric and water. Rehabilitation Developments may claim sub-meter only if not already sub-metered at the time of Application;**~~

This is already Texas code.

~~**(g) healthy finish materials including the use of paints, stains, and sealants consistent with the Green Seal 11 standard or other applicable Green Seal standard;**~~

This is too vague, how much finish materials should be used. This item is difficult to verify.

~~**(j) construction waste management system provided by contractor that meets LEEDs minimum standards;**~~

Per LEED Version 4, this is extremely difficult to achieve now.

~~**(l) for Developments with 41 units or less, at least 25% by cost FSC certified salvaged wood products.**~~

This is very expensive and there is no real benefit to the tenant or building.

~~**(m) locate water fixtures within 20 feet of water heater.**~~

Difficult to verify.

(-n-) drip irrigate at non-turf areas and sprinkler system with rain sensors.

This should be a combined category in order to truly achieve water savings

(-o-) radiant barrier decking for New Construction Developments or other "cool" roofing materials;

TPO roofs are "cool" roofing and should be counted in this section.

(-p-) permanent shading devices for windows with solar orientation (does not include solar screens, but may include permanent awnings, ~~black-out shades,~~ fixed overhangs, etc.).

Black out shades are easy to remove and not as efficient as exterior shading devices.

~~**(q) Energy Star certified insulation products (For Rehabilitation Developments, this would require installation in all places where insulation could be installed, regardless of whether the area is part of the scope of work);**~~

Energy Star does not certify insulation products.

(-t-) FloorScore certified vinyl flooring, Green Label certified carpet, or resilient flooring;

Floor score only certifies vinyl flooring, please include other certifications and more flooring options

~~**(u) sprinkler system with rain sensors;**~~

This should be a combined category (n) drip -irrigate in order to truly achieve water savings.

(II) Enterprise Green Communities (~~four~~ six points).

(III) LEED (~~four~~ six points).

(IV) ICC 700 National Green Building Standard (~~four~~ six points).

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

We feel that the past and currently proposed list of features is *too restrictive* and should be expanded to allow for greater design options. Below are some *additional amenities* that provide value to tenants and improve the quality of developments

- Pantry (0.5 point)
- Breakfast bar (0.5 point)
- Walk-in closet in master bedroom (0.5 point)
- Low Flow Water Fixtures (0.5 point)
- Durable Flooring (1 point)
- Solar panels that directly offset the tenant's electricity bill. (2 points)

Below are some *additional comments* on existing features

(vii) Energy-Star qualified laundry equipment (washers ~~and dryers)~~ for each individual Unit; must be front loading washer ~~and dryer~~ in required accessible Units (1.5 points);

Energy Star Dryers are cost prohibitive, please consider awarding points for Energy Star washers only.

(x) Meet current R-value requirements (rating of wall/ceiling/slab system) of current IECC for the Development's climate zone (1.5 points)

R-values of slabs will be important in north Texas

(xi) ~~14 SEER HVAC~~ Energy Star Rated HVAC equipment (or greater) for New Construction, Adaptive Reuse, and Reconstruction or radiant barrier in the attic for Rehabilitation (excluding Reconstruction) where such systems are not being replaced as part of the scope of work, a radiant barrier in the attic is provided (1.5 points);

We suggest incentivizing Energy Star appliances

(xii) Free High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);

TDHCA requires the high-speed internet service to be free of charge, so need to indicate as such.

~~(xii) Floor to ceiling kitchen cabinetry (1 point);~~

This item presents an accessibility conflict with 2010 ADA.

~~(xiii) Recessed or track LED lighting in kitchen and living areas (1 point);~~

Recessed lighting can add complications to ceiling assemblies due to fire rating, and, in our opinion, do not add value for the tenant. In addition, track LED lighting is difficult to source.

(xiv) Thirty (30) year shingle or metal roofing (~~excludes~~ including Thermoplastic Polyolefin (TPO) roofing material) (0.5 point); We would like to lay out the following argument for why TPO roofing should be included as a valuable feature.

80 mil TPO is a popular high-grade commercial roofing material with long term heat and UV resistance and a highly reflective, emissive white material that helps reduce energy costs and urban heat island effect. Many TPO roofing systems come with 30 year warranties, and are arguably more durable and energy efficient than the commonly used 30 year shingle. TPO also allows developers the option to pursue the more modern look of a flat roof design. A flat roof can provide the following practical benefits for developments.

- Maximizes space for smaller urban sites or sites with strict impervious cover limits
- Allows projects to mount HVAC on the roof, which frees up valuable space on the ground
- provides more space and greater flexibility for placement of solar panels
- easier to provide significant continuous roofing insulation which is more effective than batts or loose fill typical in a pitched roof design, and
- Allows for more strategic placement of downspouts and rainwater collection.
- Allows projects to take full advantage of max height restrictions without using valuable vertical space for attics.

(xv) Greater than 30 percent stucco or masonry (includes stone, cultured stone, hardi and brick ~~but excludes cementitious and~~ metal siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points).

We urge TDHCA to include Hardi as an option. Stone and brick are cost prohibitive and do not provide enough of a benefit to the resident to justify the cost. Hardi is a durable, aesthetically pleasing, and popular Texas façade.

10.101(b)(7) Tenant Supportive Services.

"These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be

providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider, with the exception of services specified in subparagraphs C,D,L,P,Q,and Y in developments of less than 40 units. Where applicable, the services must be documented by a written agreement with the provider."

We support the intent of this added language and feel strongly that these services are more effective when provided by a qualified and experienced individual or provider. However, in smaller developments in which a dedicated service coordinated is not feasible, we believe that property management staff can provide the following services.

(C) daily transportation such as bus passes, cab vouchers, specialized van on-site (4 points);
(D) Food pantry consisting of an assortment of non-perishable food items and common household items (i.e. laundry detergent, toiletries, etc.) accessible to residents at least on a monthly basis or upon request by a tenant (1 point);
(L) Notary Services during regular business hours (§2306.6710(b)(3)) (1 point);
(P) monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point);
(Q) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, etc.) (1 point);
(Y) a resident-run community garden with annual soil preparation and mulch provided by the Owner and access to water (1 point);

(A) partnership with local law enforcement to provide *regular* on-site social and interactive activities intended to foster relationships with residents (such activities could include playing sports, having a cook-out, swimming, card games, etc.) (3 points);

Please clarify regular. We suggest quarterly.

(D) Food pantry consisting of an assortment of non-perishable food items and ~~common household items (i.e. laundry detergent, toiletries, etc.)~~ accessible to residents at least on a monthly basis or upon request by a tenant (1 point);

Household items are not commonly available through nonprofit food banks. Maybe replace this with fruits/vegetables.

(O) annual *income tax preparation* (offered by an in-come tax prep service) (1 point);

Add "or IRS-certified VITA program"

(R) specific case management services offered by a qualified Owner or Developer or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (~~1~~ 3 points);

This should be worth 3 points as it is of utmost importance, time consuming, and expensive.

(X) a full-time resident services coordinator with a dedicated office space at the Development (~~2~~ 3 points);

This should be worth 3 points as it is of utmost importance, time consuming, and expensive.

UNIFORM MULTIFAMILY RULES: SUBCHAPTER C

10.201(7)(B) Administrative Deficiencies for Competitive Applications

We recommend returning to a 5-day deficiency timeframe.

10.201(16) Section 811

We recommend returning this section to the scoring criteria and delete from threshold. Foundation Communities has leased the first Section 811 unit with TDHCA. It is a very time intensive and multi-detailed program that should be awarded with points for undertaking.

UNIFORM MULTIFAMILY RULES: SUBCHAPTER G

10.901 (12) Extension Fees.

"All extension requests for deadlines relating to the Carryover, 10 Percent Test (submission and expenditure), ~~Construction Status Reports,~~ or Cost Certification requirements submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee."

We recommend striking Construction Status Reports from a required deadline on an extension with monetary repercussions. Construction Status Reports are a relatively new requirement and are not followed up on or enforced by TDHCA staff. The status reports are by no means as important or time critical as the Carryover, 10 Percent Test or Cost Certification and should not be treated as such.

From:	Jennifer Hicks
To:	Marni Holloway; Sharon Gamble; Tim Irvine
Cc:	Walter Moreau; Tillie Croxdale
Subject:	2017 Draft Rules Comment - 10.101(a)(3)(E)
Date:	Thursday, October 13, 2016 9:45:14 AM

Good morning –

We have on additional comment on the 2017 DRAFT QAP. Please accept this email as formal comment.

We are very concerned about the below section of the Multifamily Rules related to Undesirable Neighborhood Characteristics. It seems this section is saying that a project has to be preservation or federally-sourced in order for the Board to have the ability to approve a project despite the existence of Neighborhood Characteristics? As the Undesirable Neighborhood Characteristics is written, it is very certain that many of Foundation Communities' most successful projects would have triggered at least one of the Undesirable Neighborhood Characteristics. We feel that staff did an amazing job of adding scoring items to the QAP that allow Urban Core projects to compete in the process. The section below directly impedes those projects that might score competitively under the new scoring priorities to compete. We do not feel this is the intent of the staff. We ask TDHCA to make the following change to the section below. Also, TDHCA might consider adding further clarification as to what is meant by "subject to federal rent or income restrictions."

Subchapter B, Site and Development Requirements and Restrictions – 10.101(a)(3)

(E) In order for the Development Site to be found eligible by the Board, despite the existence of undesirable neighborhood characteristics, the Board must find that the use of Department funds at the Development Site must be consistent with achieving at least one of the goals in clauses (i) – (iii) of this subparagraph.

(i) Preservation of existing occupied affordable housing units to ensure they are safe and suitable or development of new high quality affordable housing units that are subject to federal rent or income restrictions; ~~and~~ Or

(ii) Factual determination that the undesirable characteristic(s) that has been disclosed are not of such a nature or severity that they should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph. Such information sufficiently supports a conclusion that the characteristic(s) will be remedied by the time the Development places into service.

Much appreciation,
Jenn Hicks

Jennifer Hicks
Director of Housing Finance
Foundation Communities
st

3036 S. 1st Street
Austin, TX 78704
Office: 512.610.4025
Mobile: 512.203.4417
Email: jennifer.hicks@foundcom.org

(45) Franklin Development

FRANKLIN
DEVELOPMENT

October 14, 2016

Texas Department of Housing and Community Affairs (TDHCA)
Attn: Sharon Gamble
P.O. Box 13941
Austin, Texas 78711-3941
Fax: (512) 475-0764
Sharon.gamble@tdhca.state.tx.us

Dear Ms. Gamble,

The following are comments provided to TDHCA by Franklin Development regarding the proposed changes to the DRAFT 2017 TDHCA Qualified Allocation Plan (QAP). Franklin Development is NOT in support of the following items:

Proposed New Chapter 11

11.9 Competitive HTC Selection Criteria

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

  - ***(4) Opportunity Index***

    (A) A proposed Development is eligible for a maximum of seven (7) opportunity index points if it is located in a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and meets the requirements in (i) or (ii) below…

    Franklin's comment:
    - There is a discrepancy in the total points you can receive between items (i) or (ii) as item (i) only allows for 2 points max and (ii) only allows for 1 points max
    - Opportunity Index scoring criteria requires review by TDHCA Staff.

  - ***(6) Underserved Area***

    (E) A census tract within the boundaries of an incorporated area and all contiguous census tract for which neither the census tract in which the Development is located nor the contiguous tracts have received an award or HTC allocation within the past 15 years and continues to appear on the Departments inventory. This item will apply to cities with a population of 500,000 or more, and will not apply in the At Risk Set Aside. {5 points}

    Franklin's comment:
    - Franklin is requesting for item (E) to be deleted from the Underserved Area scoring criteria or at the very least to allow a maximum of **only** two (2) points under this item. Within the boundaries of Region 9 serving the San Antonio-New Braunfels Area, the only incorporated area that has a

21260 Gathering Oaks ◆ Suite 101 ◆ San Antonio, Texas 78260 ◆ (210) 694-2223 fax: (210) 694-2225

population of 500,000 or more is the City of San Antonio. This will not allow an opportunity for other incorporated areas to compete for the same or "equal" number of points that might be underserved. Granting 5 points to this item will force developers to propose and compete for developments only in the City of San Antonio in order to maximize scoring points in the "*high opportunity*" areas or cities with a population of 500,000 or more. The factor has the same impact for the cities of Houston and Dallas.

- ***(8) Proximity to the Urban Core***
  A development in a County with a population over 1 million and in a City with a population over 500,000 if the Development Site is located within 4 miles of the main City Hall facility. The main City Hall facility will be determined by the location of regularly scheduled City Council, City Commission, or similar governing body meetings. Distances are measure from the nearest property boundaries, not inclusive of non-contiguous parking areas (5 points).

  Franklin's comment:
  - Franklin is requesting that the above item (8) be deleted from the 2017 QAP. We feel that urban core deals already have an allocation because of the attached House Bill 3535 (effective September 1, 2015), that allows for this kind of prioritization of Community Revitalization Plan (CRP) projects in the three regions which contain the four most populous Texas counties (those around Dallas-Fort Worth, Houston and San Antonio). Specifically, the highest-scoring project to be awarded CRP points in each of these three regions is guaranteed an award of tax credits. The change in law made by HB3535 applies only to the allocation of low income housing tax credits for an application cycle that begins on or after January 1, 2017.

11.7 Tie Breakers

- **(1) Applications having achieved a score on Proximity to the Urban Core.**

  Franklin's comment:
  - In addition to our request to delete the item above *(8) Proximity to the Urban Core*, item (1) from the Tie Breaker factors should also be eliminated as HB 3535 allows prioritization for deals within the urban core.

Further review and consideration of our comments by TDHCA Staff and Board would be greatly appreciated.

Best regards, on behalf of Aubra Franklin and Ryan Wilson.

Lucila Diaz
Franklin Development

21260 Gathering Oaks ◆ Suite 101 ◆ San Antonio, Texas 78260 ◆ (210) 694-2223 fax: (210) 694-2225

LEGISCAN

Bill Text: TX HB3535 | 2015-2016 | 84th Legislature | Enrolled

Texas House Bill 3535 ***(In Recess)***

Bill Title: Relating to low income housing tax credits awarded for certain developments.

Spectrum: Partisan Bill (Democrat 4-0)

Status: *(Enrolled)* 2015-06-19 - Effective on 9/1/15 [HB3535 Detail]

Download: Texas-2015-HB3535-Enrolled.html

H.B. No. 3535

AN ACT

relating to low income housing tax credits awarded for certain developments.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2306.6711, Government Code, is amended by adding Subsection (g) to read as follows:

(g) Except as necessary to comply with the nonprofit set-aside required by Section 42(h)(5), Internal Revenue Code of 1986 (26 U.S.C. Section 42(h)(5)), in an urban subregion of a uniform state service region that contains a county with a population of more than 1.7 million, the board shall allocate housing tax credits to the highest scoring development, if any, that is part of a concerted plan of revitalization and is located in that urban subregion in a municipality with a population of 500,000 or more.

SECTION 2. The change in law made by this Act applies only to the allocation of low income housing tax credits for an application cycle that begins on or after January 1, 2017. The allocation of low income housing tax credits for an application cycle that begins before January 1, 2017, is governed by the law in effect on the date the application cycle began, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2015.

President of the Senate

Speaker of the House

I certify that H.B. No. 3535 was passed by the House on May 5, 2015, by the following vote: Yeas 130, Nays 15, 2 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 3535 on May 27, 2015, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 3535 on May 31, 2015, by the following vote: Yeas 79, Nays 63, 3 present, not voting.

_____

Chief Clerk of the House

I certify that H.B. No. 3535 was passed by the Senate, with amendments, on May 24, 2015, by the following vote: Yeas 19, Nays 11; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 3535 on May 30, 2015, by the following vote: Yeas 23, Nays 8.

_____

Secretary of the Senate

APPROVED: _____

Date

_____

Governor

(46) FW Mason Heights, LP

FW Mason Heights, LP
1717 Arts Plaza Drive; #2001
Dallas, Texas 75201
214.662.1234

October 10, 2016

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

By fax: (512) 475-0764, attn: Teresa Morales.

Re: 2017 Qualified Allocation Plan – Comments and Suggested Changes

Dear Ms. Morales:

Fort Worth Mason Heights, LP appreciates the opportunity to submit these comments regarding the proposed 2017 Qualified Allocation Plan (QAP).

Our comments are in relation to two sections in the QAP: Section 11.9(d)(7) – Concerted Revitalization Plan, and Section 11.9(c)(5) – Educational Quality.

11.9(d)(7) – Concerted Revitalization Plan

We support this section and the intent for developments which are part of concerted revitalization plans to be able to achieve up to seven (7) points, but want to amend a typo in the 2017 QAP. We suggest that the first sentence in section 11.9(d)(7)(A)(i), which currently reads...

> "an Application may qualify to receive up to six (6) points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed and executed."

Be amended to read...

> "an Application may qualify to receive up to **seven (7)** points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed and executed."

Amending this sentence to seven points would be consistent with the number of points available further down in section 11.9(d)(7)(A)(ii), which reads...

> "up to seven (7) points will be awarded based on:"

We would also like to suggest that the sentence in section 11.9(d)(7)(A)(ii)(III) which reads...

> "Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, 11.9(c)(4)"

Be amended to...

> "Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, 11.9(c)(4)**(B) but for the criteria found in 11.9(c)(4)(A) and subparagraphs 11.9(c)(4)(A)(i) and 11.9(c)(4)(A)(ii)"**

Revitalization of once vital neighborhoods improves quality of life and makes our communities and the State stronger. However, achieving true revitalization is not easy and is accomplished with sustained effort over a number of years. Successful revitalization initiatives must consider the full range of factors that impact resident quality of life. This definitely includes housing – as a neighborhood is being revitalized, and becomes more attractive to a range of incomes, housing can become more expensive and ultimately inaccessible to lower income children, families, and individuals. Ideally, concerted neighborhood revitalization includes housing accessible to a range of incomes so that all, especially those most in need, benefit from the investment. These worthy initiatives cannot adequately navigate this challenge without 9% tax credits.

Clarifying Language to 11.9(c)(5) – Educational Quality

We agree with the importance Educational Quality, and we support that a goal of the QAP is to consider the schools that will be accessible to tenants. However, we believe that the language in the 2017 QAP is potentially problematic, and should be clarified, because almost all, if not all, schools have some registration/application process and capacity or enrollment limit. We therefore suggest that the fourth sentence of Section 11.9(c)(5) Educational Quality which currently reads...

> "Schools with an application process for admittance, limited enrollment or other requirements that may prevent a tenant from attending will not be considered as the closest school or the school which attendance zone contains the site."

Be amended to read...

"Schools with an application process for admittance **that include academic achievement or other potentially restrictive requirements** that may prevent a tenant from attending will not be considered as the closest school or the school which attendance zone contains the site."

Amending the QAP in this manner better aligns with the TDHCA objective of considering only those schools which are accessible to tenants of the proposed housing development.

We believe that the QAP should award points for schools that (1) serve students living in an area that is a part of a concerted revitalization plan and (2) have shown sustained multi-year progress. The reality is that, even with vigorous focus on improvement for schools in underserved areas coupled with concerted revitalization efforts, educational improvement is incremental. Improved scholastic performance is impacted by a number of factors outside of the classroom – such as having enough to eat, having a safe home life, having before- and after-school activities, living in a healthy environment, etc. Affordable housing should not be the last component of a concerted revitalization effort, but unfortunately, that is currently the likely outcome based on existing QAP provisions.

We therefore suggest Section 11.9(c)(5)(A)-(E) be amended to read:

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score (5 points); **or**

(B) **The Development Site is part of a concerted revitalization plan that meets the requirements in section 11.9(d)(7) and is within the attendance zone of an elementary school, a middle school and a high school with an Index 1 score that has improved for three consecutive years prior to application (5 points); or**

(C) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (3 points, or 2 points for a Supportive Housing Development); or

(D) **The Development Site is part of a concerted revitalization plan that meets the requirements in section 11.9(d)(7) and is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with an Index 1 score that has improved for three consecutive years prior to application (3 points, or 2 points for a Supportive Housing Development); or**

(E) The Development Site is within the attendance zone of a middle school or a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. ~~Center.~~(1 point); or

(F) The Development Site is within the attendance zone of an elementary school with an Index 1 score in the first quartile of all elementary schools statewide.(1 point); or

(G) If the Development Site is able to score one or three points under clauses (B) - **(F)** above, two additional points or 1 point for a Supportive Housing Development may be added if one or more of the features described in subclause (1) - (4) is present:

In Summary

We applaud TDHCA for Section 11.9(d)(7) which appreciates the importance and the urgent need for thoughtful, well executed revitalization efforts. High-quality mixed-income affordable housing, made possible by 9% tax credits, helps these worthy initiatives accelerate progress while ensuring the neighborhood remains accessible to a range of incomes.

Additionally, we encourage TDHCA to amend and expand Section 11.9(c)(5). We share the belief that quality neighborhood schools are a critical factor achieving measurable improvements in the quality of life for residents within an undergoing neighborhood revitalization. We also believe that affordable housing is also a critical component toward driving successful outcomes. We therefore recommend that additional recognition of the need for affordable housing should be given for concerted revitalization programs where educational improvements are being realized on a year-by-year basis.

We thank you for your consideration.

Sincerely,

Mark Trieb

Mark A. Trieb
Partner, Fort Worth Mason Heights, LP

cc: TDHCA Board of Directors

(47) Marks, Roger

ROGER S. MARKS

630 South Maitland Avenue, Suite 200
Maitland, FL 32751

October 11, 2016

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

By fax: (512) 475-0764, attn: Teresa Morales.

Re: 2017 Qualified Allocation Plan – Comments and Suggested Changes

Dear Ms. Morales:

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> "an Application may qualify to receive up to six (6) points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed and executed."

Be amended to read…

> "an Application may qualify to receive up to **seven (7)** points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed and executed."

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> "up to seven (7) points will be awarded based on:"

We would also like to suggest that the sentence in section 11.9(d)(7)(A)(ii)(III) which reads…

> "Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, 11.9(c)(4)"

Be amended to…

> "Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, 11.9(c)(4)**(B) but for the criteria found in 11.9(c)(4)(A) and subparagraphs 11.9(c)(4)(A)(i) and 11.9(c)(4)(A)(ii)"**

Revitalization of once vital neighborhoods improves quality of life and makes our communities and the State stronger. However, achieving true revitalization is not easy and is accomplished with sustained effort over a number of years. Successful revitalization initiatives must consider the full range of factors that impact resident quality of life. This definitely includes housing – as a neighborhood is being revitalized, and becomes more attractive to a range of incomes, housing can become more expensive and ultimately inaccessible to lower income children, families, and individuals. Ideally, concerted neighborhood revitalization includes housing accessible to a range of incomes so that all, especially those most in need, benefit from the investment. These worthy initiatives cannot adequately navigate this challenge without 9% tax credits.

Clarifying Language to 11.9(c)(5) – Educational Quality

We agree with the importance Educational Quality, and we support that a goal of the QAP is to consider the schools that will be accessible to tenants. However, we believe that the language in the 2017 QAP is potentially problematic, and should be clarified, because almost all, if not all, schools have some registration/application process and capacity or enrollment limit. We therefore suggest that the fourth sentence of Section 11.9(c)(5) Educational Quality which currently reads…

> "Schools with an application process for admittance, limited enrollment or other requirements that may prevent a tenant from attending will not be considered as the closest school or the school which attendance zone contains the site."

Be amended to read…

> "Schools with an application process for admittance **that include academic achievement or other potentially restrictive requirements** that may prevent a tenant from attending will not be considered as the closest school or the school which attendance zone contains the site."

Amending the QAP in this manner better aligns with the TDHCA objective of considering only those schools which are accessible to tenants of the proposed housing development.

Additional Components to 11.9(c)(5) – Educational Quality

We believe that the QAP should award points for schools that (1) serve students living in an area that is a part of a concerted revitalization plan and (2) have shown sustained multi-year progress. The reality is that, even with vigorous focus on improvement for schools in underserved areas coupled with concerted
revitalization efforts, educational improvement is incremental. Improved scholastic performance is impacted by a number of factors outside of the classroom such as having enough to eat, having a safe home life, having before- and after-school activities, living in a healthy environment, etc. Affordable housing should not be the last component of a concerted revitalization effort, but unfortunately, that is currently the likely outcome based on existing QAP provisions.

We therefore suggest Section 11.9(c)(5)(A)-(E) be amended to read:

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score (5 points); or

(B) The Development Site is part of a concerted revitalization plan that meets the requirements in section 11.9(d)(7) and is within the attendance zone of an elementary school, a middle school and a high school with an Index 1 score that has improved for three consecutive years prior to application (5 points); or

(C) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (3 points, or 2 points for a Supportive Housing Development); or

(D) The Development Site is part of a concerted revitalization plan that meets the requirements in section 11.9(d)(7) and is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with an Index 1 score that has improved for three consecutive years prior to application (3 points, or 2 points for a Supportive Housing Development); or

(E) The Development Site is within the attendance zone of a middle school or a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (1 point); or

(F) The Development Site is within the attendance zone of an elementary school with an Index 1 score in the first quartile of all elementary schools statewide.(1 point); or

(G) If the Development Site is able to score one or three points under clauses (B) - **(F)** above, two additional points or 1 point for a Supportive Housing Development may be added if one or more of the features described in subclause (1) - (4) is present:

In Summary

We applaud TDHCA for Section 11.9(d)(7) which appreciates the importance and the urgent need for thoughtful, well executed revitalization efforts. High-quality mixed-income affordable housing, made possible by 9% tax credits, helps these worthy initiatives accelerate progress while ensuring the neighborhood remains accessible to a range of incomes.

Additionally, we encourage TDHCA to amend and expand Section 11.9(c)(5). We share the belief that quality neighborhood schools are a critical factor achieving measurable improvements in the quality of life for residents within an undergoing neighborhood revitalization. We also believe that affordable housing is also a critical component toward driving successful outcomes. We therefore recommend that additional recognition of the need for affordable housing should be given for concerted revitalization programs where educational improvements are being realized on a year-by-year basis.

We thank you for your consideration.

Sincerely,

Roger S. Marks, CLU, ChFC, MSFS
Certified Financial Planner

cc: TDHCA Board of Directors

(48) Hamilton Valley Management, Inc.

Hamilton Valley Management, Inc.

October 13th, 2016

Sharon Gamble
Multifamily Finance Division
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941
sharon.gamble@tdhca.state.tx.us

Re: New Proposed Rule at 10 Texas Administrative Code ("TAC") - Public Comment

Dear Ms. Gamble,

Included below is relevant comment and opinion on behalf of Hamilton Valley Management, in response to the above-referenced Request for Public Comment on the proposed changes to the 10 TAC. While retaining some concern and potential comment towards many of the other minor changes drafted for the 2017 rules, we are submitting input on only those items we feel are most relevant and will have the most profound overall effect on preservation of affordable housing in rural areas.

Chapter 10 - Subchapter C

RULE: **§10.204 – Required Documentation for Application Submission**
(7)(A)(iii) For Developments proposing to refinance an existing USDA Section 515 loan, a letter from the USDA confirming that it has been provided with a complete loan transfer application."

COMMENT: This was a previous requirement in years past, and resulted in USDA personnel being overwhelmed with dozens of Transfer Applications, most of which would not be awarded Tax Credits and eventually get withdrawn, as USDA is required to review every transfer application they receive, in the order received, regardless of potential HTC award. This also resulted in the post-award USDA underwriting process being bogged down, as most of the low-scoring applicants wait to withdraw until all HTC awards have trickled down through the credit allocation formula. In 2015 this rule was changed to allow for complete USDA loan transfer applications to be submitted after an HTC award is received. This significantly lightened the burden on USDA staff and stakeholders, but

inadvertently created a late and slow start to the USDA loan transfer, underwriting and closing, and too many applicants in the USDA set-Aside requested Carryover and 10% Tests extensions. We recognize the importance of jump-starting the USDA process, but not at the expense of reverting back to overburdening the lien-holding Agency.

REQUEST: **Modify the proposed rule change to allow "For developments proposing refinancing an existing USDA Section 515 loan must provide a letter from the USDA confirming that it has been notified of the Tax Credit application and then provide a complete loan transfer application no later than 60 days from the date of HTC Commitment if awarded.**

CHAPTER 11

RULE: **§11.9(c)(4) Opportunity Index:**

(A)Threshold: A Proposed Development is eligible for a maximum of seven (7) opportunity index points if it is located in a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and meets the requirements in (i) or (ii) below.

(i)The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and an income rate in the two highest quartiles within the uniform service region. (2 points)

(ii) The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile, without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. and, (1 point)"

COMMENT: With this proposed change, developments competing in Rural, which were not previously affected by quartiles, now will be – and excludes any 4th quartile possibility. There is much concern as to why non-MSA rural areas are affected by poverty ratings and quartile rankings of any kind due to the **"Donut-Hole" Issue, whereby in non-MSA rural areas, the ranking of quartiles and poverty rate for any given census tract is indirectly proportionate to the density of population within the county. Outside of rural city limits lie sparsely populated ranch lands, farm lands and wealthier home owners. In order to develop inside a top-two quartile with low poverty, applicants are forced to target developments too far from all the required amenities.** We recognize that quartile and poverty ranking can be an effective tool within urban areas, where population density is spread throughout the affected county, more accurately differentiating high

poverty areas from low ones. However the ranking system appears to have a much unintended reverse affect in rural areas.

REQUEST: **Since there are many areas of the rules currently affected by this policy, a temporary streamline solution might be to modify some language to exempt developments competing in the Rural Set Aside from poverty rates or quartile rankings, and just default to the already existing criteria where presence of and proximity to certain amenities and services helps to define Rural high opportunity.** *For example: For Developments located in a Rural Area, an Application may qualify to receive points through a combination of requirements in subclauses (i) - (xiii) of this subparagraph if the Development Site is located within a census tract that has a poverty rate below 20 percent.*

RULE: **11.9(d)(7) – Concerted Revitalization Plan**

An Application may qualify for points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.

(B) For Developments located in a Rural Area:

(i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction in a location meeting the threshold requirements of the Opportunity Index, §11.9(c)(4)(A) of a development in a rural area…"

COMMENT: This goes back to the "donut-hole" issue stated above in regards to High Opportunity and how it affects Rural. But more so than that, stipulating an "either/or, but not both" and then require that substantial achievement of one item be a stipulation of the other – is nonsensical, and circular rulemaking.

REQUEST: **Completely remove the Opportunity Index threshold requirement for the CRP Rural 4-point item.**

I truly appreciate your time and consideration. Should you have any questions or concerns regarding this or any other matter, please feel free to contact me at your earliest convenience.

Sincerely,

Dennis Hoover

Dennis Hoover
President-Hamilton Valley Management, Inc.

cc: Development Team at Hamilton Valley Management, Inc.
Marni Holloway
Tim Irvine
Ginger McGuire

(49) Highridge Costa Development Company, LLC

highridge costa
DEVELOPMENT COMPANY, LLC
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VIA EMAIL

October 14, 2016

Sharon Gamble
9% Competitive Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Dear Sharon:

Below are our comments related to the proposed 2017 Housing Tax Credit Program Qualified Allocation Plan (QAP). We have carefully reviewed the proposed 2017 QAP and Multifamily Rules and have summarized our comments to reflect the most important points for your thoughtful consideration

§11.7. Tie Breaker Factors.
(3) Applications having achieved the maximum Opportunity Index Score and the highest number of point items on the Opportunity Index menu that they were unable to claim because of the 7 point cap on that item.
~~(4) Applications having achieved the maximum Educational Quality score and the highest number of point items on the Educational Quality menu that they were unable to claim because of the 5 point cap on that item.~~

The Statutory purpose of the Pre-Application is to give Applicants the ability to judge their potential competition in order "to prevent unnecessary filing cost." At the September Board meeting, public comment was made that Opportunity Index menu items above the point cap-Items (3) and (4) above should be disclosed at Pre-Application. This comment was not incorporated into the QAP that was published in the Texas Register and consequently there is no enforcement mechanism by which to require disclosure. Tie breaker item (3) makes it nearly impossible to judge potential competition. An Applicant would need to drive each competitive site to see the additional items a competing Applicant could claim. We would like to rely on Google Maps(earth) but many times the maps are not up to date and do not show new construction nor does it note establishments that have closed.

Proposed Language:
(3) Applications having achieved the maximum Opportunity Index Score and have four (4) additional point items on the Opportunity Index menu that they were unable to claim because of the 7 point cap on that item.

TAAHP has proposed to strike the Educational Quality scoring item in its entirety. We support this position and therefore recommend item (4) above be removed from tie-breaker category.

§11.9 (c)(5) Educational Quality
We agree with TAAHP's position to strike this item.

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§11.9 (c)(6) Underserved Area.

(C) A census tract within the boundaries of an incorporated area, **not including the ETJ,** that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development within the past 15 years (3 points);
(E) A census tract within the boundaries of an incorporated area, **not including the ETJ,** and all contiguous census tracts for which neither the census tract in which the Development is located nor the contiguous census tracts have received an award or HTC allocation within the past 15 years and continues to appear on the Department's inventory. This item will apply to cities with a population of 500,000 or more, and will not apply in the At-Risk Set-Aside (5 points).

Underserved points should only be eligible for sites within the corporate city limits of a municipality at Application. This will further the goal of attracting affordable housing to the urban centers of a region.
Please note we do not agree with TAAHP's recommendations on this rule.

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

We agree with TAAHP's recommendation.

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

We agree with TAAHP's recommendation to revert back to the percentages in the 2016 QAP i.e., 8, 9 and 10. In our analysis of the 2016 REA underwriting reports Applications are not feasible with a 7% leveraging. In most cases Applicants would have to defer between 75% and 100% of the developer fee making the transaction financially infeasible.

Take you in advance for your consideration. If you should have any questions, please contact Monte Heaton at (424) 258-2910 or monte.heaton@housingpartners.com

Sincerely,

Mohannad H. Mohanna
President
Highridge Costa Development Company

(50) Hoke Development Services, LLC

From:	Tim Smith
To:	Marni Holloway
Cc:	Teresa Morales; Sharon Gamble
Subject:	Public Comment on 2017 Uniform Multifamily Rules and QAP
Date:	Friday, October 14, 2016 4:53:02 PM

Marni Holloway,
Director of Multifamily Finance
TDHCA
221 East 11th Street
Austin, Texas 78701

Re: 2017 Uniform Multifamily Rules and QAP

Please accept these comments on the draft Uniform Multifamily Rule and Qualified Allocation Plan for 2017.

1. I am in agreement and support the comments made by TAAHP and submitted to the Department, especially that TDHCA should remove the Undesirable Neighborhood Characteristics from the Multifamily Rule now that the ICP lawsuit has been dismissed. In the event that this section is not removed see comments below.

2. I am concerned that the department is abandoning existing low-income residents in existing affordable housing which is located in an area with Undesirable Neighborhood Characteristics by requiring mitigation of these undesirable characteristics. Preservation of existing affordable housing is a priority. If these undesirable characteristics are not able to be mitigated, the residents will still reside at the property, but without the benefit of rehabilitation of their residence. All mitigation requirements for Undesirable Neighborhood Characteristics should be removed from the rule for existing occupied affordable housing that is subject to state or federal income restrictions.

3. Please add the following language to Section 10.101(a)(3)(E) Undesirable Neighborhood Characteristics

    a. (iii) The Development satisfies HUD Site and Neighborhood Standards or is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order.

4. Subchapter B §10.101 Site and Development Requirements and Restrictions – Rehabilitation Costs *(Page 12 of 23 in Subchapter B).* These cost should not be increased, it is an arbitrary cost considering the great diversity of developments throughout the state of Texas. Additionally, I recommend including exception language allowing TDHCA to approve a lessor amount of rehab per unit if a third party PCA, which meets TDHCA requirements, supports the lower per unit rehab amount, and a letter from the investor/syndicator stating they have reviewed the PCA and support its conclusions that the rehab budget and scope of work is sufficient to extend the useful life of the development throughout the initial compliance period.

5. Regarding requirement of 811 units--- 4% tax credit/ tax-exempt bonds should be exempt from this requirement.

Sincerely,

Tim Smith
Hoke Development Services, LLC
tsmith@hokeservices.com
832.443.0333 cell
713.490.3143 fax

(51) Investment Builders, Inc.

INVESTMENT IBI BUILDERS INC.

October 14, 2016

Sharon Gamble
Competitive Housing Tax Credit Program Administrator
Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

Re: 2017 Uniform Multifamily Rules and QAP

Dear Sharon,

Below please find our comments to the 2017 Uniform Multifamily Rules and QAP:

Subchapter B – Site and Development Requirements and Restrictions

Section 10.101 (a)(2)(E) – Development Sites located within 500 feet of active railroad tracks...

Comment: The 500 feet should be measured from the centerline of the railroad tracks to the nearest property boundaries.

Qualified Allocation Plan

Section 11.9(c)(8) – Proximity to the Urban Core

Comment: This should not apply to the At-Risk Set-Aside.

If you have any questions or need additional information, please contact me at ibihousing@ibitoday.com or Maria Espinoza at mespinoza@ibitoday.com.

Sincerely,

Ike J. Monty
President

(52) ITEX Group

From:	Chris Akbari
To:	Sharon Gamble
Cc:	Clark Colvin
Subject:	Comments to Chapter 11 (Qualified Allocation Plan)
Date:	Friday, October 14, 2016 4:32:47 PM

Sharon, Please see my comments to the Chapter 11 rules:

Section 11.7 Tie Breakers: Remove items (4) & (5). These educational quality scores seem redundant and should both be removed.

Section 11.9 Competitive Selection Criteria

(c)(4) Opportunity Index:
We believe that this is substantially better than previous years. We would also like to see the square footage of retail shopping center be reduced to 250,000 square feet.

(e)(2) Cost of Development Per Square Foot:

Modify it as follows: "If the proposed Development is a Supportive Housing Development or Adaptive Reuse involving Historic Preservation, the NRA will include common area up to 50 square feet per Unit."

(e)(2)(A) add "(v) Adaptive Reuse involving Historic Preservation" as a condition to be a high cost development.

(e)(2)(E) change the cost per square foot to an an acheivable amount for historic preservation projects that are Adaptive Reuse by making the following changes: "twelve (12) points for Applications which include Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than $135 per square foot" and "(iii) eleven (11) points for Applications which include Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than $150 per square foot."

(e)(4)(A)(ii to iv) - Leveraging of Private, State, and Federal Resources: The over leverage of LIHTC could be a major issue if we have an economic downturn. I suggest that we increase the percentages to less than eight (8) percent for 3 points; less than nine (9) percent for 2 points; and less than ten (10) percent for 1 point. This will also allow the REA rules to determine feasibility as opposed to an arbitrary percentage.

Thank you for the opportunity to provide comments.

Chris Akbari, President/CEO
ITEX Group
9 Greenway Plaza, Ste. 1250 Houston, Texas 77046
chris.akbari@itexgrp.com

Direct: 832.941.5343 | Cell: 409.543.4465 | Fax: 866.395.6362

From:	Clark Colvin
To:	Sharon Gamble
Cc:	Chris Akbari
Subject:	Comments Chapter 11
Date:	Friday, October 14, 2016 12:49:28 PM
Attachments:	image001.png

Sharon,

State Representative withdrawal of Support Letter - I have never had a State Rep provide a letter of support without first checking to see if the Mayor/City Manager supports the proposed development. Typically developers have worked closely with the City/County on zoning, utility availability and resolution of support issues long before the State Rep. makes his call to confirm City support. TAAHP hopes to encourage the legislature to remove the State Rep. support letter requirement from the QAP. To give these elected officials the opportunity to change their mind on a project after providing a support letter, may hurt TAAHP's initiative. If they can't change their position later, they may be more likely to remove this provision.

Tie Breakers - I would appreciate TDHCA reconsidering making the proximity to the Urban Core the first tie breaker item. I prefer that the 3rd item be moved to number 1 and Urban Core moved to number 2 or 3. In my opinion, the 3rd item assures that the tenants will be located at the site with superior amenities /services.

Maximum Request Limit - We all know the importance of affordable housing. If the market-study supports the number of units proposed in a new development, it is difficult to understand why a developer helping fill the need in a smaller Urban Center should be penalized by 1pt for a development producing more affordable housing than a competing proposing a development with substantially fewer affordable units. I would recommend removing this penalty and hurdle to serving the great need for affordable housing.

Clark

Clark T. Colvin
Executive Vice President
The ITEX Group, LLC
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(53) Lakewood Property Management, LLC

LAKEWOOD PROPERTY MANAGEMENT, LLC

6333 E. Mockingbird Lane, Suite 147-509
Dallas, Texas 75214
Phone 214-277-4839

October 14, 2016

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410
Via email to Sharon.gamble@tdhca.state.tx.us

Re: 2017 Rules and Qualified Allocation Plan

Dear Mr. Irvine:

I would like to reinforce the comments made by the Rural Rental Housing Association of Texas on the draft 2017 Rules and QAP. Preservation of the existing affordable housing stock should become more of a priority with TDHCA given the age of the first properties constructed with equity from housing tax credits; the age of the USDA financed rural portfolio and the difficultly in retaining properties as affordable rental housing in our explosive rental markets in Texas.

Even with the current USDA set aside provided in the housing tax credit program, the aging portfolio of affordable rural properties financed with USDA 515 funding can't obtain the necessary renovation solely from the competitive 9% housing tax credit program. The renovation process could be accelerated if several properties were included in a single tax exempt bond financing with the resulting automatic housing tax credit allocation as has been accomplished in other states. This process has challenges including some created by these rules. Several suggestions in RRHA's comments address these challenges. In order for a bond financed renovation to be economically feasibility a collection of rural properties must be combined into a single bond transaction so the costs of that transaction can be shared. RRHA's request to waive or adjust some requirements should be instituted. The request to waive or reduce the seven amenities requirements (10.101(6)(B) is needed so a practical rehabilitation can be completed. Similarly the Tenant Support Services requirement (10.101(7)) should be reduced or waived for bond applications with multiple USDA financed properties. Many of these services are not available in rural areas or prohibitively expensive for a small property.

Financing the renovation of a group of rural properties will be challenging even with these rule changes. With no 130% boost available for credits with bond financing unless the property is located in a Qualified Census Tract under Section 42 and with a floating 4% rate for calculating the credit allocation, some source of soft funding is needed. RRHA would like to determine if Housing Trust Funds, TCAP funds or some other source of soft financing could be made available for this specific purpose.

Finally, I would like to reinforce the balance of RRHA's recommendations for changes to the QAP. These changes will not adversely affect the quality of the resulting renovated affordable housing in rural Texas but only clarify and simplify the application process.

Sincerely,

Dan Allgeier
dan@lakewoodmanagement.com

From: Dan Allgeier
To: HTC Public Comment
Subject: comments about 2017 QAP
Date: Monday, September 26, 2016 5:26:22 PM

In the proposed QAP, Paragraph 11.9 Competitive HTC Selection Criteria, Section (c) Criteria to serve and support Texans most in need, (4) Opportunity Index, (B) additional points, (ii) Rural - the distances to a museum, indoor and outdoor recreation facility and community, civic or service organization are the same as in urban areas. **These distance should be increased to at least 5 miles for a museum and 3 miles for indoor and outdoor recreation facility and community, civic or service organizations. The balance of the distances to amenities in rural areas should be doubled. It takes much less time to travel in rural areas than in an urban area.**

For both the Urban and Rural additional points in Section (B) how are we to verify the square footage of a retail shopping center? Tax appraisal districts information doesn't always include square footages of buildings and isn't available everywhere, particularly in rural counties. Are we to measure the buildings? This minimum square footage requirement seems difficult to verify and unnecessary in this day of on line purchases delivered to the front door. Retail stores are getting smaller. For example a Walmart Express can be as small as 10,000 SF. The proposed requirement for an acceptable retail shopping center is a million square feet. This is very large requirement in today's retail environment. How will national big box retail stores be defined? Are Brookshires or HEB national chains? They have stores in "big box" centers. Half Price Books operates in 17 states and REI in 36 states according to Wikipedia. If national means 50 states, they are not national retail stores.

You should define this requirement in both urban and rural areas as a retail center with at least 3 stores that sell goods to the general public and are open at least from 10 am to 5 pm Monday thru Friday. That's verifiable and practical.

(54) Leslie Holleman and Associates, Inc.

Leslie Holleman & Associates, Inc.
Residential Real Estate Development & Consulting

October 14, 2016

Via email htc.public-comment@tdhca.state.tx.us

Ms. Sharon Gamble
9% Competitive Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

Re: Public Comment on QAP and MF Rules

Dear Sharon:

Attached is our comment on the proposed 2017 QAP and Multifamily Rules, submitted in accordance with the notice published in the September 23, 2016, edition of the Texas Register.

If you have any questions or need additional information, please feel free to contact me at (970) 731-9797 or leslie@holleman-associates.com.

Sincerely,

LHolleman

Leslie Holleman
President

enclosures

11.1(b) Due Diligence and Applicant Responsibility

New language has been added to the end of this section (as well as to 10.201(5)), which raises a number of procedural questions. The language states "appeal rights are triggered by the publication on the Department's website of the results of the evaluation process. Individual Scoring notices or similar communications are a courtesy only." In the 2016 Round, there were only 6 logs published from the date of Application submission through date the awards were made by the Board in late July. This is less than half the number of logs that were published in the previous two years (2015: 15 logs, 2014: 13 logs). Furthermore, of the 6 logs that were published, only 3 were announced via Department listserv. Does this new language mean the Department intends to move away from issuing scoring notices? If a courtesy scoring notice is issued, but a log is not published until two weeks later, is an Applicant able to submit an appeal prior to the official "trigger date?" If no scoring notice is issued, and a log is published but not announced, how would the Department hand an Applicant who then misses their appeal window? We recommend striking this language, as it adds ambiguity to a process, which up until this point has been very clear. Furthermore, this language is unnecessary as there is an entire section related to Appeal rights in Subchapter G.

11.6(2) Credit Returned and National Pool

"if sufficient credits are available to meet the requirement of the Application after underwriting review."

The addition of this new language limits the Department's ability to allocate the entire credit ceiling in any given year. There was a sizable amount of credit left over in 2015, which if not allocated in the current round, will go into the 2017 National Pool, and will make Texas ineligible for a National Pool allocation. We recommend striking this language.

11.6(3)(C)(ii) – statutory reference missing (2306.6711(g))

11.7 Tie Break Factors

We agree with the TAAHP recommendation to remove the 4th tie break factor, related to Educational Quality score, which is concurrent with the TAAHP recommendation that the Education Quality scoring item be removed from the QAP.

Additionally, we make the following recommendation to the 3rd tie break factor, related to the Opportunity Index menu items above the maximum Opportunity Index Score. We believe that great strides have been made in the 2017 QAP to deconcentrate the allocation of tax credits by allow more ways to achieve a maximum score, and we commend these efforts. However, this progress is undone with the 3rd tie break factor, and could likely have the effect of creating another Alton or Whitehouse. There are a limited number of sites that have the necessary demographics and proximity to achieve all of the menu items, so with the current language, this tie break factor perpetuates the problem of developers going after the same sites, driving up land prices and further concentrating the allocation of tax credits. It is the confluence of factors from the menu that equate to High Opportunity, not any one individual menu item. Therefore, breaking a tie based on one item, when another site might have a different positive attribute which is not part of the menu, seems myopic (for example a senior center, which would likely not count as "an indoor recreation facility available to the public" because use of the facilities is age restricted). We recommend limiting the number of above the point cap menu items that can be claimed on this tie break factor to no more than 4 (suggested language below). This still incentivizes finding High Opportunity sites, but follows the general trend in the QAP to expand the idea of what High Opportunity means.

Furthermore, there is a procedural problem with the construct of this tie break factor. The Statutory purpose of the Pre-Application is to give Applicants the ability to judge their potential competition in order "to prevent unnecessary filing cost." At the September Board meeting, public comment was made that Opportunity Index menu items above the point cap should be disclosed at Pre-Application; however, this comment was not incorporated into the QAP that was publish in the Texas Register and consequently, there is no enforcement mechanism by which to require disclosure. Creating such an enforcement mechanism at this point in time would seem be beyond the scope of changes allowed under the Administrative Procedures Act. If such a mechanism could be incorporated into the QAP, we would recommend that it function in a similar fashion to the Pre-Application scoring item, specifically, an Applicant must disclose their menu items at Pre-App, and those menu items cannot swing more than 4 items up or down at Full Application.

(3) Applications having achieved the maximum Opportunity Index Score and ~~the highest number of~~ have at least four (4) additional point items on the Opportunity index menu that they were unable to claim because of the 7 point cap on that item.

11.9(c)(3)(B) Tenant Services

"The Applicant certifies that the Development will contact local service providers, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. (1 point)"

There is a lot of ambiguity with this language. What is the point for, the certification? What constitutes a service provider? How is local defined? How will compliance be verified? What if no service providers are available or interested? Also, there is nothing precluding an Applicant from using one or more of the items under 10.101(7) to meet this requirement. If the area Planned Parenthood does an annual health fair at the Development, under the current language, that one event would count for 2 points: 1 point for a health fair under 10.101(7), plus the point under this scoring item (space made available to a local service provider on an annual basis, meaning "regularly-scheduled"). We recommend striking this language from 11.9(c)(3) and adding it as an option under 10.101(7) in more clearly defined terms.

11.9(c)(4) Opportunity Index

We commend TDHCA on its efforts to expand the definition of High Opportunity, and believe these changes help to deconcentrate the allocation of tax credits. We offer the following recommendations to this section, some of which are self-explanatory. A more detailed explanation of some of these recommendations is offered below the blackline of this section.

(A) A ~~P~~proposed Development is eligible for a maximum of seven (7) opportunity index points if it is located in a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and ~~meets the requirements in (i) or (ii) below.~~ has:

(i) ~~The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and~~ an income rate in the two highest quartiles within the uniform service region~~.~~; (2 points)

(ii) ~~The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with~~ an income rate in the third quartile within the region, ~~and~~ is contiguous to a census tract in the first or second quartile~~,~~ without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the first or second quartile census tract~~s~~. and, (1 point)

(B) An application that meets the foregoing criteria may qualify for additional points up ~~to seven (7) points~~ for any one or more of the following factors. Each facility or amenity may be used only

once for scoring purposes, regardless of the number of categories it fits~~:~~.

(i) For Developments located in an Urban Area:~~, an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIV) of this subparagraph.~~

(I) The Development site is located less than 1/2 mile on an ~~accessible route~~ from a public park with an ~~accessible~~ playground (1 point);

(II) The Development Site is located less than ½ mile ~~on an accessible route~~ from Public Transportation with a route schedule that provides regular service to employment and basic services (1 point);

(III) The Development site is located within 1 mile of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items~~.~~ (1 point);

(IV) The Development is located within 3 miles of either an emergency room or an urgent care facility (1 point);

(V) The Development Site is within 2 miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten (1 point);

(VI) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less, as defined by neighborhoodscout.com (1 point);

(VII) The development site is located within 1 mile of a public library (1 point);

(VIII) The Development Site is located within 5 miles of a University or Community College campus (1 point);

(IX) The Development Site is located within 3 miles of a concentrated retail shopping center ~~of at least 1 million square feet or~~ that includes at least 4 ~~big box~~ national retail stores (1 point);

(X) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher exceeds that of the State-wide average ~~is 27% or higher.~~ (1 point);

(XI) Development site is within 2 miles of a ~~government-sponsored~~ non-profit museum (1 point);

(XII) Development site is within 1 mile of an indoor recreation facility available to the public (1 point);

(XIII) Development site is within 1 mile of an outdoor recreation facility available to the public (1 point); and

(XIV) Development site is within 1 mile of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point).

(ii) For Developments located in a Rural Area:~~, an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIII) of this subparagraph.~~

(I) The Development site is located within ~~2~~5 miles of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide

variety of household goods, paper goods and toiletry items~~.~~ (1 point);
(II) The Development is located within 4 miles of health~~—~~related facility, such a full service hospital, community health center, or minor emergency center. Physician specialty offices are not considered in this category~~.~~ (1 point);
(III) The Development Site is within 3 miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten (1 point);
(IV) The Development Site is located in a census tract with a property crime rate 26 per 1,000 or less, as defined by neighborhoodscout.com (1 point);
(V) The development site is located within 3 miles of a public library (1 point);
(VI) The development site is located within 3 miles of a public park (1 point);
(VII) The Development Site is located within ~~7~~15 miles of a University or Community College campus (1 point);
(VIII) The Development Site is located within 5 miles of a retail shopping center with ~~XX square feet of stores~~ at least 3 retail stores (1point);
(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher exceeds that of the State-wide average ~~is 27% or higher.~~ (1 point);
(X) Development site is within 2 miles of a ~~government sponsored~~ non-profit museum (1 point);
(XI) Development site is within ~~1~~3 mile of an indoor recreation facility available to the public (1 point);
(XII) Development site is within ~~1~~3 mile of an outdoor recreation facility available to the public (1 point); and
(XIII) Development site is within ~~1~~3 mile of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point).

For item (B)(i)(I) & (II), we recommend removing the accessible route language because the accessibility of a public path is difficult to prove and will be very hard for the Department to administer. The term "accessible" is not specific and could mean compliance with a variety of laws dealing with accessibility. We have included an informational guide published by the Federal Highway Administration on accessible sidewalks and street crossings which goes into great detail about all the factors that need to be taken into account when designing an accessible path. Even paths that have been carefully designed as accessible can overtime create barriers to accessibility (shifting soil, tree roots, etc.). This language also invites Third Party Requests for Administrative Deficiencies, creating a further administrative burden for the Department. Given the vague language, if an Applicant takes the point for this item, a Third Party could hire an engineer to find one defect with the route based on a specific set of standards. The Applicant could then hire their own engineer to certify that the route is accessible based on a different set of standards, creating dueling professional opinions. The same argument can be made for an accessible playground. Furthermore, if an Application proposes a family deal, they will in all likelihood include a playground on the development site, which must be accessible.

For items (B)(i)(VI) & (ii)(IV), we recommend clarifying that the property crime rate must be based on neighborhoodscout.com data, so as to compare apples to apples.

For item (B)(i)(IX), we recommend striking the square footage requirement (also on the Rural side for item (ii)(VIII)). One million square feet limits this point item to only the largest shopping malls. Of the 23 Simon brand malls in the State of Texas almost half wouldn't qualify for this point (see attached list).

Notably, neither of the Simon shopping complexes in Fort Worth would qualify for the point. Furthermore, given that shopping malls encourage spending money as a form of recreation, perhaps this is not the best thing to incentivize for an affordable housing development. We also recommend striking "big-box" as this is not a defined term.

For items (B)(i)(X) &(ii)(IX), the language we have proposed above ties the point to exceeding the State-wide average of adults 25 and older with associates degrees or higher, which according to the 2014 American Community Survey is 24.5%.

For items (B)(i)(XI) & (ii)(X), the phrase "government-sponsored" is vague and would require an examination of a museum's IRS Forms 990 for information on its funding sources. What constitutes sponsorship and how much would be required? If a museum received a single government grant ten years ago, would that count? What about an annual contribution of $1? We believe substituting the word "non-profit" achieves the intended goal, while using objective data point.

11.9(c)(5) Educational Quality

We agree with the TAAHP recommendation that the Educational Quality scoring item should be removed from the QAP, and further recommend that each school with a Met Standard (elementary, middle, and high) should be worth one point on the Opportunity Index menu.

11.9(c)(8) Proximity to the Urban Core

We recommend that this scoring item not apply to the At-Risk/USDA set-asides, as those are State-wide competitions and this item is only available in 5 cities.

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

This section is missing a statutory citation (2306.6725(e)). We question why terms would be necessary on a de minimis contribution.

11.9(d)(5) Community Support from State Representative

We agree with TAAHP's recommendations on this section.

11.9(d)(7) Concerted Revitalization Plan

For Urban areas, we recommend striking the language "and in a city with a population of 100,000 or more." With this population limitation, all of Region 4 would be ineligible for points under this scoring criteria. Sherman, which is in its own MSA, would also be ineligible. The attached list shows all of the Urban cities with populations of less than 100K. Many, like Texarkana, have existing plans in place which would likely qualify for points but for this population limitation. If a limitation must be included, we recommend 25,000 or more.

For Rural areas, we are supportive of the recommendations made by Rural Rental Housing.

11.9(e)(2) Cost of Development per Square Foot

We agree with the recommendations made by the Texas Coalition of Affordable Housing Developers.

11.9(e)(3) Pre-application Participation

We have concerns with the new language under subparagraph (F). As previously mentioned, the statutory purpose of the pre-application process is to allow Applicants to judge their potential competition in order

"to prevent unnecessary filing cost." If an Applicant submits a Pre-App with one piece of property, but then submits a Full App with an entirely different piece of property, but the two pieces happen to share a boundary, why wouldn't this be considered a completely new application? Why would this type of bait and switch be incentivized? We recommend the following language.

> (F) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number listed at pre-application is the same at Application;

11.9(e)(4) Leveraging of Private, State and Federal Resources

We recommend that the leveraging percentages outlined in clauses (ii) – (iv) should be increased to eight, nine and ten. Lower levels will result in deals with deferred fees in excess of that allowable in Subchapter D, related to Underwriting and Loan Policy.

Subchapter A

10.3 Definitions

We agree with the recommendations made by The Brownstone Group to the definitions of Control and Principal.

The current definition of Elderly Preference Development does not preclude an Application from choosing this type of Elderly Development even if HUD funding (or other federal assistance) is not used; however, the 2016 Application conflicted with this plain language and did not allow for that type of a choice to be made. If the intention of the Elderly Preference Development definition is that it only apply to developments with HUD funding or other types of federal assistance, that should be clearly articulated in the definition.

Subchapter B

10.101(a)(2) Undesirable Site Features

Much of the new language in paragraph (2) is far too subjective. How do does the Department intend to define "high speed roads" which are listed separately from highways? If an "intervening barrier" exists between the development site and a railroad track 490 feet away, does this mean the railroad track is no longer a concern? We offer the following proposed language (with explanatory remarks below).

(2) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph maybe considered ineligible as determined by the Board. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs ("VA") may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application and must include a letter stating the Rehabilitation of the existing units is consistent with achieving at least one or more of the stated goals as outlined in the State of Texas Analysis of Impediments to Fair Housing Choice or, if within the boundaries of a participating jurisdiction or entitlement community, as outlined in the local analysis of impediments to fair housing choice and identified in the participating jurisdiction's Action Plan. The distances are to be measured from the nearest boundary of the Development Site to the ~~nearest boundary of the property or easement containing the~~ undesirable feature. ~~The minimum distances noted assume that the land between the proposed Development Site and the particular undesirable feature has no significant intervening barriers or obstacles such as waterways or bodies of water, major high speed roads, park land, or walls, such as noise suppression walls adjacent to railways or highways.~~ Where there is a local ordinance that ~~regulates the~~ for closer proximity ~~of~~ to such undesirable feature ~~to a multifamily development that differs from~~ than the minimum distances noted below, documentation, such as a copy of the local ordinance identifying such distances relative to the Development Site, must be included in the Application. ~~The distances identified in subparagraphs (A) - (J) of this paragraph are intended primarily to address sensory concerns such as noise or smell, social factors making it inappropriate to locate residential housing in proximity to certain businesses. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes.~~ If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (K) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

(A) Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Transportation Code, §396.001;

(B) Development Sites located within 300 feet of a solid waste or sanitary landfills;

(C) Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local Government Code, §243.002, or as zoned, licensed and regulated as such by the local municipality;

(D) Development Sites in which the buildings are located within 100 feet of the easement of any overhead high voltage transmission line, or support structures for high voltage transmission lines~~, or other similar structures~~. This does not apply to local service electric lines and poles;

(E) Development Sites located within ~~500~~100 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail;

(F) Development Sites located within 500 feet of heavy industrial (i.e. facilities that require extensive capital investment in land and machinery, are not easily relocated and produce high levels of external noise such as manufacturing plants, fuel storage facilities (excluding gas stations) etc.);
(G) Development Sites located within 10 miles of a nuclear plant;
(H) Development Sites in which the buildings are located within one-quarter mile of the accident zones or clear zones of any airport;
(I) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids. Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance ("PIPA");
(J) Development Sites located within 2 miles of refineries capable of refining more than 100,000 barrels of oil daily; or
(K) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated.

Our recommendation to strike the language about the primary purpose of the list is due to the fact that a number of items on the list relate to safety: nuclear power plants, airport accident zones. We support the change in subparagraph (D) because fires burning near high voltage power lines can create electrical arcs or "flashovers" which could endanger near-by residents. In subparagraph (E), we recommend returning to the 100 foot distance of previous years. If sound is the concern, there is significant mitigation that can be done during construction, and would likely be recommended in the Phase I ESA. Anytime the Phase I ESA makes a recommendation, the Department's Real Estate Analysis division places a related condition in the Underwriting Report. We are supportive of the change in subparagraph (G). Ten 10 miles is in line with the Nuclear Regulatory Commission's first (of two) Emergency Planning Zone around nuclear power plants (plume exposure pathway zone).

10.101(a)(3) Undesirable Neighborhood Characteristics

While we believe that this section is largely irrelevant for 9% Tax Credits (due to the competitive nature of the program and QAP's scoring incentives for High Opportunity sites), we believe this section is still necessary as threshold to ensure 4% transactions are not placed in undesirable locations. Therefore, we agree with the language recommendations made by TAAHP.

10.101(b)(4) Mandatory Development Amenities

We agree with TAAHP's recommendation to strike the requirement for solar screens.

10.101(b)(5) Common Amenities

We recommend increasing the point value assigned to a furnished community room to 2 points, as this is a costly item.

10.101(b)(6)(B) Unit and Development ~~Construction~~ Features (not all these features are construction related)

We recommend increasing the point value assigned to in-unit laundry equipment to at least 2 points, if not 3 points. Under Common Amenities, a community laundry room is worth 3 points, when it is far less desirable to tenants than having laundry equipment provided to them in their units. Also, the words "and metal" should be stricken from item (xv) related to stucco and masonry exteriors.

10.101(b)(7) Tenant Supportive Services

We agree with TAAHP's recommendation to this section of the Rule. We also recommend that the point value should be increased for item (K) related to scholastic tutoring, because the requirements have increased. We recommend at least 6 points, given the cost to the Development to provide such a service, and the enormous benefit gained by the tenants.

Subchapter C

10.201 Procedural Requirement for Application Submissions

> "Only one Applicant may have an Application or Applications for assistance related to a specific Development Site at any given time."

Because Site Control is a threshold item, it would not be possible for multiple Applicants to submit Applications for the same Development Site. This second sentence should revert back to its previous construct, which read "only one Application may be submitted for a Development Site in an Application Round."

10.201(1) General Requirements

There has been a provision added to allow for errors in the calculation of applicable fees to be cured via the Administrative Deficiency process. In a highly competitive environment, we believe this is a slippery slope and the language should be removed. The Application fee due is not a difficult calculation to perform. The Department has long standing precedent of terminating Applications that make unfortunate mistakes like this precisely because of the highly competitive nature of the program. How is this different from submitting the wrong electronic Application file/third party report, thereby missing the deadline? The Department has on numerous occasions, terminated Application for that very mistake. Another simple calculation mistake that the Department has never let Applicants correct is exceeding the $3 million cap. Again, on numerous occasions, awards have been lost because an Applicant exceeded the cap by a very small dollar amount. Again, we believe this to be a slippery slope, and goes against years of precedent. In order to maintain the integrity of the Rule, this language should be removed.

10.201(7) Administrative Deficiency Process

The Administrative Deficiency deadline for should be increased to 5 days. This is not an extraordinarily long period of time, and historically not unduly slowed the review process. Often times, Administrative Deficiencies *are* resolved immediately, but there are situations when more time may be needed. Five days is an appropriate amount of time.

10.203 Public Notifications

We agree with TAAHP's recommendation on this section.

10.204(6) Experience Requirement

Because the criteria for an experience certificate in 2014 was exactly the same as the criteria in 2015 and 2016, there is no reason that a 2014 experience certificate should not count. Additionally, we believe that the term "natural Person" used in subparagraph (A) should be changed to "natural person" as the capitalized term Person includes entities.

10.204(8)(E) Financing Narrative

Language has been added requiring that the financing narrative include "(dates and deadlines) for application, approvals and closings, etc. associated with the commitments for all funding sources." We do not see the benefit of requiring this information to be including in the financing narrative. The debt and equity terms submitted at Application are very preliminary in nature and highly dependent on numerous factors (whether an allocation is even made, changes in market conditions, changes to the proposed debt

and equity providers, the Developer's pipeline, etc.). At very best, any dates and deadlines that could be included in the narrative would be an educated guess. We recommend that this language be removed.

10.204(16) Section 811 Project Rental Assistance Program

We agree with TAAHP's recommendations on this item.

Subchapter D

10.302(e)(9) Reserves

New language has been added to the 5th sentence of this section, and we recommend the following changes.

> In no instance at initial underwriting will total reserves exceed twelve (12) months of stabilized operating expenses plus debt service (and only for USDA or HUD financed rehabilitation transactions the initial deposits to replacement reserves, initial deposits to required voucher reserves and transferred replacement reserves ~~for USDA or HUD financed rehabilitation transactions~~).

Subchapter G

10.901(5) Third Party Underwriting Fee

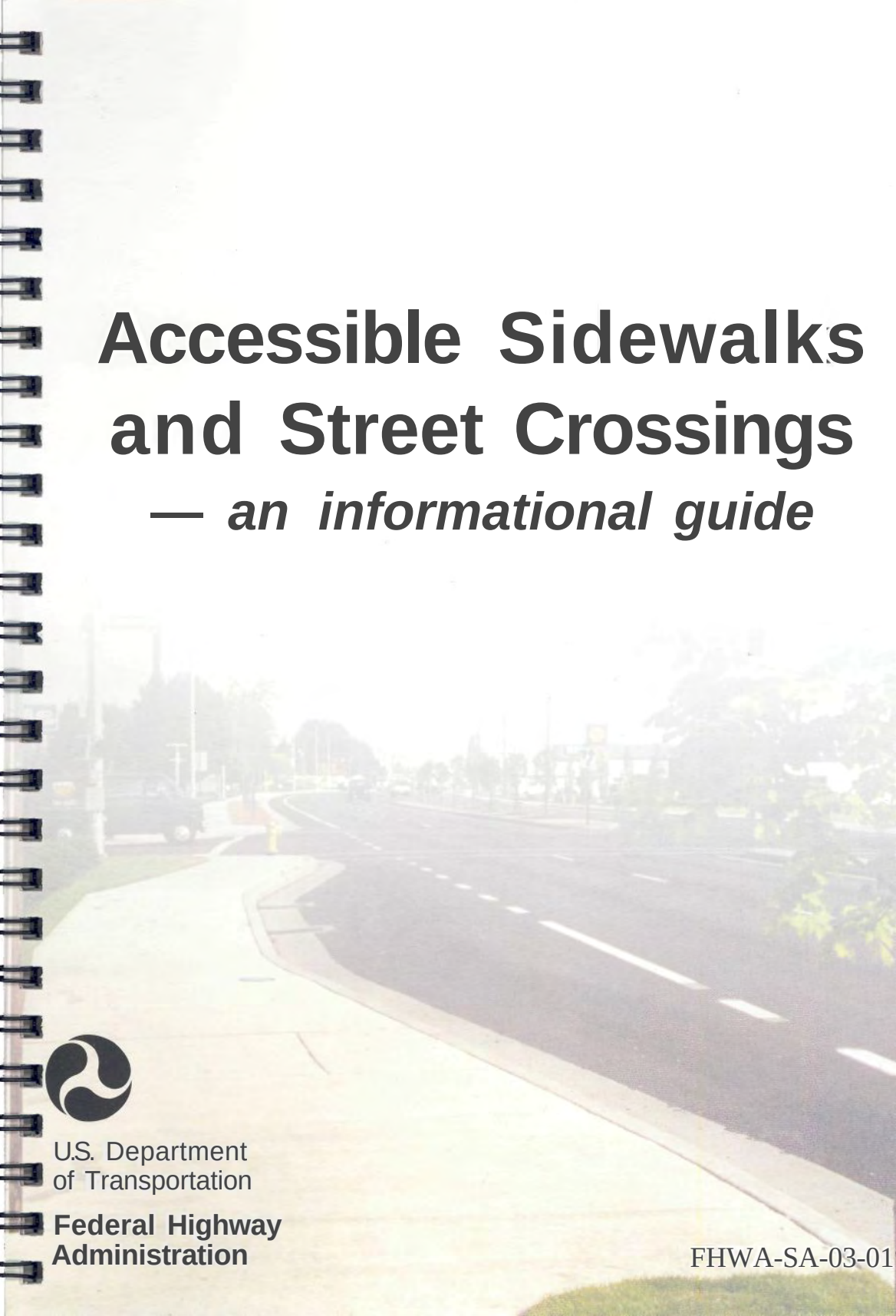
Because the language allowing for a third party underwriter has been removed from 10.201(5), related to Evaluation Process, this associated fee should also be removed.

10.901(12) Extension Fees

We believe the addition of Construction Status Reports to the Extension Fee section is unnecessary and should be removed. The Construction Status Report is simply a report updating the Department on the status of construction progress. We cannot see a reason why an Owner would need an extension on this type of simple reporting. Furthermore, we fear this language may be used to collect $2,500 for submitting a late Construction Status Report. If it is the intension of the Department to find a penalty for late reporting, this is not the appropriate place or method. We recommend removing the reference to Construction Status Reports from this section.

Accessible Sidewalks and Street Crossings

— *an informational guide*



U.S. Department of Transportation

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Content

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Introduction

Providing Accessible Sidewalks and Street Crossings

In order to meet the needs of all sidewalk users, designers must have a clear understanding of the wide range of abilities that occur within the population. Sidewalks, like roadways, should be designed to serve all users. This includes children, older people, parents with strollers, pedestrians who have vision impairments, and people using wheelchairs and other assistive devices. Just as a roadway will not be designed for one type of vehicle, the design of sidewalks should not be limited to only a single type of pedestrian user. Because the sidewalk is the basic unit of mobility within our overall system of transportation, every route and facility must be usable.

Pedestrian facility design and operation must comply with the accessibility standards in the *Architectural Barriers Act (ABA) of 1968, the Rehabilitation Act of1973 (Section 504), and the Americans with Disabilities Act (ADA) of 1990.* Implementing regulations for Title II of the ADA, which covers State and local governments, also address "communications and information access," requiring 'effective communications' with persons with disabilities. In the sidewalk/street crossing environment, this would include accessible pedestrian signals, markings, and signage. The latest version of the Manual on Uniform Traffic Control Devices (MUTCD) contains standards on Accessible Pedestrian Signals (APS) that have audible, visual, and vibrotactile features. These standards represent the minimum; designers should use more conservative design parameters whenever possible.

Temporary and alternate pedestrian routes where sidewalks are obstructed by work zones must meet accessibility standards, as well. Pedestrians who must cross the street and then cross back again in order to continue on their destination will be exposed to significantly increased risk from vehicles.

The intent of this guide is to focus on some of the emerging accessibility issues and the design parameters that affect sidewalk and street crossing design and operation.

The Legal Framework:

During the 1990s, several key pieces of legislation were passed that impacted transportation planning. The first, the Americans with Disabilities Act (ADA) of 1990, protects the civil rights of people with disabilities. Secondly, the 1991 reauthorization of the Federal transportation legislation, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), specifically called for integrating pedestrian travel into the transportation system. ISTEA increased the Federal-aid funding options for pedestrian facilities and programs. In 1998, the Transportation Equity Act for the 21st Century (TEA-21) extended the opportunities established in ISTEA and increased funding available for pedestrian facilities. These laws complimented more than 40 years of legislation aimed at guaranteeing the rights of people with disabilities. Following is a brief chronological summary of the laws and regulations mandating accessible environments and programs:

Americans National Standards Institute (ANSI A117.1), 1961: The first building standard to address issues of accessibility.

Architectural Barriers Act (ABA) of 1968 (Public Law 90-480): This was the first Federal law requiring new facilities constructed for Federal agencies or with Federal funding to meet accessibility standards (UFAS).

Rehabilitation Act of 1973, Title V, Section 504 (Public Law 93-112, amended by PL 516 and PL 95-602): Section 504 requires federally funded facilities and programs to be accessible to people with disabilities.

Education of All Handicapped Children Act of 1975 (now The Individuals with Disabilities Education Act (IDEA)): This Act greatly expanded educational opportunities by requiring school accommodations for children with disabilities.

Uniform Federal Accessibility Standards (UFAS, Federal Standard 795): The UFAS defined the minimum standards for design, construction, and alteration of buildings to meet the requirements of the ABA. UFAS derived from ANSI A 117.1-1980 and the Access Board's 1982 Minimum Guidelines and Requirements for Accessible Design (MGRAD).

Americans with Disabilities Act of 1990 (ADA): ADA extends the coverage of the ABA, and the Rehabilitation Act, Section 504 to include all public facilities regardless of funding. The Title II implementing regulations for the ADA require all newly constructed and altered facilities to be readily accessible to persons with disabilities. Transportation agencies are responsible for developing a transition plan for removing the structural barriers, including communication barriers, and providing access to existing pedestrian facilities.

State Laws: In some States, codes have been adopted that exceed the requirements set forth in the ADA guidelines. In these States, both the ADA and the State code must be satisfied.

2 Understanding Sidewalk Users:

People have differing abilities: A variety of users need to access the sidewalk system. Their abilities vary in agility, balance, cognition, coordination, endurance, flexibility, hearing, problem solving, strength, vision, and walking speed.

Designing for all abilities: The design of sidewalk environments is important to all pedestrians, but is particularly important to those with disabilities who have limited travel choices and rely most on the pedestrian environment. For example, older adults, persons with vision impairments, and children frequently rely on the sidewalk to travel independently within their community for shopping, recreation, exercise, and walking to school.

Traditionally, design parameters have been based on the "standard pedestrian," an agile person with good vision, hearing, and mobility. These design parameters do not meet the needs of the growing disabled population. The Bureau of Census data indicates that:

- Approximately 20 percent of all Americans have a disability, and that percentage is increasing.
- By the year 2030, one in five Americans will be 65 years or older.

Universal design principles are based on creating an environment that is usable for people of all abilities. Incorporating these principles into all aspects of sidewalk development can eliminate the barriers and create a truly functional sidewalk system.

Movement and Informational barriers may limit an individual's access to the sidewalk environment:

Movement barriers restrict an individual's ability to physically move along or within an environment. They may limit the individual's movement from one side of the intersection to the other, or ability to use the push button to activate the pedestrian signal. Movement barriers within the pedestrian environment include curbs, steep slopes, obstacles within the path (poles, etc.), and widths too narrow to pass through.

Information barriers restrict an individual's use of information contained in the pedestrian environment. These barriers limit the pedestrian's ability to recognize and receive information (e.g., loss of vision prevents the individual from utilizing visual signs), or understand the information received and decide on a course of action. Information barriers within the environment include complex intersections, diverted paths (e.g., in work zones), and lack of street crossing information.

***Conflicting Pedestrian** Needs*

To create a truly accessible sidewalk network that is usable by all pedestrians, designers need to understand how the users' abilities are impacted by their design decisions. Pedestrians have varying needs, therefore, changing a design to enhance access for one group can create additional barriers for other individuals. The goal should be to make all sidewalks accessible to the largest possible number of pedestrian users by incorporating the principles of universal design.

Assistive Technology:

Assistive technologies play a valuable role in enhancing the ability of people with disabilities to travel independently through the environment. These devices may be used to minimize and eliminate the activity limitations and participation restrictions that exist within the sidewalk environment. Technologies may be personal, activity-specific, or environmental. Following are examples of personal technologies:

- A manual wheelchair provides easy mobility on flat, firm, obstacle free surfaces. However, it is difficult to maneuver on steep grades or cross slopes, and across uneven transition points like street to sidewalk.
- A prosthetic leg allows an individual to retain some mobility. However, a prosthetic leg does not provide the sensory feedback that is needed to ensure stable foot placement, detect obstacles, or maintain balance.
- A white cane used by individuals with severe vision loss provides advance warning about obstacles on the path ahead 0.6 m-0.9 m (2 ft—3 ft), but is not effective at detecting obstacles above 0.7 m (2.3 ft).
- Motorized wheelchairs and scooters can maneuver on steeper grades and travel longer distances than manual wheelchairs.
- Service dogs are trained to respond to specific commands and to avoid obstacles. Service dogs require care and maintenance.
- A hearing aid can be used to amplify the traffic sounds. The magnification is not selective, so the sounds of traffic and Audible Pedestrian Signal (APS) are all magnified.

Environmental technologies include APS, and engineering treatments like curb ramps and detectable warnings. **(See Section 9).**

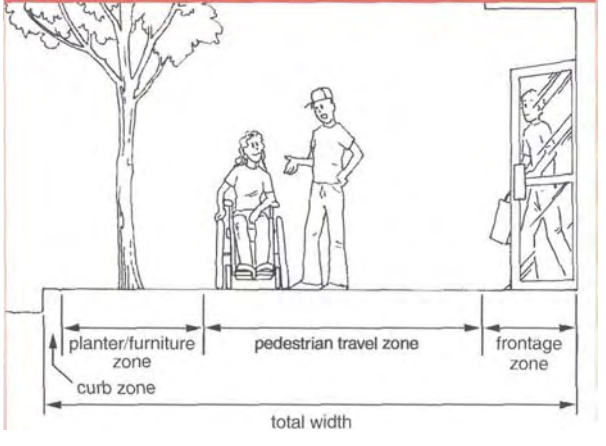
3 Sidewalk Corridors:

The "Sidewalk Corridor" is the portion of the pedestrian system from the edge of the roadway to the edge of the right-of-way (property line or building edge), generally parallel to the street. Attributes of good sidewalk corridor design include:

- Accessibility by ALL users.
- Adequate width.
- Safe to use (sidewalk users should not feel threatened by adjacent traffic or by the environment).
- Continuity and connectivity.
- Landscaping to create a buffer space between pedestrians and traffic and also provide shade.
- Social space (area where pedestrians can safely participate in public life).

The Zone System
(See Figure 1): Sidewalks in central business districts and downtown areas need to be designed to accommodate larger volumes of pedestrian traffic than in residential areas. Streetscapes in these areas often function for multiple purposes, and generally consist of the following zones: the building frontage zone, the pedestrian zone, the planter/furniture zone, and the curb zone.

Figure 1



The zone system divides the sidewalk corridor into four zones to ensure that pedestrians have a sufficient amount of clear space to travel.

Building Frontage Zone: The building frontage zone is the area between the building wall and the pedestrian zone. Pedestrians don't feel comfortable walking directly adjacent to a building wall or fence. At a minimum pedestrians prefer to keep at least 0.6 m (2 ft) of "shy" distance away from the building wall.

Depending on the use of this area, the frontage width should be increased and physically separated from the pedestrian zone (example, allow extra space for a door opening into the frontage area, sidewalk cafes, etc.). People with vision impairments often travel in the frontage zone and use the sound from the adjacent building for orientation. Some use the building edge as a guide for a white cane, traveling between 0.3 m-1.2 m (1 ft-4 ft) from the building. The frontage zone should be free of obstacles and protruding objects. If not,

obstacles in the frontage zone should be detectable by people who use long white canes. Level landings are required at building entrances and around sidewalk furnishings such as drinking fountains, benches, etc.

Pedestrian Travel Zone: The pedestrian zone is the area of the sidewalk corridor that is specifically reserved for pedestrian travel. This area should be free of all obstacles, protruding objects, and any vertical obstructions hazardous to pedestrians, particularly for individuals with vision impairments. The pedestrian zone should be at least 1.8 m-3.0 m (6-10 ft) wide or greater to meet the desired level of service in areas with higher pedestrian volumes. This allows pedestrians to walk side by side or for pedestrians going in the opposite direction to pass each other. The pedestrian zone should never be less than 1.2 m (4 ft), which is the minimum width required for people using a guide dog, crutches, and walkers. Wheelchair users need about 1.5 m (5 ft) to turn around and 1.8 m (6 ft) to pass other wheelchairs.

Planter/Furniture Zone: The planter/furniture zone lies between the curb and the pedestrian travel zone. This area provides a buffer from the street traffic and allows for the consolidation of elements like utilities (poles, hydrants, telephone kiosks, etc), and street furniture (benches, signs, etc). *The intent is to ensure that the pedestrian travel zone is free of ALL obstacles.* On local and collector streets, 1.2 m (4 ft) is preferred and on arterial and major streets 1.8 m (6 ft) is preferred. Additional space will be required for transit stops and bus shelters which may include a boarding pad typically 1.5 m x 2.4 m (5 ft—8 ft). States that have significant accumulations of snow during the winter months will require wider planter/furniture zones. This allows the snow to be stored in the planter/furniture zone and keeps the pedestrian zone obstacle free.

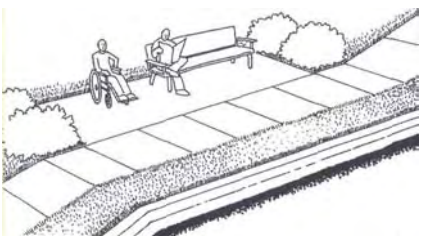
Curb Zone: The curb zone is the first 0.15 m (6 in) of the sidewalk corridor, located adjacent to the roadway. It is an integral part of the road/drainage system and keeps excess water off the sidewalk corridor. The curb zone also discourages motor vehicles from entering/exiting the sidewalk corridor except at designated locations and is a valuable safety and guide cue for pedestrians with vision impairments.

4 Sidewalk Grades and Cross Slopes:

Steep grades and cross slopes should be avoided where possible or integrated with level rest areas. Both powered and manual wheelchairs can become very unstable and/or difficult to control on sloped surfaces. When areas with steep sidewalks and ramps are wet, icy, or covered with snow, they have little or no slip resistance and a slide will usually end in the street.

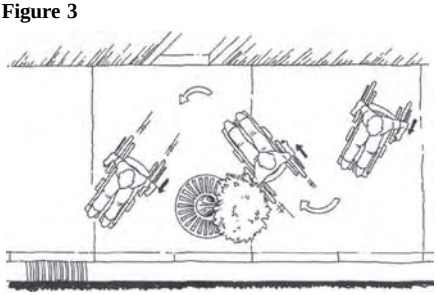
Grade: Grades are often difficult to control in the sidewalk environment because sidewalks follow the path of the street. The sidewalk grade ideally should not exceed 5 percent. Design parameters developed for ramps on buildings and sites, permit a maximum grade of 8.3 percent for a distance of 9.1 m (30 ft) before a level landing must be installed. Where the sidewalk grade approaches or exceeds that of the maximum permitted for a ramp, it is good practice to provide a level rest area. The slope of the level landing should not exceed 2 percent in any direction **(See Figure 2).** The dimensions of the level landing should be at least 1.5 m x 1.5 m (5 ft x 5 ft) to allow wheelchair users to stop and rest without blocking the flow of pedestrians. This area can be greater with the inclusion of other amenities such as benches, hand rails, and drinking fountains. In areas with steep slopes, consider installing wide sidewalk corridors that permit the wheelchair user to travel in a zig-zag motion **(See Figure 3).**

Figure 2



Level landing with benches provide a resting point that will not impede the flow of pedestrian traffic.

Figure 3



In areas of steep terrain, a wide sidewalk allows wheelchair users to travel in a zigzag motion which reduces the grade they must travel, although the overall distance of their trip is increased.

*Cross **Slope:*** The maximum cross slope permitted by ADA Accessibility Guidelines (ADAAG) is 2 percent. Severe cross slopes require wheelchair users and other pedestrians to work against the effects of gravity to maintain their lateral balance. Pedestrians using crutches or canes may be forced to turn sideways in order to keep their base of support at a manageable angle. Severe cross slopes can cause wheelchair users to veer towards the curb and into the street **(See Figure 4).** The impact of cross slopes are compounded when combined with steep grades and uneven surfaces. Designers and those constructing

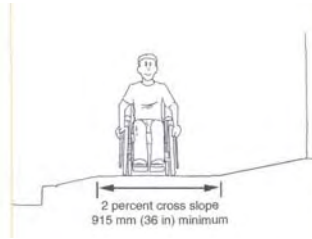
facilities need to understand the impact of grades and cross slopes and take particular care to stay within construction tolerances as well as within design standards. For example, Portland Cement Concrete has a construction tolerance of 1/4 in per 10 ft.

For ***sidewalks with steep cross slopes*** the designer can create a level area of at least 915 mm (3 ft) within the pedestrian zone **(See Figure 5)** or increase the height of the curb **(See Figure 6)** The latter case can create problems for curb ramp design and on-street parking (car doors may not be able to swing over the curb).

Figure 4

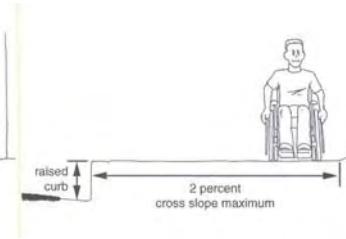
PROBLEM Wheelchair users traveling on a sidewalk with a cross slope greater than 2% use more energy to to offset the force of gravity that directs them towards the curb and into the street

Figure 5



GOOD DESIGN A level area at least 915 mm (36 in) wide improves access when the street elevation is lower than the building elevation

Figure 6



ACCEPTABLE DESIGN Increasing the height of the curb provides a level pathway when the street elevation is lower that the building elevation This solution may not be ideal if sidewalks are not wide enough to install well-designed curb ramps

5 Sidewalk Surfaces:

Factors that affect the usability of the sidewalk surface include:

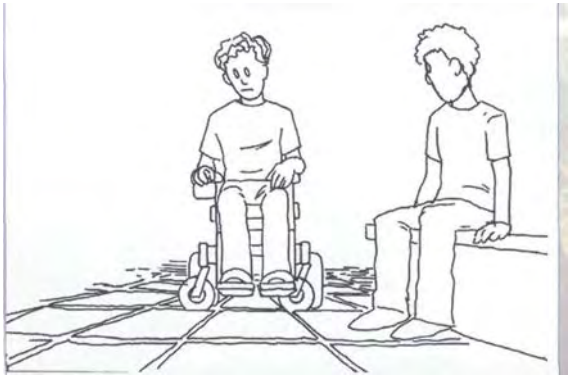
- Surface materials
- Changes in level
- Firmness, stability, and slip resistance
- Dimensions of gaps, grates and openings
- Visual consistency

Surface materials generally consist of concrete or asphalt; however, tile, stone, and brick are also used. Typically, sidewalks of concrete and asphalt are firm, stable, and fairly slip resistant when dry. A broom finish used on concrete sidewalks increases the slip resistance. Surfaces that are not slip resistant are especially difficult for people who use wheelchairs or walking aids to travel across. Crutch users, for example, rely on being able to securely plant their crutch tip to travel effectively on the sidewalk. Surfaces that are not visually consistent (all one color and texture) can make it difficult for pedestrians with vision disabilities to distinguish the difference between a change in color and pattern on the sidewalk and a drop off or change in level.

Decorative surface materials such as paints and surface materials, polished stones or exposed aggregate rock, are not as slip resistant and should be avoided. Paint and thermoplastic materials, commonly used to mark crosswalks, are generally not as slip resistant when wet. Slip resistant contact is more difficult to achieve when the sidewalk material is wet or icy. Texture added to the thermoplastic will improve the slip resistance.

Brick and cobblestone may improve the aesthetic quality of the sidewalk, but may also increase the amount of work required by pedestrians with mobility impairments. For example, tiles that are not tightly spaced together can create grooves that catch wheelchair casters **(See Figure 7).** These decorative surfaces may also create a vibrating bumpy ride that can be uncomfortable and painful for those in wheelchairs. The surface texture should not include more than a 1/4 inch rise every 30 inch. Brick and cobblestone may heave or settle, creating unsafe changes in level or become a tripping hazard for pedestrians, especially those with vision and mobility disabilities. Decorative textured surface materials can make it more difficult for pedestrians with vision impairments to identify

Figure 7



The space between the jointed surface causes wheelchair casters to swivel and catch and greatly increases the rolling resistance.

detectable warnings, which provide critical information about the transition **from** the sidewalk to the street. For these reasons, brick and cobblestone are not recommended. Creative alternatives include smooth walkways with brick trim, and colored concrete.

Changes in level/elevation are vertical rises between adjacent surfaces. Causes of changes in level include:

- Tree roots pushing upwards.
- Uneven transitions from street to gutter to ramp.
- Heaving and settling due to frost.
- Buckling due to improper sub-base preparation.

Changes in level/elevation can cause major problems for:

- Pedestrians with mobility impairments-difficulty lifting feet, or crutches (causing tripping).
- Pedestrians with vision impairments-difficulty detecting elevation changes, (causing tripping).
- Pedestrian using wheelchairs-small front caster wheels swivel sideways and cannot climb over.
- Pedestrian using wheelchairs-difficult time rolling over large changes in elevation.

Changes in level/elevation requirements:

- Up to 6 mm (0.25 in)-can remain without beveling.
- 6-13 mm (0.25 in-0.5 in)-bevel the surface with a maximum grade of 50 percent (1:2).
- Greater than 13 mm (0.5 in)-remove or install a ramp with a maximum grade of 8.3 percent.

Gaps, grates and other openings occur at railroad tracks, drainage inlets, air vents, tree grates, etc. Wheelchair casters, inline skating wheels, as well as bicycle wheels often get caught in openings and gaps wider than 1/2 inch or which are incorrectly aligned. In these cases there is potential for the person to be suddenly pitched forward. Walking aids such as canes and crutches can also get caught in grates and gaps. When the cane tip slips through an opening, the pedestrian can become unstable and risk falling. Grates should be placed within the planter/furniture zone **(See Figure 1)** away from the pedestrian travel area, **and** also away from the bottom of crosswalks and curb ramps.

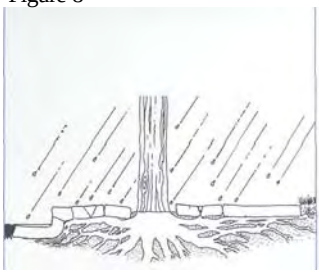
Gaps and grates should be designed so that:

- Openings do not allow the passage of a 13 mm (0.5 in) sphere.
- The long dimension of the opening is perpendicular or diagonal to the dominant direction of travel.

The impact of trees on the sidewalk corridor-- trees are generally planted because they improve the pedestrian experience, improve the aesthetic appearance of the streetscape, serve as a visual and auditory buffer between pedestrians and traffic, provide shade, and may have a traffic calming effect. Trees need a minimum of 1.2 m x 1.2 m (4 ft x 4 ft). They are also one of the

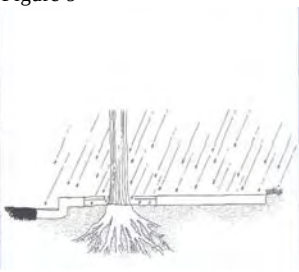
most common causes of sidewalk cracks and changes in level. When water is limited, tree roots tend to push through the surface **(See Figure 8)** and spread out rather than down **(See Figure 9)** to look for new water sources. Tree branches should be maintained to hang no lower than 2.0 m (6.7 ft) (See **Figure 10).** Low hanging branches can be a safety hazard, especially for pedestrians with vision impairments who may not detect them. Other pedestrians with mobility impairments may have difficulty bending under them. Careful selections of tree type, their placement and maintenance can provide a comfortable and safer environment for all road users including pedestrians.

Figure 8



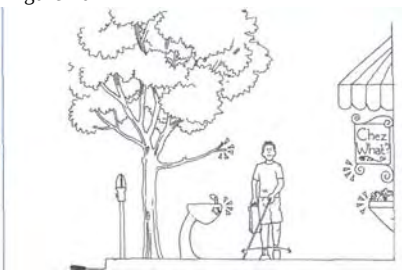
When trees do not get enough water they tend to spread their roots out, which can break up the surface of the sidewalk.

Figure 9



Trees planted with grates are less likely to cause sidewalk cracks than trees planted without grates because the grate allows a sufficient amount of water to reach the tree roots.

Figure 10



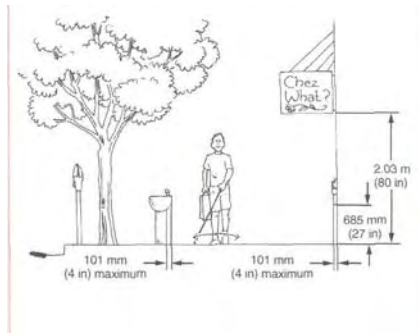
This pedestrian, who is blind is walking down a sidewalk that contains a number of obstacles that are difficult to detect using a long white cane, because they protrude into the path of travel between 685 mm (2.3 ft) up from ground level and below 2.03 m (6.7 ft) in height.

6 Protruding Objects:

Objects that protrude into the sidewalk corridor above 2 m (6.7 ft) are not generally a problem for pedestrians with vision impairments (See **Figure** 11). Pedestrians who use long canes will usually detect and avoid objects on the sidewalk that extend below 0.69 m (2.3 ft). However, obstacles that protrude into the sidewalk corridor between 0.69 m-2 m (2.3 ft—6.7 ft) and do not extend to the ground **(See Figure 10)** are more difficult to detect and avoid.

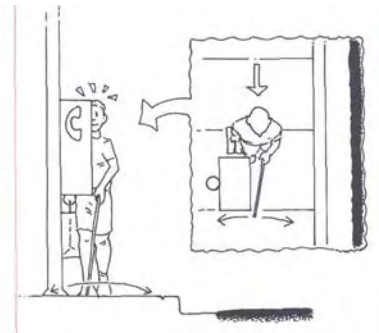
Pedestrians with vision impairments often travel using the edge of the building line. Objects mounted on the wall, post, or side of a building, should therefore not protrude more than 0.1 m (4 in) into the sidewalk corridor (See **Figure** 12).

Figure 11



This pedestrian. who is blind, will have a much easier time traveling on this sidewalk because there are no walls or post-mounted obstacles that protrude more than 101 mm (4 in)

Figure 12

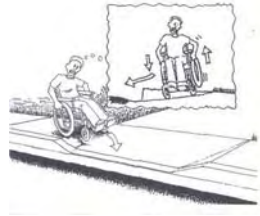


POTENTIAL PROBLEM:
When obstacles mounted on posts can be approached from the side they should not protrude more than 101mm (4 in). This pedestrian who is blind does not detect the pole, which could cause him to collide with the obstacle.

7 Driveway Crossings:

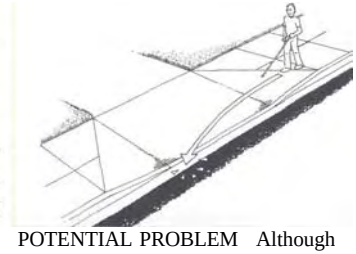
Driveway crossings serve the same purpose for cars as curb ramps serve for pedestrians. They consist of many of the same components found in curb ramps. Designers need to remember that as they change the grade to allow cars to effectively negotiate the elevation change between the street and the sidewalk, they **must not** compromise good pedestrian design practice. Unfortunately, this happens quite often and pedestrians using wheelchairs and other walking aids are sometimes put at risk of becoming unstable and falling. ADAAG does not permit the cross slope of the sidewalk to exceed 2 percent. Driveway crossings are often built with grade changes in the sidewalk corridor that have cross slopes greater than 2 percent. Driveway crossings without level landings force users to travel over the sidewalk flare. This design results in rapid changes in grade and cross slope **(See Figure 13),** wheelchair users can lose control and possibly tip over as the front wheel loses contact with the ground followed by the opposing back wheel. Pedestrians with vision impairments may not detect the difference in slope of the driveway flare and veer towards the street and may enter the street without realizing it **(See Figure 14).**

Figure 13



PROBLEM This driveway design is not allowed by ADAAG Driveway crossings must be level and not force users to travel over the sidewalk flare This design results in rapid changes in cross slope, which compromises balance and stability for people who use wheelchairs The right front wheel loses contact with the ground followed by the opposing back wheel

Figure 14



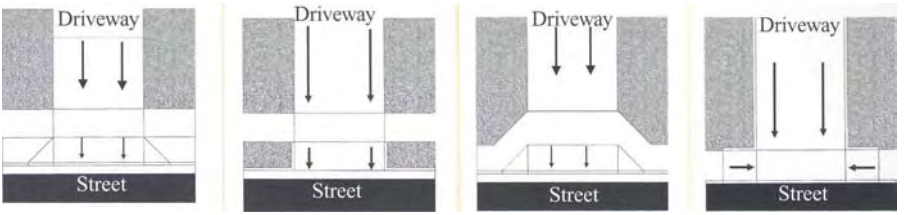
POTENTIAL PROBLEM Although gradually sloped driveway crossings are beneficial to people with mobility impairments, they can be problematic for people with vision impairments unless there is a detectable difference in slope at the edge of the street If a visually impaired person veers toward the street and isn't able to recognize where the driveway ends and the street begins, he or she may enter the street without realizing it

Driveway crossings should be designed with the following guidance:

- Cross slope = 2.0 percent maximum
- Level maneuvering space
- Changes in level = flush (1/4 inch maximum)
- Flare slope =10 percent maximum

Figure 15 illustrates good or acceptable design practice

Figure 15 Driveway Crossings



Good Design
Driveway crossings with wide level sidewalks

Good Design
Driveway crossings with level sidewalk

Acceptable Design
Driveway crossing with a level landing jogged away from the street
see *1

Acceptable Design
Driveway crossing with ramps parallel to the sidewalk and sidewalk at grade with the street
see *2

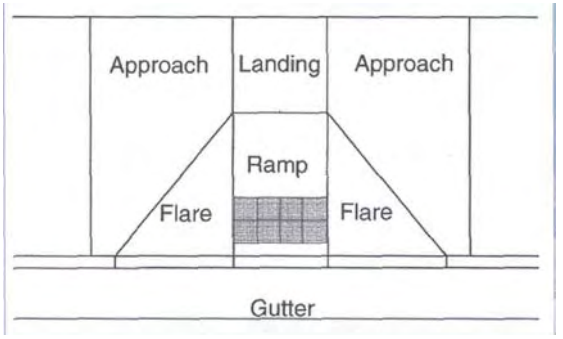
*1 Potential tripping problem for pedestrians traveling over flare

*2 May have drainage problems There needs to be a detectable edge or lip for pedestrians with vision impairments to distinguish the sidewalk and street boundary at the base of the driveway

8 Curb Ramps:

Curb ramps are necessary for access between the sidewalk and the street for people who use wheelchairs **(See Figure 16).** Title II of the ADA specifically requires curb ramps for existing facilities, as well as all new construction or altered facilities. However, curb ramps can create a barrier for people with vision impairments who use the curb to identify the transition point between the sidewalk and the street. Because curb ramps eliminate the vertical edge of the curb used by pedestrians with vision impairments, it is necessary to install detectable warnings **(Section 9)** to mark the boundary between the sidewalk and street. For some pedestrians who use walking aids such as canes, walkers or crutches, curb ramps may be difficult to access. The pedestrian must have strength to lift his or her body up over the supporting device. A wider crosswalk to allow use of curb and curb ramp **(See Figure 17)** will enhance access for all users

Figure 16

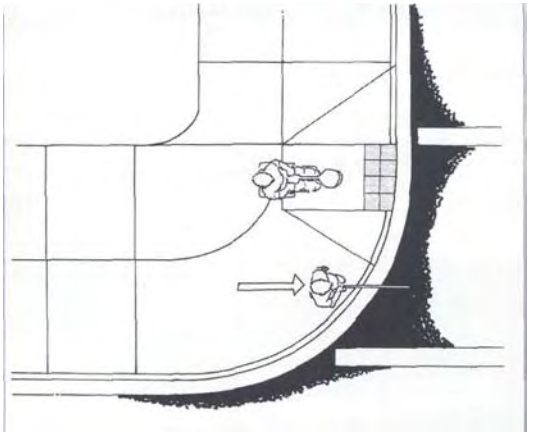


Curb ramp components.

***Curb ramp** types:*

Curb ramp types are usually categorized by their structural design and how they are positioned relative to the sidewalk or street. Selecting a curb ramp design depends on site conditions. Curb ramp types include perpendicular, diagonal, parallel, combination, and depressed corners. Table 1 discussed the advantages and disadvantages of each curb ramp types.

Figure 17

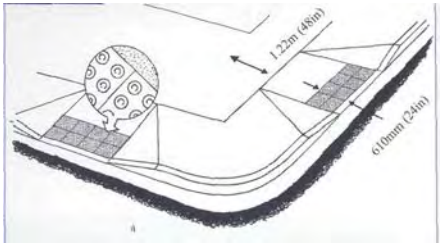


GOOD DESIGN:
When a portion of the curb is included in the crosswalk, it is easier for people with vision impairment to detect the transition between the sidewalk and the street

Table 2: Advantages and disadvantages of curb ramp types

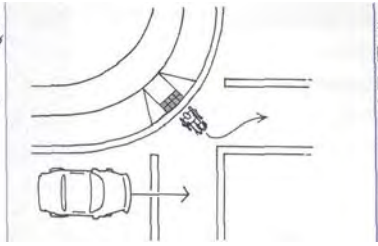
Ramp Type	Advantage to Pedestrian	Disadvantage to Pedestrian
Perpendicular **See Figure 17,18**	1) Ramp aligned with the crosswalk. 2) Straight path of travel on tight radius. 3) Two ramps per corner.	1) May not provide a straight path of travel on larger radius corners.
Diagonal **See Figure 19**	Not recommended	1) Pedestrian with a vision impairment can mistake a diagonal ramp for a perpendicular ramp and unintentionally travel into the intersection because it is not aligned with the crossing direction. 2) May conflict with motorists who are traveling straight or turning if corner radius is small. 3) Directs wheelchair users into the intersections. Requires wheelchair turning at the top and bottom of the ramp. A 1.2 m x 1.2 m (4 ft x 4 ft) bottom landing is required. **(See Figure 19).**
Parallel **See Figure 20, 21, 22**	1) Requires minimal right-of-way. 2) Provides an area to align with the crossing. The bottom landing is contained in the sidewalk and not the street. 3) Allows ramps to be extended to reduce ramp grade. 4) Provides edges on the side of the ramp that are clearly defined for pedestrians with vision impairments.	1) Pedestrians need to negotiate two or more ramp grades (makes it more difficult for wheelchair users). 2) Improper design can result in the accumulation of water or debris on the landing at the bottom of the ramp.
Combined Parallel and Perpendicular **See Figure 23**	1) Does not require turning or maneuvering on the ramp. 2) Ramp aligned perpendicular to the crosswalk. 3) Level maneuvering area at the top and bottom of ramps.	1) Visually impaired pedestrians need to negotiate sidewalk ramps.
Depressed Corners See **Figure** 24, 25	1) Eliminates the need for a curb ramp.	1) Pedestrians with cognitive impairments may have the illusions that the sidewalk and street are unified pedestrian space (i.e., safe). 2) Improper design can allow large vehicles to travel onto the sidewalk to make tight turns which puts the pedestrian at risk. 3) More difficult to detect the boundary between the sidewalk and the street for persons with vision impairments. 4) Service dogs may not distinguish the boundary between the sidewalk and the street and continue walking. 5) The design may encourage motorist to turn faster by traveling onto the sidewalk.

Figure 18



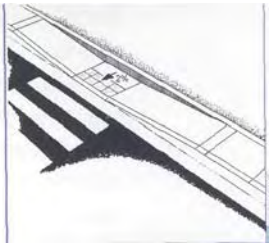
GOOD DESIGN:
A level landing at the top of the ramp of at least 1.2 m (4 ft). A 610 mm (2 ft) strip of detectable warnings must be installed at the bottom of a perpendicular curb ramp.

Figure 19



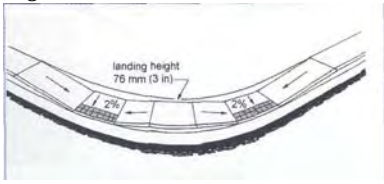
Diagonal curb ramps arc not recommended. However, users must have enough room to maneuver towards the direction of the crosswalk. There must be a 1.2 m x 1.2 m (4 ft x 4 ft) bottom level landing of clear space outside the direction of motor vehicle travel.

Figure 20



Parallel curb ramps won't well on narrow sidewalks but require users continuing on the pathway to negotiate two ramp grades

Figure 21

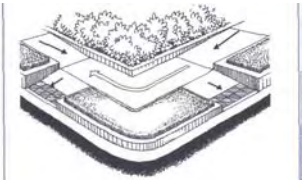


At intersections with narrow sidewalks and wide turning radii, two parallel curb ramps should be considered.

Figure 22

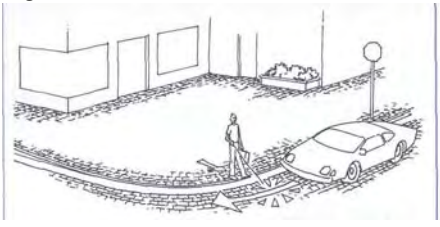
NOT RECOMMENDED

Figure 23



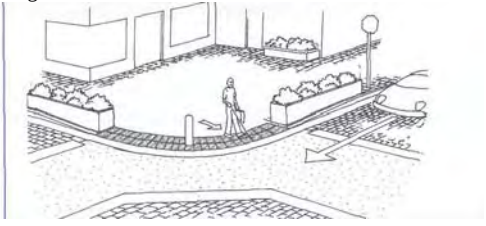
Combined parallel and perpendicular curb ramps lowers the elevation of level landings while bridging the remaining elevation gap.

Figure 24



PROBLEM: Decorative patterns used at depressed corners, such as this brick pattern, create a continuous pathway. People with vision and cognitive impairments have difficulty detecting where the street begins and ends.

Figure 25



Detectable warnings, contracting surface materials, and barrier posts are measures that can be used to convey the transition between the street and sidewalk at depressed corners. This corner would be a good location for accessible signals.

Curb Ramp Specifications:

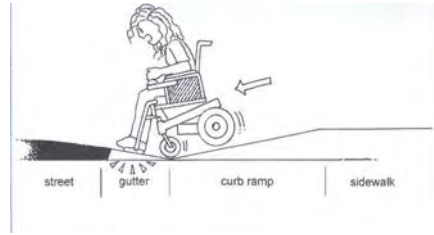
- ***Ramp Grade:*** ADAAG permits a maximum curb ramp slope of 8.3 percent (preferred 7 1 percent to allow for construction tolerance)
- ***Cross slope*** on the ramp may not exceed 2 0 percent.

[1] Minimum ***ramp width*** should be 1.2 m (4 ft) in new construction. In restricted spaces only, the minimum width should not be less than 915 mm (3 ft).

Significant ***changes of grade*** as the pedestrians travel from the down slope of the ramp to the up slope of the gutter can cause wheelchair users to fall forward **(See Figure 26)** and should be 13 percent or less. Counterslope should not exceed 5 percent.

Curb ramp alignment should be perpendicular to the curb face. The ramp needs to be aligned within the crosswalk with a straight path of travel from the top of the ramp to the roadway to the curb ramp on the other side.

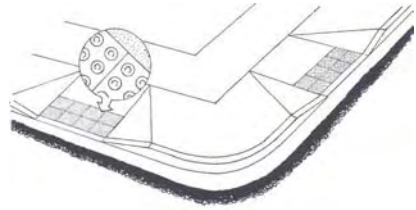
Figure 26



A wheelchair can bottom out at areas of rapid change of grade (greater than 13 percent). The wheelchair can be pitched forward or thrown backwards.

[1] ***Detectable warnings*** **(See Figure 27)** across the lower part of the ramp are required. Ramps make it difficult for pedestrians with vision impairments to detect the transition between the sidewalk and the street. Detectable warnings should have a visual contrast with the adjacent walking surfaces. **(See Section 9)**

Figure 27

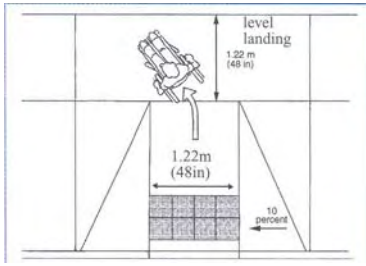


GOOD DESIGN

A 610 mm (2 ft) strip of detectable warnings shall be installed at the bottom of a curb ramp to indicate the transition from the sidewalk to the street.

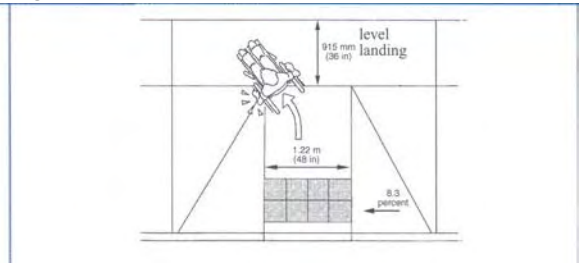
- ***Transition points*** between adjacent curb ramp surfaces should be flush. Even a 13 mm (0.5 in) change in level combined with a change in grade can complicate access for wheelchair users. Curb ramp lips are not allowed by ADAAG.
- ***Sidewalk approach width*** should have a minimum of 1.2 m (4 ft). (See previous discussion in Section 3, Sidewalk Corridors.)
- ***Level landing*** at the top and bottom of the curb ramp should be 1.2 m x 1.2 m (4 ft x 4 ft) and the cross slope should not exceed 2 percent in any direction. This is necessary to allow wheelchair users to maneuver off the ramp

Figure 28



The 1.2 m (4 ft) width of this curb ramp provides sufficient turning space for this wheelchair user. The maximum slope of the flares at this curb ramp should be 10 percent. Measured at the face of the curb.

Figure 29



The 915 mm (3 ft) width of this landing forces this wheelchair user to travel over a portion of the flare to maneuver onto the narrow landing. For this reason, the maximum slope of the flare should not exceed 8.3 percent and should be blended at the top appex. The ramp width should be widened up to 1.2 m (4 ft) to allow for a tighter turn onto the landing.

and onto the path of travel within the pedestrian zone. **(See Figure 28).** If space is limited, the absolute minimum level landing width should not be less than 915 mm (3 ft). **(See Figure 29).** However, in such a case, wheelchair users may have to travel over a portion of the flare in order to move off the ramp onto the path of travel. To compensate, the warping of the slope at the top area of the *flare* should be blended for easier travel across, and the ramp width should not be less than 1.2 m (4 ft). The maximum slope of the flare should not exceed 8.3 percent if the landing is between 0.9m-1.2m(3 ft-4 ft).

Table 2. Ramp length for perpendicular curb ramps based on ramp slope

Change in Elevation	Ramp Length for 7.1 Percent Slope	Ramp Length for 8.3 Percent Slope
203 mm (8 m)	**4.0 m (13.1 ft)**	**3.2 m (10.7 ft)**
178 mm (7 in)	**3.5 m (11.4 ft)**	**2.8 m (9.3 ft)**
152 mm (6 m)	**3.0 m (9.8 ft)**	**2.4 m (7.9 ft)**
127 mm (5 in)	**2.5 m (8.2 ft)**	**2.0 m (6.6 ft)**
101 mm (4 in)	**2.0m (6.5 ft)**	**1.6 m (5.3 ft)**

This table assumes that the sidewalk corridor has a 2 percent slope and that the corner is level. The length is for the ramp only and does not include sidewalk width required for level landing.

Curb ramp length is determined by the vertical height of the curb between the roadway and the sidewalk. Assuming the cross slope of the corridor is constant at 2 percent, the formula for determining ramp length is:

$$\text{ramp length} = \frac{\text{curb height}}{(\text{ramp slope/percent} - \text{sidewalk corridor cross slope/percent})}$$

Table 2 calculates the minimum ramp length required for a 7.1 percent ramp and an 8.3 percent ramp, based on the height of the required vertical change.

Additional good practice curb ramp *design:*

- Align the curb ramp within the marked crosswalk, so there is a straight path of travel to the curb ramp on the other side.
- Provide adequate drainage to prevent the accumulation of water and debris on or at the bottom of the ramp.
- Minimize ramp length by lowering the sidewalk to reduce the curb height. Applicable in areas with narrow sidewalks.

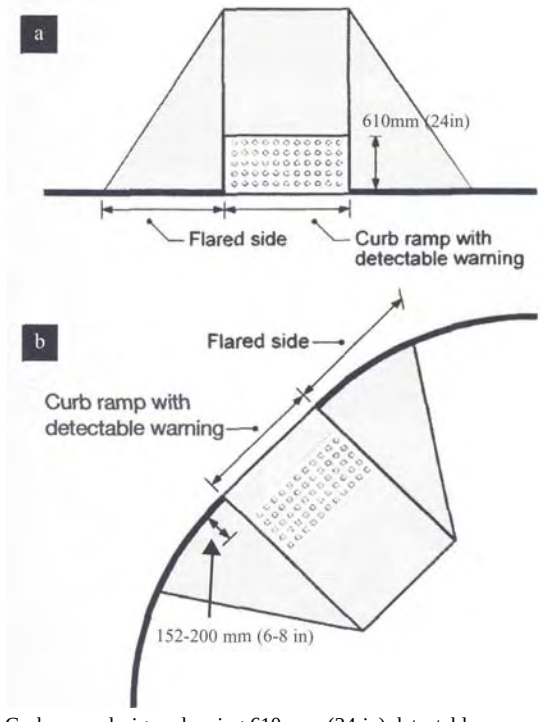
9 Providing Information to Pedestrians:

Pedestrians with vision impairments rely on nonvisual audible and tactile cues to travel. Cues in the environment include the sound of traffic, presence of curb ramps, verbal messages and audible tones in pedestrian signals, and detectable warnings.

To accommodate the information needs of all pedestrians, it is important to provide information in formats that can be assimilated using more than one sense. Pedestrian information includes pedestrian signage, Accessible Pedestrian Signals (APS) - audible tones, verbal messages, and vibrotactile information, and detectable warnings.

Detectable warnings **(See Figure 30)** are a standardized surface feature built in or applied to walking surfaces or other elements to warn visually impaired people of potential hazards.

Figure 30



Curb ramp designs showing 610 mm (24 in) detectable warning (U.S. Access Board-Detectable Warnings: Synthesis).

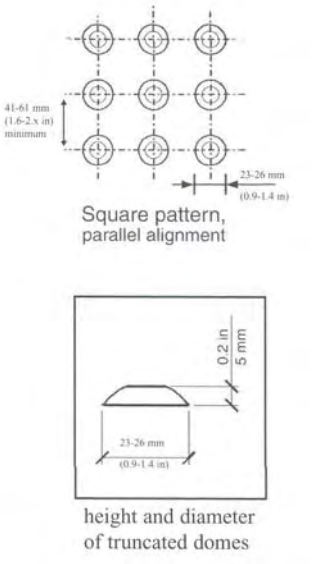
Detectable warnings shall consist of a surface of truncated domes aligned in a square grid pattern **(See Figure 31):**

- Base diameter of 23mm-26 mm (0.9in-1.4in).
- Top diameter of 50-60 percent of base diameter.
- Height of 5 mm (0.2 in).
- Center-to-center spacing of 41 mm-61 mm (1.6 in-2.4 in).
- Visual contrast of light-on-dark or dark-on-light with adjacent walking surfaces.

ADAAG Appendix, Section A, 29.2 recommends that the materials used provide a contrast of at least 70 percent.

Contrast = [(Bl- B 2) / Bl] x 100
B1 = light reflectance value of lighter area (LRV)
B2 = light reflectance value of darker area (LRV)

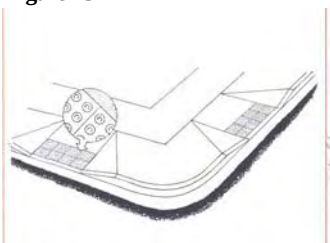
Figure 31



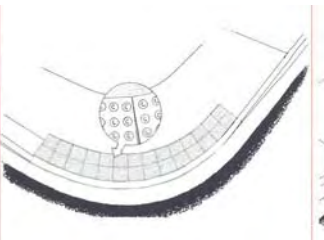
Truncated domes aligned so that wheels may pass between them arc easier for some wheelchair users to negotiate (Bentzen, Barlow, & Tabor, 2000.)

Detectable Warning Design Applications

Figure 32

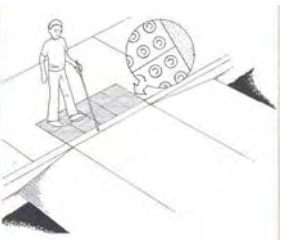


A 610 mm (2 ft) strip of detectable warnings shall be installed at the bottom of a curb ramp to indicate the transition from the sidewalk to the street.



A 610 mm (2 ft) strip of warnings shall be installed at the border of a depressed corner to identify the transition between the sidewalk and the street.

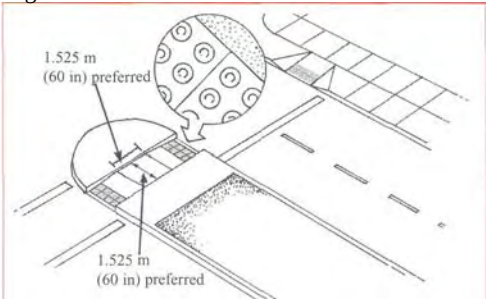
Figure 34



A 610 mm (2 ft) strip of warnings shall be installed at the edge of a raised crosswalk to identify the transition between the sidewalk and street.

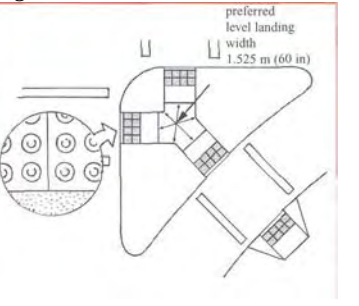
Detectable warnings shall be placed at the bottom of curb ramps **(See Figure 32)** and other locations such as depressed corners **(See Figure 33),** raised crosswalks and raised intersections **(See Figure 34),** borders of medians and islands **(See Figures 35 and 36),** and at the edge of transit platforms and where railroad tracks cross the sidewalk to warn people with visual impairments of potential hazards. Detectable warnings must be installed across the full width of ramps, and 610 mm (2 ft) in length up the ramp. The detectable warning

Figure 35



A ramped median should have a level landing that is 1.5 m (5 ft) level landing.

Figure 36

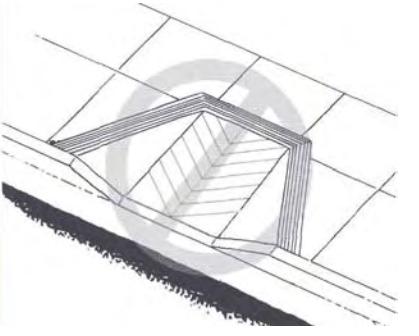


Ramped islands shall include detectable warnings and have a level landing.

should be set back 152 mm-200 mm (6 in-8 in) from the bottom of the curb **(refer to Figure 30 b above).** This allows wheelchair users to gain momentum before traveling over the truncated domes. It provides pedestrians with vision impairments additional time to react to the detectable warning or advanced warning before they reach the street. Smooth surfaces should be provided adjoining the detectable warning to maximize contrast. Bricks and other textured surfaces affect the ability of the pedestrian to detect the truncated dome warnings.

Grooves do not provide a detectable warning and pedestrians can easily confuse them with sidewalk expansion joints or cracks in the sidewalk **(See Figure 37).** They are not allowed as a detectable warning by ADAAG.

Figure 37



Potential Problem:
Grooves are not the equivalent of a detectable warning because they are not detectable underfoot.

Accessible Pedestrian Signals:

The implementing regulation under Title II of the ADA requires that all facilities constructed or altered after January 1992 be designed and constructed to be accessible to people with disabilities.

Audible tones and speech messages can provide standard information about the status of the signal cycle (WALK, DON'T WALK). Information on the location, direction of travel, and the name of the street to be crossed can also be included. Infrared or Light Emitting Diodes (LED) transmitters can send speech messages to personal receivers. In addition to providing information in multiple formats, the physical design, placement, and location of the pedestrian signal device need to be accessible to pedestrians with vision and mobility impairments.

Accessible Pedestrian Signal (APS)

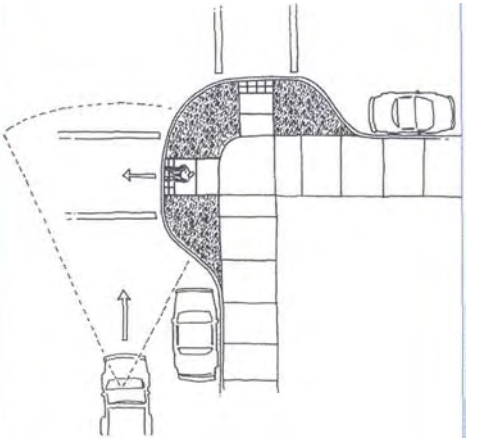
- Locate the push button as close as possible to the curb ramp without interfering with clear space.
- The device should be operated from a level landing.
- Mount the device no higher than 1.0 m (3.5 ft) above the sidewalk.
- The control face of the button shall be parallel to the direction of the marked crosswalk.
- One button per pole, each separated by 3 m (10 ft) is preferred.
- Place the device no closer than 760 mm (2.5 ft) to the curb, and no more than 1.5 m (5 ft) from the crosswalk.
- The button should be a minimum of 50 mm (2 in) in diameter to be easily operated by pedestrians with limited hand function. Avoid activation buttons that require conductivity (unusable by pedestrians with prosthetic hands).
- The force to actuate the button should require a minimum amount of force no greater than 15.5 N or 3 lbf to activate.

(For more information on Accessible Pedestrian Signals visit the Web sites at http://www.mutcd.gov, www.access-board.gov and www.accessforblind.org)

Pedestrian Crossings:

Designing an effective pedestrian crossing involves the correct layout of pedestrian elements including: information (signs, accessible pedestrian/traffic signals, markings), turning radius, visible crosswalks (including raised crosswalks), adequate crossing times, medians **(See Figure 35),** refuge islands, corner island (See **Figure 36),** curb ramps with detectable warnings, and curb extensions **(See Figure 38).** It also involves careful consideration of adequate sight lines, traffic patterns, and traffic signal phasing. Other techniques such as restrictions on right turns, pedestrian lead times, and traffic calming measures will benefit all pedestrians. Regulations that prohibit parking at the corner can also improve blocked sight lines.

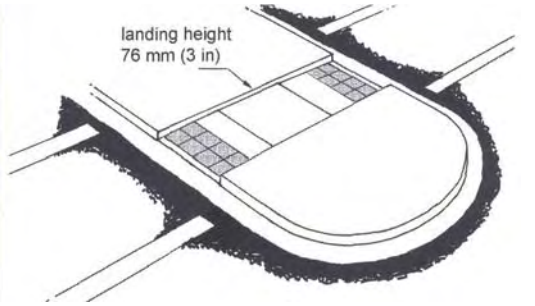
Figure 38



Curb extensions improve visibility between pedestrians and motorists and make it easier to install perpendicular curb ramps with level landing. Regulations that prohibit parking at the corner can also improve blocked sight lines

Medians: Medians generally reduce crossing exposure and allow pedestrians to negotiate vehicle traffic one direction at a time. Medians should be curbed or barrier medians to physically separate pedestrians and motorists rather than painted flush. Furthermore, all medians should be accessible to pedestrians. The nose of the median should be extended beyond the crosswalk (See **Figure** 39). If a cut through **(See Figure 40)** is provided, it should be at least 1.8 m (6 ft) long and 1.5 m (5 ft) wide. This allows 2 wheelchair users to pass each other. In addition the edges of the cut through must be perpendicular to the street being crossed.

Figure 39



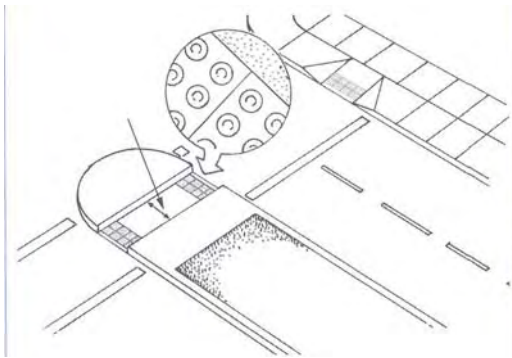
GOOD DESIGN: The height of this median does not exceed 76 mm (3 in). This design allows for the construction of shorter curb ramps and a longer level landing.

Ramped medians **(See Figure 35),** should have a curb ramp at either end and a level landing at least 1.5 m x 1.5 m (5 ft x 5 ft). For all medians, cut through or ramped, a 0.6 m (2 ft) strip of detectable warnings should be located at the entrance and exit.

Corner Island: The design guidance for the island itself is similar to those of the median. The island should be raised and designed with curb ramps **(See Figure 36)** or a pedestrian cut-through **(See Figure 41).** If a cut-through design is selected, it should provide at least 1.5 m (5 ft) of clear space in all directions. In addition, a 0.6 m (2 ft) strip of detectable warning should be included at every exit point on the island.

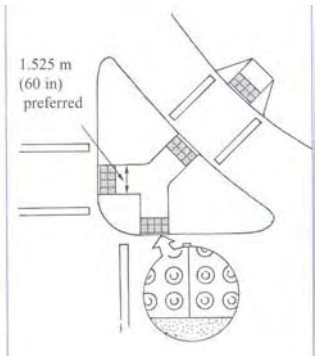
Ramped Corner Island **(See Figure 36):** The design should include curb ramps that are at least 1.5 m (5 ft) wide (preferred), 1.5 m x 1.5 m (5 ft x 5 ft) level landing and detectable warnings.

Figure 40



Cut-through medians should be at least 1.525 m (60 in) wide and should include 610 mm (24 in) strips of detectable warnings at both ends.

Figure 41



Corner islands with cut-throughs should be at least 1.525 m (60 in) wide at all locations and include 610 mm (24 in) strips of detectable warnings

CITIES INELIGIBLE FOR CRP DUE TO POPULATION LIMITATION

Tyler	98335	Tyler, TX	Urban	4
Lewisville	97462	Dallas-Fort Worth-Arlington, TX	Urban	3
College Station	96000	College Station-Bryan, TX	Urban	8
San Angelo	94812	San Angelo, TX	Urban	12
Pearland	94098	Land, TX	Urban	6
Allen	87213	Dallas-Fort Worth-Arlington, TX	Urban	3
League City	86136	Land, TX	Urban	6
Longview	81435	Longview, TX	Urban	4
Sugar Land	80755	Land, TX	Urban	6
Mission	78707	McAllen-Edinburg-Mission, TX	Urban	11
Edinburg	77415	McAllen-Edinburg-Mission, TX	Urban	11
Bryan	77139	College Station-Bryan, TX	Urban	8
Baytown	73043	Land, TX	Urban	6
Pharr	71634	McAllen-Edinburg-Mission, TX	Urban	11
Missouri City	68244	Land, TX	Urban	6
Temple	67669	Killeen-Temple, TX	Urban	8
Atascocita	66879	Land, TX	Urban	6
Flower Mound	66523	Dallas-Fort Worth-Arlington, TX	Urban	3
Harlingen	65296	Brownsville-Harlingen, TX	Urban	11
North Richland Hills	64677	Fort Worth-Arlington, TX	Urban	3
Victoria	63571	Victoria, TX	Urban	10
New Braunfels	59620	San Antonio-New Braunfels, TX	Urban	9
Conroe	59429	Land, TX	Urban	6
Mansfield	57529	Fort Worth-Arlington, TX	Urban	3
Rowlett	56856	Dallas-Fort Worth-Arlington, TX	Urban	3
Spring	55458	Land, TX	Urban	6
Cedar Park	54874	Austin-Round Rock, TX	Urban	7
Port Arthur	54193	Beaumont-Port Arthur, TX	Urban	5
Euless	52127	Fort Worth-Arlington, TX	Urban	3
Georgetown	50380	Austin-Round Rock, TX	Urban	7
Pflugerville	50127	Austin-Round Rock, TX	Urban	7
DeSoto	50014	Dallas-Fort Worth-Arlington, TX	Urban	3
San Marcos	48291	Austin-Round Rock, TX	Urban	7
Galveston	48178	Land, TX	Urban	6
Bedford	47727	Fort Worth-Arlington, TX	Urban	3
Grapevine	47688	Dallas-Fort Worth-Arlington, TX	Urban	3
Cedar Hill	45505	Dallas-Fort Worth-Arlington, TX	Urban	3
Texas City	45363	Land, TX	Urban	6
Haltom City	42906	Fort Worth-Arlington, TX	Urban	3
Wylie	42384	Dallas-Fort Worth-Arlington, TX	Urban	3
Keller	40872	Fort Worth-Arlington, TX	Urban	3
Coppell	39551	Dallas-Fort Worth-Arlington, TX	Urban	3
Duncanville	39000	Dallas-Fort Worth-Arlington, TX	Urban	3
Rockwall	38958	Dallas-Fort Worth-Arlington, TX	Urban	3
Channelview	38919	Land, TX	Urban	6
Sherman	38805	Sherman-Denison, TX	Urban	3

Burleson	38165	Fort Worth-Arlington, TX	Urban	3
Hurst	37822	Fort Worth-Arlington, TX	Urban	3
The Colony	37614	Dallas-Fort Worth-Arlington, TX	Urban	3
Lancaster	37087	Dallas-Fort Worth-Arlington, TX	Urban	3
Texarkana	36851	Texarkana, TX-AR	Urban	4
Friendswood	36375	Land, TX	Urban	6
Weslaco	36273	McAllen-Edinburg-Mission, TX	Urban	11
Mission Bend	36072	Land, TX	Urban	6
San Juan	34556	McAllen-Edinburg-Mission, TX	Urban	11
La Porte	34127	Land, TX	Urban	6
Schertz	33758	San Antonio-New Braunfels, TX	Urban	9
Fort Hood	32902	Killeen-Temple, TX	Urban	8
Copperas Cove	32869	Killeen-Temple, TX	Urban	8
Deer Park	32517	Land, TX	Urban	6
Socorro	32227	El Paso, TX	Urban	13
Rosenberg	31908	Land, TX	Urban	6
Waxahachie	30412	Dallas-Fort Worth-Arlington, TX	Urban	3
Cleburne	29677	Fort Worth-Arlington, TX	Urban	3
Farmers Branch	29405	Dallas-Fort Worth-Arlington, TX	Urban	3
Kyle	29396	Austin-Round Rock, TX	Urban	7
Leander	28281	Austin-Round Rock, TX	Urban	7
Little Elm	27966	Dallas-Fort Worth-Arlington, TX	Urban	3
Harker Heights	27163	Killeen-Temple, TX	Urban	8
Lake Jackson	27107	Land, TX	Urban	6
Southlake	27006	Fort Worth-Arlington, TX	Urban	3
Weatherford	25971	Fort Worth-Arlington, TX	Urban	3
Seguin	25848	San Antonio-New Braunfels, TX	Urban	9
Greenville	25729	Dallas-Fort Worth-Arlington, TX	Urban	3
Alvin	24708	Land, TX	Urban	6
San Benito	24347	Brownsville-Harlingen, TX	Urban	11
Balch Springs	24294	Dallas-Fort Worth-Arlington, TX	Urban	3
Cloverleaf	24150	Land, TX	Urban	6
Timberwood Park	23952	San Antonio-New Braunfels, TX	Urban	9
Brushy Creek	23908	Austin-Round Rock, TX	Urban	7
Watauga	23798	Fort Worth-Arlington, TX	Urban	3
Colleyville	23465	Fort Worth-Arlington, TX	Urban	3
University Park	23460	Dallas-Fort Worth-Arlington, TX	Urban	3
Denison	22697	Sherman-Denison, TX	Urban	3
West Odessa	22156	Odessa, TX	Urban	12
Benbrook	21655	Fort Worth-Arlington, TX	Urban	3
Sachse	20930	Dallas-Fort Worth-Arlington, TX	Urban	3
Cibolo	20564	San Antonio-New Braunfels, TX	Urban	9
Saginaw	20347	Fort Worth-Arlington, TX	Urban	3
Corinth	20126	Dallas-Fort Worth-Arlington, TX	Urban	3
Fresno	19467	Land, TX	Urban	6
Converse	19023	San Antonio-New Braunfels, TX	Urban	9
Dickinson	18879	Land, TX	Urban	6

Belton	18855	Killeen-Temple, TX	Urban	8
Universal	18844	San Antonio-New Braunfels, TX	Urban	9
Midlothian	18666	Dallas-Fort Worth-Arlington, TX	Urban	3
Alamo	18658	McAllen-Edinburg-Mission, TX	Urban	11
Murphy	18412	Dallas-Fort Worth-Arlington, TX	Urban	3
Cinco Ranch	17863	Land, TX	Urban	6
Stafford	17840	Land, TX	Urban	6
Horizon City	17736	El Paso, TX	Urban	13
Nederland	17530	Beaumont-Port Arthur, TX	Urban	5
Bellaire	17223	Land, TX	Urban	6
South Houston	17157	Land, TX	Urban	6
White Settlement	16372	Fort Worth-Arlington, TX	Urban	3
New Territory	16188	Land, TX	Urban	6
Donna	16010	McAllen-Edinburg-Mission, TX	Urban	11
Mercedes	15999	McAllen-Edinburg-Mission, TX	Urban	11
Groves	15954	Beaumont-Port Arthur, TX	Urban	5
Pecan Grove	15769	Land, TX	Urban	6
Highland Village	15364	Dallas-Fort Worth-Arlington, TX	Urban	3
Portland	15289	Corpus Christi, TX	Urban	10
Humble	15286	Land, TX	Urban	6
Seagoville	15099	Dallas-Fort Worth-Arlington, TX	Urban	3
West University Place	15033	Land, TX	Urban	6

Simon Malls in Texas

Name of Mall	Location	Gross Leasable Square Feet
The Galleria	Houston	2,237,000
Grapevine Mills	Grapevine	1,777,000
North East Mall	Hurst	1,669,736
Barton Creek Square	Austin	1,430,000
Galleria Dallas	Dallas	1,425,000
Cielo Vista	El Paso	1,242,000
La Plaza Mall	McAllen	1,215,000
The Domain	Austin	1,209,000
Katy Mills	Katy	1,201,104
Ingram Park Mall	San Antonio	1,125,000
Lakeline Mall	Cedar Park	1,098,000
Firewheel Town Center	Garland	1,000,000
San Marcos Premium Outlets	San Marcos	731,000
Brodway Square	Tyler	628,000
Midland Park Mall	Midland	615,000
Rio Grande Valley Premium Outl	Mercedes	604,000
Houston Premium Outlets	Cypress	542,000
Round Rock Premium Outlets	Round Rock	488,689
The Shops at Clearfork	Fort Worth	473,769
Allen Premium Outlets	Allen	442,000
Grand Prairie Premium Outlets	Grand Prairie	417,415
Tanger Outlets Houston	Texas City	352,705
University Park Village	Fort Worth	173,358

data from http://business.simon.com/

(55) Carpenter, Alyssa

October 10, 2016

Sharon Gamble
TDHCA
PO Box 13941
Austin, TX 78711

RE: 2017 Draft TDHCA Rules and QAP Comments

Dear Ms. Gamble:

Thank you for the opportunity to provide comment on the 2017 TDHCA Draft MF Rules and QAP. Please consider the following comments.

10.101 Undesirable Site Features

The proposed language states the following:
The distances identified in subparagraphs (A) -(J) of this paragraph are intended primarily to address sensory concerns such as noise or smell, social factors making it inappropriate to locate residential housing in proximity to certain businesses.

If this is the case, then there should be an avenue for the applicant to prove existing mitigation or provide mitigation of any sensory concerns for a site that would otherwise be ineligible within such distances. For example, a site located 1.99 miles from an oil refinery is extremely unlikely to have any sensory noise or smell factors that would render it undesirable and ineligible.

This section further states the following:
The minimum distances noted assume that the land between the proposed Development Site and the particular undesirable feature has no significant intervening barriers or obstacles such as waterways or bodies of water, major high speed roads, park land, or walls, such as noise suppression walls adjacent to railways or high-ways. Where there is a local ordinance that regulates the proximity of such undesirable feature to a multifamily development that differs from the minimum distances noted below, documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application.

If there are significant intervening barriers between a site and an undesirable feature, what is the process for submission and proof that those barriers provide mitigation of any sensory concerns? Are these board determinations that must be submitted at a certain time in the application process?

11.9 Opportunity Index

The proposed rule states the following with regard to qualifying census tracts:
The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile, without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. and, (1 point)

“Highway” is used here; however, per Merriam Webster, a “highway” is defined as a “public way” and could therefore refer to any local street. Additionally, Wikipedia states that “A highway is any public road or other public way on land. It is used for major roads, but also includes other

public roads and public tracks: It is *not* an equivalent term to controlled-access highway, or a translation for *autobahn*, *autoroute*, etc."

As written, "highway" could be defined as any public way, which would not make sense considering nearly all census tracts have at least one boundary that is public street of some size. I would assume that staff meant for this item to refer to a significant road like a major high speed thoroughfare with some specified number of lanes or speed limit or a controlled access highway like a freeway or toll road with exits.

I propose that "highway" be changed to "controlled access highway" as this is more likely to create "non-contiguous" areas on either side.

11.9 Educational Quality

As written, Supportive Housing development are eligible for the 5 point option, 2 out of 3 points for the 3 point option, and eligible for the 1 point option as well as any of the additional four 1-point additions. This is a departure from the 2016 rules and also contradicts the scoring matrix table the was published in the board book that states "Supportive Housing can score up to two points." I am assuming this is an oversight and this language should be revised to be consistent with staff's intent.

11.9 Underserved Area

Subsections C, D, and E have inconsistent language with regard to whether there is a development in the census tract that is currently active. Please make this language consistent across all subsections to consider only developments that are subject to an active tax credit LURA and currently being monitored by TDHCA.

11.9 Urban Core

It was my understanding from staff that the Urban Core scoring item was added to the QAP as a way to "balance out" the Education Quality scoring item between suburban areas with higher performing schools and urban areas with lower performing schools. If staff proposes the deletion of the Educational Quality scoring item or the relocation of the scoring item such that it is not a standalone point item, then deletion or similar relocation of the Urban Core scoring item should also be considered.

Regards,

Alyssa Carpenter

(56) Lucas and Associates, LP

LUCAS & ASSOCIATES, L.P.

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October 13, 2016

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

Attn: Ms. Sharon Gamble

Subject: 2017 QAP Comments

Dear Ms. Gamble:

Lucas & Associates (LAI) would to support the draft 2017 Qualified Allocation Plan (QAP) or the New Proposed Rule at 10 TAC Chapter 11 with one reservation. Specifically, a late revision related to Chapter 11.9(c)(6) regarding underserved points included as part of the posting to the Texas Register. We support the original proposed revision to item (E) of this section included in the Board Book for the TDHCA Board meeting on September 8, 2016 as:

ITEM

(E) A census tract within the boundaries of an incorporated area and all contiguous census tracts for which neither the census tract in which the Development is located nor the contiguous census tracts have received an award or HTC allocation within the past 15 years and continues to appear on the Department's inventory (5 points).

The public comment posted in the Texas Register added the following restriction as follows "This item will apply to cities with a population of 500,000 or more, and will not apply in the At-Risk set-Aside."

RECOMMENDATION

We believe this item should be applicable to smaller cities as follows: "This item will apply to cities with a population of 200,000 or more and will not apply in the At Risk set-Aside".

We feel that overall this is an excellent change that will help in the dispersion and deconcentration of new tax credit developments that the Department has worked so hard to achieve in recent annual revision efforts of QAP. While simple, the new requirement helps promote the development of new 9% developments away from recent previous developments and locate them in areas that have not benefitted this type of affordable housing in the past. However, we feel the added restriction to cities with a population of 500,000 or more is too restrictive and should be reduced to at least 200,000.

As a result of lowering the eligibility to 200,000 cities that would be added would include Arlington, Corpus Christi, Plano, Laredo, Lubbock, Garland, and Irving for which dispersion and deconcentration would be helpful to these communities. For example Corpus Christi is developing a concentration of tax credit projects in the Calallen area. The City Council person representing the Calallen area has asked why can't the 9% tax credit projects be disbursed in other areas of Corpus. Applying this provision to Corpus would help do just that.

This could be applicable for even smaller cities. We are just not familiar with their situation.

If you have any questions or would like to contact me please do.

Sincerely,

Raymond H. Lucas
President or the General Partner

(57) Madhouse Development Services

madhouse
DEVELOPMENT SERVICES

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

RE: Public Comment on the QAP Draft

1. Please clarify if townhome is still considered an eligible type of development.

2. We would suggest the following wording regarding 11.9 (c)(4)(B)(i)(IX): The Development Site is located 3 miles of a concentrated retail shopping center of at least **500,000** square feet or that includes at least four big-box national retail stores.

3. Please provide guidance on what constitutes "big box" retail.

4. Regarding 11.9(c)(6)(E), we respectfully request that the language regarding cities with a population over 500,000 be removed from the proposed draft, or at a minimum reduced to 100,000. The major metro areas have already been incentivized through points for the Urban Core. By also allowing only cities with populations over 500,000 to qualify for the max Underserved Points you will be effectively eliminating the suburban areas from competitiveness and will further the concentration of developments in a small number of census tracts.

5. We agree with TAAHP's comment on item 11.9(c)(6)(F) with the exception of the language regarding cities with a population of 500,000 or more. We would suggest this language be removed, or at a minimum reduced to 100,000. Again, cities with populations with over 500,000 have already been incentivized through the points for Urban Core. Providing additional points for only these areas will further concentrate developments in a small number of census tracts.

6. What constitutes an **accessible route**?
   - -Assuming ramps are required – is there some degree of flexibility in their design given the fact most Cities have been installing handicap ramps on their streets over the span of time and their designs have varied accordingly over that time span.
   - -Are sidewalks required – in some cases, cities have installed handicap ramps at street intersections but the private lots may not have added sidewalks yet. Does the lack of a sidewalk disqualify the route even though there are ramps?
   - -Street crossings – in some cases one would have to cross a street to get to the accessible route. Are there any required elements needed to qualify the cross as accessible such as a cross walk? Can a crossing occur mid-street without a cross walk? Can a crossing route begin by going down a drive way and entering the street from the drive's apron though it isn't technically a handicap ramp?

7. What constitutes an **accessible playground**?
   - -Does it simply mean having an accessible route into or up to the playground or does it need to have some play equipment that is specifically designed for a handicapped person?

8. How is **distance measured**?
   - -I assume the playground's distance away is measured as a crow flies from the nearest point of the proposed development site to the playground.
   - -What is the point of measurement for the playground? Is it the edge of the play area or the edge of the park in which the playground is located?
   - - I assume there is no distance requirement for the accessible route as it may be longer than the ½ mile requirement given the winding of streets etc.

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October 14, 2016

Texas Department of Housing and
Community Affairs
221 East 11th Street
Austin, Texas 78701-2410
Attn.: TDHCA Board Members
TDHCA Staff

Re: Comments to Proposed 2017 Multifamily Program Rules - Qualified Allocation Plan (collectively the "QAP") Posted in the Board Materials for the Texas Department of Housing and Community Affairs ("TDHCA") September 8, 2016 Board Meeting

Ladies and Gentlemen,

We appreciate the opportunity to provide comments to the proposed 2017 QAP.

We have reviewed the proposed QAP, attended various QAP monthly discussions in Austin, the July 15, 2016 TDHCA QAP round table meeting in Austin, and attended online the September 8, 2016 THDCA Board meeting.

We have participated in developing the TAAHP consensus comments to the QAP and we support those comments.

With respect to the proposed 2017 QAP, we have the following questions / comments that we would like to bring to your attention:

§10.101(a)(2) Undesirable Site Features:
Please see attached mark-up of §10.101(a)(2) Undesirable Site Features. We suggest measuring distances from the nearest residential building of the Development Site to the nearest undesirable feature (rather than from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the undesirable feature) because if the Development site is large, the residential building could actually be farther away from the undesirable feature than residential buildings on a small site that meet the boundary to boundary distances.

We also request that proximity to railroads not be considered an undesirable site feature if the Development will provide adequate noise attenuation inside the residential units. There are many good sites that are near or next to railroads that should not be excluded. Note that there are many High Opportunity neighborhoods that back up to railroads (e.g. West University Place in Houston).

§10.101(a)(3) Undesirable Neighborhood Features:
We request that this entire section be deleted especially in light of the current status of the remediation plan. We also note that data regarding school performance and crime fluctuate significantly from year to year. Because of this fluctuation a site can score well under the school performance and/or crime criteria one year and not well the following year and then well again in the third year and so on. It does not seem reasonable to use criteria such that a site can score well one year but not the next. If Staff and the Board will not agree to delete §10.101(a)(3) Undesirable Neighborhood Features, then we request that you consider the comments noted on TAAHP's mark-up.

§10.101(b)(4)(A) Mandatory Development Amenities:
Item (A) of Mandatory Development Amenities requires RG-6/U COAX or better. The "U" was added a few QAP's ago, but the addition was never explained or defined. Please delete the "U" or let us know your understanding of its meaning as there does not seem to be an industry standard definition.

§10.101(b)(4)(D) Mandatory Development Amenities:
Item (D) of Mandatory Development Amenities requires that all developments have solar screens on all windows. Formerly this subsection required insect screens on all operable windows. The QAP provides points for green initiatives and solar screens should continue to be a point item under the green initiatives point category. Solar screens will add construction costs to a project, limit the amount of ambient light in units, and negatively impact the appearance of developments. Energy efficient windows are a much better design option for appearance, light and energy efficiency. We request that the solar screens be deleted as a mandatory development amenity.

§10.101(b)(5)(C) Common Amenities:
We suggest revising the following subsections to read as follows:
(xv) Service provider office in addition to leasing offices or a desk for service provider in leasing office;
(xxxii) Porte-cochere (1 point) [delete the limitation to just Elderly Developments].
(xxxiii) We also suggest revising / adding the following options to subsection (I) Limited Green Amenities of subsection (xxxiii) Green Building Features:
(-p-) permanent shading devices for windows with solar orientation (may include solar screens, permanent awnings, black-out shades, fixed overhangs, etc.);
(-w-) no carpet in main living area of all units;
(-x-) locate HVAC ducts within thermal envelope:
(-y-) label all storm drains and storm inlets on the development site to discourage dumping of pollutants.

§10.101(b)(7) Tenant Supportive Services:
We request that you delete the following sentence from the introductory paragraph of Tenant Supportive Services: "In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider." On-site personnel can be and are qualified to provide many of the listed tenant supportive services and not allowing existing personnel to provide such services just increases operating costs unnecessarily.

§10.201(1)(A) General Requirements:
The new language in the second to last sentence of §10.201(1)(A) provides that the "deficiency period for curing fee errors will be three business days and may not be extended." We request

that you delete "and may not be extended." Our thought is that it is better to address fees on a case by case basis, rather than provide a complete prohibition.

§10.201(7)(B) Administrative Deficiencies:
We request changing the period to cure a deficiency from three days back to five days. While most deficiencies can be cured quickly, applicants have no idea when a deficiency will appear via email. Applicants may be out their office on business and may not be in a position to respond immediately. Five days is a reasonable amount of time and provides a cushion, if an applicant cannot turn to the response immediately.

§10.202(1)(N) Ineligible Applicants – Dissemination of Misinformation:
The 2016 Multi-Family rules (and prior years) have had a §10.202(1)(N) that prohibited Applicants from disseminating misinformation about affordable housing and the persons it serves or about a competing Applicant. This provision addressed specific problems of this nature that occurred in a prior application cycle. We believe it is a good idea to continue to include this section in the 2017 rules.

§10.203 Public Notifications:
The last sentence of the introductory paragraph of §10.203 Public Notifications has been revised to require that "should a change in elected official occur between the submission of a pre-application and the submission of an Application, Applicants are required to notify the newly elected (or appointed) official within fourteen (14) days of when they take office. We request that this change not be made. It is very difficult to keep track of newly elected or appointed officials, especially with respect to school districts and school superintendents. The 14 day period creates a trap for Applicants that are trying to keep up with many different moving pieces. Under prior rules Applicants have had until the date of full application to notify newly elected / appointed officials.

§10.204(13) Required Documentation for Application Submission – Previous Participation:
As reworded, this provision now seems to require that all Affiliates of a Development Owner complete the previous participation information for each Application. The term Affiliate is broadly defined to include, among other things, every entity that is under common control. Therefore, all entities that are under common control with the Development Owner will need to complete the previous participation information regardless of whether such entities have any interest in the Development Owner. This could require a Developer to provide previous participation information for every single development in which the Developer is involved in Texas and other states. We request that this provision be worded as it was worded in the 2016 rules or limited to Affiliates that have an ownership interest in the Development Owner.

§10.204(16) Required Documentation for Application Submission – Section 811 Project Rental Assistance Program:
We request that this §10.204(13) be deleted in its entirety and that requirements relating to Section 811 be a point category in the QAP as it was in 2016. If you will not delete Section 811 as a threshold requirement, then we request that you make the changes shown on the attached mark-up. It is not appropriate to require Applicants to put Section 811 units in their existing projects as this provision appears to require. Applicants should have the option to add Section 811 units into their existing projects or in the new Development for which the Application is being submitted. Remember that while Developers may control developments through their general partnership interests, Developers have different investors that own the Developments and those investors may not permit adding Section 811 units to existing projects.

§10.901(12) Fee Schedule – Extension Fees:
Adding Construction Status Reports into the category requiring a $2,500 extension fee seems extremely excessive. We request that Construction Status Reports be removed from this category.

§10.901(12) Fee Schedule – Amendment Fees:
A new sentence has been added to this Section that provides "Amendment fees will increase by $500 for each subsequent request, regardless of whether the first request was non-material and did not require a fee." We request that this new fee increase be deleted. If it is not deleted please clarify how it will work. We assume that multiple amendments in one request will only incur one fee.

§11.6(3)(C) Competitive HTC Allocation Process – Award Recommendation Methodology:
Why has the last sentence been deleted from clause (i)? Will the Department continue to calculate the maximum percentage in accordance with Texas Gov't Code, §2306.6711(h) and publish such percentages on its website as provided in the 2016 QAP?
Also, there is a word missing from clause (ii). Should clause (ii) provide "…the Board shall allocate…" in the second line?

§11.7 Tie Breaker Factors:
We request that the tie breakers consist of the following in the following order:
(i) proximity to Urban Core (except At Risk)
(ii) highest score on opportunity index
(iii) most amenities on opportunity index
(iv) average rating for all schools
(v) distance to other tax credit projects

§11.8(b)(1) Pre-Application Threshold Criteria:
We request that you delete new requirement in clause (I) to disclose any Undesirable Neighborhood Characteristics under §10.101(a)(4) in the HTC pre-application. Developers need more time to investigate and identify Undesirable Neighborhood Characteristics than the pre-application deadline will allow.

§11.9(c)(4) Opportunity Index:
We believe that using the uniform service region to determine the highest quartiles could have a negative impact on rural areas. Therefore, we suggest that rural developments not be required to meet the criteria set out in Clause A (i) and (ii).
Clause (B)(i)(I): What is meant by "accessible route" in this context. If you mean drivable rather than as the crow flies, please so clarify.
Clause (B)(i)(II): Same comment re "accessible route." Also we suggest deleting the qualification "to employment and basic services" because we are not sure that the qualification is necessary and more likely will only serve to create debates over whether or not the public transportation provides service to employment and basic services in a direct or sufficient enough method.
Clause (B)(i)(IX): We request that this point category relating to health care facilities be the same for Urban and Rural Areas and be worded in both sections as follows: "The Development is located within ___ miles of a health related facility, such as a full service hospital, community health center, minor emergency center, emergency room or urgent care facility. Also note that the roman numeral numbering in these subclauses is not in numerical order.

Clause (B)(i)(V): provides for retail shopping of at least 1 million square feet or that includes 4 big-box national retail stores. How is the 1 million square feet to be measured and what source / proof information will be acceptable? What do you consider a "big-box national retail store?" Four seems excessive. Even large urban shopping centers rarely have that many big-box national retail stores (depending on how you are using the term).
Clause (B)(i)(VII): we request that you replace the requirement that museums be government sponsored with the requirement that they be open to the public. There very good and reputable privately funded museums such as the Menil in Houston.
Clause (B)(ii)(II): See comment for Clause (B)(i)(IX) above regarding health care facilities.
Clauses (B)(ii)(V)-(VIII): W request that the distances be increased such that they are two miles longer than the corresponding point category for Urban areas.

§11.9(c)(5) Educational Quality:
We request that the Educational Quality point category be deleted as a stand alone point category and, instead, be added as an additional optional point category under Section 11.9(c)(4)(B)(i) and (ii) Opportunity Index. With one point if only one of the elementary, middle, or high school achieves the desired rating, two points if two of such schools achieve the desired rating, and three points if all three of such schools achieve the desired rating.

In the event Educational Quality stays in its proposed format, we request that the rating needed to obtain 1 point for only an elementary school (Section 11.9(c)(5)(D)) use the same criteria for points that the other subcategories use (Sections 11.9(c)(5)(A-C)). It doesn't make sense that an elementary school has to have an Index 1 score within the top quartile of the entire state, while a middle or high school has to have an Index 1 score at the lower of the score for the Education Service Center region or the statewide score in order to qualify for 1 point. All categories for Educational Quality points should use the same criteria for points.

§11.9(c)(7) Tenant Populations with Special Housing Needs:
- As mentioned earlier, we request that the Section 811 Program be deleted as a threshold requirement and put back into §11.9(c)(7) Tenant Populations with Special Housing Needs for the reasons stated earlier in this letter.
- We still think that the Section 811 Program would work better through a separate Request for Proposal (RFP) process and that it should be removed from the scoring criteria in the QAP.
- We also suggest that to be eligible to participate, the Development Sites must be located in an Urban region in one of the areas specified in clause (iv) for the same reasons that the 811 program is only required in certain MSAs.

§11.9(d)(7) Concerted Revitalization Plan:
We request that you delete the population minimum.

§11.9(e)(2) Cost of Development per Square Foot:
We request clarification that items voluntarily excluded from Eligible Basis will not be included in the determination of cost per square foot in the Hard Costs and Building Costs categories.

In addition, we request that you add a Clause (A)(v) providing that the following is a high cost development: (v) the Development qualifies for five (5) points under subsection (c)(8) of this section related to proximity to the Urban Core.

We also request that the cost per square foot limits be increased by ten percent (10%) rather than just 4%. Construction costs have increased by substantially more than the 4% over the last few

years since the existing limits in the QAP were established due not only to material and labor costs over that period but also changes in building codes and increased minimum requirements and point incentives in the QAP.

§11.9(e)(3) Pre-application Participation:
Clause (G): We request that the Clause (G) regarding Undesirable Neighborhood Characteristics be deleted for the reason previously state.

§11.9(e)(4) Leveraging of Private, State, and Federal Resources:
We request that the leveraging percentages be returned to the percentages in the 2016 QAP. Reducing the percentages will drive developments to either claim fewer credits than are needed or to increase development costs unnecessarily in order to achieve maximum points under this category. In either case, reducing the leveraging percentages will result in projects that will be less likely to be feasible for the term of the initial and extended compliance periods.

§11.9(f) Point Adjustments:
There appear to be paragraph numbering references that need to be corrected.

We appreciate the opportunity to provide comments to the proposed QAP and hope that you will consider and make the changes that we have discussed. If you have any questions about our comments, we would appreciate the opportunity to discuss them with you.

Sincerely,

David Mark Koogler
President

SECTION 811 PROJECT RENTAL ASSISTANCE PROGRAM

All Application must participate in the 811 Project Rental Assistance Program in accordance with meet the requirements of subparagraphs (A) or (B) of this paragraph unless an Applicant is unable to meet the requirements of either subparagraphs (A) or (B). Applications that are unable to meet the requirements of subparagraphs (A) or (B) must certify to that effect in the Application.

(A) Applicants that opt to participate under this subparagraph (A) must apply for and obtain a determination by the Department that an Existing Development is approved to participate in the Department's Section 811 Project Rental Assistance Program ("Section 811 PRA Program"). The approved Existing Development must commit at least 10 units to the Section 811 PRA Program unless limited by the Integrated Housing Rule. An approved Existing Development may be used to satisfy the requirements of this paragraph in more than one Housing Tax Credit or other Multifamily Housing program Application, as long as at the time of Carryover, Award Letter or Determination Notice, as applicable, a minimum of 10 Units, unless limited by the Integrated Housing Rule, are provided for each Development awarded housing tax credits or Direct Loan funds. Once an Applicant submits their Application, Applicants may not withdraw their commitment to satisfy the threshold criteria of this subparagraph, although an Applicant may request to utilize a different approved Existing Development than the one submitted in association with the awarded Application to satisfy this criteria. Existing Developments that are included in an Application that does not receive an award are not obligated to participate in the Section 811 PRA Program.

(B) Applicants that opt to participate under this subparagraph (B) ~~cannot meet the requirements of subparagraph (A) of this paragraph must submit evidence of such through a self-certification that the Applicant and any Affiliate do not have an ownership interest in or control of any Existing Development that would meet the criteria outlined in the Section 811 PRA Program Request for Applications, and if applicable, by submitting a copy of any rejection letter(s) that have been provided in response to the Request for Application. In such cases, the Applicant is able to satisfy the threshold requirement of this paragraph through this subparagraph (B). Applications~~ must meet all of the requirements in clauses (i) – (v) of this subparagraph. [The rest of this Section 811 section would continue as TDHCA Staff proposed in the draft.]

UNDESIRABLE SITE FEATURES

(2) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph maybe considered ineligible as determined by the Board. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs ("VA") may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application ~~and must include a letter stating the Rehabilitation of the existing units is consistent with achieving at least one or more of the stated goals as outlined in the State of Texas Analysis of Impediments to Fair Housing Choice or, if within the boundaries of a participating jurisdiction or entitlement community, as outlined in the local analysis of impediments to fair housing choice and identified in the participating jurisdiction's Action Plan.~~ The distances are to be measured from the nearest ~~boundary~~ residential building of the Development Site to the nearest ~~boundary of the property or easement containing the~~ undesirable feature. The minimum distances noted assume that the land between the proposed Development Site and the particular undesirable feature has no significant intervening barriers or obstacles such as waterways or bodies of water, major high speed roads, park land, or walls, such as noise suppression walls adjacent to railways or highways, in which case this section does not apply. Where there is a local ordinance that regulates the proximity of such undesirable feature to a multifamily development that ~~differs from~~ has smaller distances than the minimum distances noted below, then such smaller distances shall be used and documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application. The distances identified in subparagraphs (A) - (J) of this paragraph are intended primarily to address sensory concerns such as noise or smell, social factors making it inappropriate to locate residential housing in proximity to certain businesses. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (K) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

(A)Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Transportation Code, §396.001;

(B)Development Sites located within 300 feet of a solid waste or sanitary landfills;

(C)Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local Government Code, §243.002, or as zoned, licensed and regulated as such by the local municipality;

(D)Development Sites in which the buildings are located within ~~100 feet~~ of the easement of any overhead high voltage transmission line, support structures for high voltage transmission lines, or other

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similar structures. This does not apply to local service electric lines and poles; high voltage transmission are lines that carry 138 Kv of power or greater.

(E)Development Sites located within ~~5~~ 100 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail, or the Applicant submits a noise study with the application and commits at the time of commitment to provide sound attenuation of noise levels in excess of 65 decibels;

(F)Development Sites located within 500 feet of heavy industrial (i.e. facilities that require extensive capital investment in land and machinery, are not easily relocated and produce high levels of external noise such as manufacturing plants, fuel storage facilities (excluding gas stations) etc.);

(G)Development Sites located within 10 miles of a nuclear plant;

(H)Development Sites in which the buildings are located within ~~one-quarter mile~~ of the accident zones or clear zones of any airport;

(I)Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids. Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance ("PIPA");

(J)Development Sites located within 1000 feet ~~2 miles~~ of refineries capable of refining more than 100,000 barrels of oil daily; or

(K)Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated.

(1)Applications having achieved a score on Proximity to the Urban Core

(2)Applications scoring higher on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.

(3)Applications having achieved the maximum Opportunity Index Score and the highest number of point items on the Opportunity Index menu that they were unable to claim because of the 7 point cap on that item.

(4)Applications having achieved the maximum Educational Quality score and the highest number of point items on the Educational Quality menu that they were unable to claim because of the 5 point cap on that item.

(5)The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site.

(6)Applications proposed to be located in a census tract with the lowest poverty rate as compared to another Application with the same score.

(7)Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear measurement will be performed from closest boundary to closest boundary.

(59) Marque Real Estate Consultants

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October 13, 2016

Via Email – tim.irvine@tdhca.state.tx.us
Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, Texas 78701

Re: Comments - Draft 2017 Qualified Allocation Plan and Multifamily Rule

Dear Mr. Irvine,

Thank you to you and your Staff for your continued efforts to dialogue with the stakeholders relating to the proposed 2017 Qualified Allocation Plan (QAP) and Multifamily Rules (Rules). Please accept the following comments and suggested changes on behalf of Marque Real Estate Consultants (Marque) several of which mirror consensus comments made by TX-CAD and TAAHP. Marque's comments are focused and intended to promote Fair Housing, good choices and the dispersion of housing.

§11.1. General

(b) Due Diligence and Applicant Responsibility. Since a scoring notice will no longer be considered Staff's summary of their assessment of an application, please clarify what Staff intends to publish to the Department's website that represents the *"results of the evaluation process"* given that these results trigger appeal rights pursuant to §2306.6715(c).

§11.4. Tax Credit Request and Award Limits

(a) Credit Amount (Competitive HTC Only). Staff is adding a provision that will allow the Department to select which application(s) should be recommended if it appears that one or more members of a development team would trigger a violation of the $3 million credit cap. We suggest that the Applicant be given the opportunity to select which application(s) to withdraw within a certain time period and before Staff begins their review process. The Applicant would be in the best position to determine which application is more likely to close or is less risky financially.

§11.7. Tie Breaker Factors

Under Staff's current draft, the first tie breaker goes to the applications that achieved a score based on the site's proximity to the Urban Core. Since Urban Core points are only applicable to developments

located in 5 cities, we suggest that Staff remove this from the tie breaker factors such that the first tie breaker would be those applications that score higher on the Opportunity Index.

§11.9. Competitive HTC Selection Criteria

(a) General Information. Staff has modified a provision in this paragraph that requires the Applicant to disclose that certain aspects of the Development may not yet have been determined or selected or may be subject to change when seeking support or approval that may affect the Applicant's competitive posture. What happens if the Applicant fails to provide this disclosure and what evidence should the Applicant be prepared to provide to the Department as evidence of providing this disclosure to the statewide elected and local officials or stakeholders?

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

(4) Opportunity Index. In the 2016 QAP, TDHCA recognized that border Regions 11 and 13 had a higher median poverty rate and accordingly set the poverty rate at 35% to qualify for high opportunity points. We recommend that Staff continues this same policy and suggest the following change if the proposed Development Site is located in a census tract:

> "…with a poverty rate of less than the greater of 20% <u>(35% for Regions 11 and 13)</u> or the median poverty rate for the region..."

This will open up and add significantly more first and second quartile census tracts in Regions 11 and 13 to that of high opportunity which will promote further de-concentration of awards. Additionally, the method of calculating the median poverty rate for any region should be defined and we recommend using the median for all of the census tracts in a Region. This methodology gives small counties with one or only a few census tracts (and small populations) the same weight as large counties with high populations and again will open up more sites for high opportunity consideration.

We also recommend that Staff consider adding the following factors to (4)(B) of this scoring category:

> <u>"(XV) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score (3 points)</u>
>
> <u>(XVI) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (2 points)</u>
>
> <u>(XVII) The Development Site is within the attendance zone of any one of the following three schools (an elementary school, a middle school, and a high school) with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (1 point)."</u>

(5) Educational Quality. We recommend that this scoring category be deleted and that the quality of the area schools be added to the menu of amenities under Opportunity Index. This will, in part, promote dispersion of senior developments in locations with appropriate amenities instead of areas with quality schools that do not apply to these types of transactions.

(6) Underserved Area. Staff is recommending that an application should be eligible for the maximum of 5-pts. If, in part, the development site is located in a census tract within the boundaries of an incorporated area with a population of 500,000 or more. In this scenario, qualifying census tracts in only 6 cities will be eligible to achieve maximum points in this scoring item unfairly limiting opportunities and the dispersion of affordable housing in the vast majority of our Urban cities and ETJ areas that are high opportunity and rich in amenities. If the intent of this scoring category is to incentivize the most underserved areas of our State than we believe that the population of a city should be removed as a requirement to qualify for the maximum points. Additionally, to the best of our knowledge the population requirement was not included in the draft rules presented to the TDHCA Board on September 8, 2016. We recommend the following changes to this scoring category:

> "(C) A census tract ~~within the boundaries of an incorporated area~~ that has not received a competitive tax credit allocation…."
>
> "(E) A census tract ~~within the boundaries of an incorporated area~~ and all contiguous census tracts for which neither the census tract in which the Development is located nor the contiguous census tracts have receive an award or HTC allocation within the past 15 years and continues to appear on the Department's inventory. ~~This item will apply to cities with a population of 500,000 or more, and will not apply in the At-Risk Set-Aside~~."

(8) Proximity to Urban Core. While we appreciate Staff's consideration of a new scoring category that incentivizes the location of affordable housing in inner city neighborhoods, only 5 cities in Texas would be eligible for the associated points. These are the same 5 cities where the highest scoring revitalization transaction is already guaranteed to receive an award of tax credits pursuant to HB 3535. We suggest Staff consider this new scoring category as a way to de-concentrate affordable housing and prevent multiple awards within very close proximity to one another in the same year as has been seen in recent competitive application rounds. We recommend the following changes that will expand the areas eligible to qualify for the points and disperse the housing in such areas:

> "(8) Proximity to the Urban Core. A development in a County <u>with a population over 500,000, and in a City located in an Urban Area</u> ~~with a population over 1 million and in a City with a population over 500,000~~ if the Development Site… (5 points). <u>This item will apply to only one development, if any, in a qualifying Urban Area and will not apply to the At-Risk Set-Aside</u>."

(d) Criteria promoting community support and engagement.

(5) Community Support from State Representative. Staff's proposed changes to this scoring item will allow the State Representative to withdraw his/her letter of support after the application submission deadline. We understand why this was added to the QAP but this change subjects all future competitive applications across the State to the risk of losing critical points if a State

Representative rescinds his/her letter of support after the Applicant has made a considerable investment in reliance on such support. This proposed rule change supports those that might oppose the location of affordable housing in their neighborhood by providing a window of opportunity for NIMBY and competitors to rally political opposition and apply political pressure to State Representatives to change their original position. We request that this scoring item remain as written in 2016.

(7) Concerted Revitalization Plan. Staff is limiting developments that can qualify for points under this paragraph to only those that are located in cities that have a population of 100,000 or more. This significantly reduces the number of cities in Urban Areas with active revitalization efforts underway in targeted areas of their city from qualifying for these points. We recommend that Staff remove the population requirement that was added this year. We also are concerned that the language required to be in the plan is too prescriptive and doesn't seem to match what Staff and the Board says they want to see in these plans. Not all revitalization plans will include specific language on affordable housing which is now required language in an eligible plan. We encourage Staff to look at each plan independently and the unique problems such City is trying to address and respectfully recommend the following changes to this scoring category:

"(7) Concerted Revitalization Plan. An Application may qualify for points under this paragraph only if no points are elected under ~~subsection (c)(4)~~ subsection (c)(4)(A) of this section related to Opportunity Index.

(A) For Developments located in an Urban Area~~, and in a city with a population of 100,000 or more~~.

(II) The problems in the revitalization area must be identified through a process in which affected local residents had an opportunity to express their views….and prioritized. These problems ~~must include the limited availability of safe, decent, affordable housing and~~ may include the following:"

Additionally, since we now have a set-aside requiring the Department to award tax credits to the highest scoring revitalization development, its seems duplicative to grant 2-points to a Development that is explicitly identified by a city or county as contributing more than any other to the concerted revitalization effort. We therefore recommend that these 2-additional points under this scoring category be added to the 4-points under subparagraph (ii)*(I)* for a total of 6-points if the Applicant provides a letter from the appropriate local official providing documentation of measurable improvements within the revitalization area based on the target efforts outlined in the plan.

Lastly, we recommend the following change to subparagraph (ii) *(III)* so that developments located in inner city revitalization areas receive the benefits of an additional point if the targeted area is also rich in amenities.

"Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4)(B) ~~§11.9(c)(4)~~."

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(4) Leveraging of Private, State and Federal Resources. We request that Staff go back to the 2016 language as follows:

> "(ii) if the Housing Tax Credit funding request is less than ~~seven (7)~~ eight (8) percent of the Total Housing Development Cost (3 points); or
> (iii) if the Housing Tax Credit funding request is less than ~~eight (8)~~ nine (9) percent of the Total Housing Development Cost (2 points); or
> (iv) if the Housing Tax Credit funding request is less than ~~nine (9)~~ ten (10) percent of the Total Housing Development Cost (1 point)."

(6) Historic Preservation. We recommend the following changes that will incentivize historic preservation and the use of historic tax credit leveraging in the production of affordable housing:

> "…At least ten percent ~~seventy-five percent~~ of the residential units shall reside within the Certified Historic Structure and the Development must reasonably be expected to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609…"

§11.10. Third Party Request for Administrative Deficiency for Competitive HTC Applications.

We want to ensure that the Development community continues to have the right to point out mistakes on the part of competing Applicants, as well as Department Staff. The language added to the 2017 QAP seems to indicate that Staff mistakes cannot be a part of this review.

We believe that the Department should continue to be responsible for administering this process and that having Applicants communicate these issues directly with each other is not good policy.

Lastly, we want to encourage the Department to post all information received from both the Requestor, Applicant, and Staff determinations within a defined time period on the TDHCA web site.

We suggest the following proposed changes:

> "The purpose of the Third Party Request for Administrative Deficiency ("RFAD") process is to allow an unrelated person or entity to bring new, material information about an Application to staff's attention. Such Person may request the staff to consider whether a matter in an Application in which the Person has no involvement should be the subject of an Administrative Deficiency. Staff will consider the request and proceed as it deems appropriate under the applicable rules including, if the Application in question is determined by staff to not be a priority Application, not reviewing the matter further. ~~Staff actions are not subject to RFAD, as the request does not bring new information to Staff's attention.~~ Requestors must provide, at the

time of filing the challenge, all briefings, documentation, and other information that the requestor offers in support of the deficiency. ~~A copy of the request and supporting information must be provided directly to the Applicant at the same time it is provided to the Department.~~ Requestors must provide sufficient credible evidence that, if confirmed, would substantiate the deficiency request. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered. The results of a RFAD may not be appealed by the Requestor."

Subchapter B. Site and Development Requirements and Restrictions §10.101. Site Requirements and Restrictions

(2) Undesirable Site Features. A Development Site that is within a certain distance from one or more undesirable **site** features will be deemed ineligible for consideration unless otherwise determined by the Board. We are unsure where many of these changes came from since they were not a topic of discussion at the round tables held throughout the year. Several of the changes add significant barriers to site selection and inner city development and re-development activities.

We request that this provision remain as written in 2016.

(3) Undesirable Neighborhood Characteristics. A Development Site that is within a certain distance from one or more undesirable **area** features described in this provision will be deemed ineligible for consideration unless the Applicant can "*demonstrate satisfactory mitigation for each characteristic disclosed*". Furthermore, as currently drafted if the Development Site is part of a revitalization effort, the Applicant must also prove that there is a *"strong likelihood of a reasonable rapid transformation of the area to a more economically vibrant area"*.

Several of the ineligible features including the performance of the area schools and the proximity of the Development Site to blighted structures are not within the control of an Applicant to solve and therefore it would not be possible for the Applicant to demonstrate "*satisfactory mitigation"* or the likelihood of *"reasonable rapid transformation of the area"*.

Furthermore, deeming a Development Site that is located in a census tract with a poverty rate above 30% as ineligible will significantly impact the production of affordable housing in our inner city neighborhoods that are gentrifying and undergoing active revitalization and in particular those transactions financed with 4% tax credits. Currently bond project are feasible if they are located in QCT census tracts that qualify the proposed development for the QCT basis boost. QCT census tracts are by definition in higher poverty areas.

We suggest deleting this provision in its entirety from the Rules. Alternatively, we suggest going back to the 2016 rules with respect to ineligible poverty rates and our other requested change are as follows:

Paragraph (B) should be revised such that if undesirable neighborhood characteristics exist in order for the proposed development to be found eligible the Applicant should only be required to provide evidence that the Development Site is in an area covered by a concerted plan of revitalization to demonstrate satisfactory mitigation for each characteristic disclosed. This evidence will demonstrate that the city is focused on the area and is targeting the area for investment and improvement.

Paragraph (B) (i) The Development Site is located with a census tract that has a poverty rate above 40 percent ~~30 percent~~ for individuals (or 55 percent for Developments in Region 11 and 13).

Paragraph (B) (iv) The performance of the applicable schools should be striken from consideration of ineligibility since the Applicant has no control over the decision making process regarding school performance. Additionally, as stated in testimony to the Board, stable, quality and affordable housing which the housing tax credit program is designed to provide is a factor in improving school performance.

Subchapter C. Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules or Pre-Clearance for Applications

§10.204. Required Documentation for Application Submission

(16) Section 811 Project Rental Assistance Program. We believe it is premature to make participation in the 811 Program a threshold item. Until the program has been fully implemented and has some history of performance, we believe this should remain a scoring item, where an applicant has the choice of participation.

We respectfully submit these suggested changes for Staff's consideration and inclusion in the final 2017 QAP and Rules. Please do not hesitate to contact me with any questions.

Sincerely,

Donna Rickenbacker

Donna Rickenbacker

Cc: Marni Holloway, TDHCA – marni.holloway@tdhca.state.tx.us
Sharon Gamble, TDHCA – Sharon.gamble@tdhca.state.tx.us

(60) Mears Development

MEARS DEVELOPMENT
1000 LOUISVILLE AVE.
MONROE, LOUISIANA 71203

October 14, 2016

Via email htc.public-comment@tdhca.state.tx.us

Ms. Sharon Gamble
9% Competitive Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

Re: Public Comment on QAP and MF Rules

Dear Sharon:

Attached is our comment on the proposed 2017 QAP and Multifamily Rules, submitted in accordance with the notice published in the September 23, 2016, edition of the Texas Register. Please let me know if you have any questions by calling at 210-669-3081.

Sincerely,

Jeremy Mears
President

enclosures

Subchapter A

10.3 Definitions

We propose the following language for the definition of Control.

(29) Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. Controlling entities of a partnership include the general partners, may include special limited partners when applicable, but not investor limited partners or special limited partners who do not possess other factors or attributes that give them Control. Controlling entities of a limited liability company include but are not limited to the managers, managing members, any members with 10 percent or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership, but not investor members who do not possess other factors or attributes that give them Control. Controlling individuals or entities of a corporation, including non-profit corporations, include voting members of the corporation's board, whether or not any one member did not participate in a particular decision due to recusal or absence. Multiple Persons may be deemed to have Control simultaneously.

The Elderly Preference Development definition should align with the choices available in the Application, or vice versa. The definition would allow for an Applicant to choose Elderly Preference Development without having HUD funding but, the 2016 Application did not allow that choice to be made.

We propose the following language for the definition of Control.

(98) Principal--Person~~s~~ that will exercise Control (which includes voting board members pursuant to §10.3(a)(29) of this chapter) over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) partnerships, Principals include all General Partners, ~~special limited partners,~~ and Principals with ownership interest, and special limited partners with ownership interest who also possess factors or attributes that give them Control;

(B) corporations, Principals include any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation, and any individual who has Control with respect to such stock holder; and

(C) limited liability companies, Principals include all managers, managing members, members having a 10 percent or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.

Subchapter B

10.101(a)(2) Undesirable Site Features

We propose the following language.

(2) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph maybe considered ineligible as determined by the Board. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs ("VA") may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application and must include a letter stating the Rehabilitation of the existing units is consistent with achieving at least one or more of the stated goals as outlined in the State of Texas Analysis of Impediments to Fair Housing Choice or, if within the boundaries of a participating jurisdiction or entitlement community, as outlined in the local analysis of impediments to fair housing choice and identified in the participating jurisdiction's Action Plan. The distances are to be measured from the nearest boundary of the Development Site to the ~~nearest boundary of the property or easement containing the~~ undesirable feature. ~~The minimum distances noted assume that the land between the proposed Development Site and the particular undesirable feature has no significant intervening barriers or obstacles such as waterways or bodies of water, major high speed roads, park land, or walls, such as noise suppression walls adjacent to railways or highways.~~ Where there is a local ordinance that ~~regulates the~~ for closer proximity ~~of~~ to such undesirable feature ~~to a multifamily development that differs from~~ than the minimum distances noted below, documentation, such as a copy of the local ordinance identifying such distances relative to the Development Site, must be included in the Application. ~~The distances identified in subparagraphs (A) - (J) of this paragraph are intended primarily to address sensory concerns such as noise or smell, social factors making it inappropriate to locate residential housing in proximity to certain businesses. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes.~~ If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (K) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

(A) Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Transportation Code, §396.001;

(B) Development Sites located within 300 feet of a solid waste or sanitary landfills;

(C) Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local Government Code, §243.002, or as zoned, licensed and regulated as such by the local municipality;

(D) Development Sites in which the buildings are located within 100 feet of the easement of any overhead high voltage transmission line, or support structures for high voltage transmission lines~~, or other similar structures~~. This does not apply to local service electric lines and poles;

(E) Development Sites located within ~~500~~100 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail;

(F) Development Sites located within 500 feet of heavy industrial (i.e. facilities that require extensive capital investment in land and machinery, are not easily relocated and produce high levels of external noise such as manufacturing plants, fuel storage facilities (excluding gas stations) etc.);

(G) Development Sites located within 10 miles of a nuclear plant;

(H) Development Sites in which the buildings are located within one-quarter mile of the accident zones or clear zones of any airport;

(I) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids. Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance ("PIPA");
(J) Development Sites located within 2 miles of refineries capable of refining more than 100,000 barrels of oil daily; or
(K) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated.

10.101(a)(3) Undesirable Neighborhood Characteristics

We agree with TAAHP recommendations.

10.101(b)(4) Mandatory Development Amenities

We agree with TAAHP's recommendation to strike the requirement for solar screens.

10.101(b)(5) Common Amenities

We recommend increasing the point value assigned to a furnished community room to 2 points, as this is a costly item.

10.101(b)(7) Tenant Supportive Services

We agree with TAAHP's recommendation to this section of the Rule.

Subchapter C

10.201(7) Administrative Deficiency Process

The Administrative Deficiency deadline for should remain 5 days.

10.203 Public Notifications

We agree with TAAHP's recommendation on this section.

10.204(16) Section 811 Project Rental Assistance Program

We agree with TAAHP's recommendations on this item.

Subchapter G

10.901(12) Extension Fees

We do not believe that Construction Status Reports should be included in this section. A $2,500 fee to extend the date of a simple report seems high.

11.7 Tie Break Factors

We agree with TAAHP that the tie break factor related to Educational Quality should be removed.

Additionally, we make the following recommendation to the 3rd tie break factor.

> (3) Applications having achieved the maximum Opportunity Index Score and ~~the highest number of~~ have at least four (4) additional point items on the Opportunity index menu that they were unable to claim because of the 7 point cap on that item.

11.9(c)(3)(B) Tenant Services

> "The Applicant certifies that the Development will contact local service providers, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. (1 point)"

We recommend striking this language from the QAP due to its ambiguity. We would be supportive of adding this item to as an option under 10.101(7) in more clearly defined terms.

11.9(c)(4) Opportunity Index

We offer the following recommendations to Opportunity Index

> (A) A ~~P~~proposed Development is eligible for a maximum of seven (7) opportunity index points if it is located in a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and ~~meets the requirements in (i) or (ii) below.~~ has:
>
> (i) ~~The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and~~ an income rate in the two highest quartiles within the uniform service region~~.~~; (2 points)
> (ii) ~~The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with~~ an income rate in the third quartile within the region, ~~and~~ is contiguous to a census tract in the first or second quartile~~,~~ without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the first or second quartile census tract~~s~~. and, (1 point)
> (B) An application that meets the foregoing criteria may qualify for additional points up ~~to seven (7) points~~ for any one or more of the following factors. Each facility or amenity may be used only once for scoring purposes, regardless of the number of categories it fits~~:~~.
> (i) For Developments located in an Urban Area~~; an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIV) of this subparagraph.~~
> (I) The Development site is located less than 1/2 mile on an ~~accessible route~~ from a public park with an ~~accessible~~ playground (1 point);
> (II) The Development Site is located less than ½ mile ~~on an accessible route~~ from Public Transportation with a route schedule that provides regular service to employment and basic services (1 point);
> (III) The Development site is located within 1 mile of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items~~.~~ (1 point);

(IV) The Development is located within 3 miles of either an emergency room or an urgent care facility (1 point);

(V) The Development Site is within 2 miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten (1 point);

(VI) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less, as defined by neighborhoodscout.com (1 point);

(VII) The development site is located within 1 mile of a public library (1 point);

(VIII) The Development Site is located within 5 miles of a University or Community College campus (1 point);

(IX) The Development Site is located within 3 miles of a concentrated retail shopping center ~~of at least 1 million square feet or~~ that includes at least 4 ~~big box~~ national retail stores (1 point);

(X) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher exceeds that of the State-wide average ~~is 27% or higher.~~ (1 point);

(XI) Development site is within 2 miles of a ~~government-sponsored~~ non-profit museum (1 point);

(XII) Development site is within 1 mile of an indoor recreation facility available to the public (1 point);

(XIII) Development site is within 1 mile of an outdoor recreation facility available to the public (1 point); and

(XIV) Development site is within 1 mile of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point).

(ii) For Developments located in a Rural Area:~~, an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIII) of this subparagraph.~~

(I) The Development site is located within ~~2~~5 miles of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items~~.~~ (1 point);

(II) The Development is located within 4 miles of health~~—~~related facility, such a full service hospital, community health center, or minor emergency center. Physician specialty offices are not considered in this category~~.~~ (1 point);

(III) The Development Site is within 3 miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten (1 point);

(IV) The Development Site is located in a census tract with a property crime rate 26 per 1,000 or less, as defined by neighborhoodscout.com (1 point);

(V) The development site is located within 3 miles of a public library (1 point);

(VI) The development site is located within 3 miles of a public park (1 point);

(VII) The Development Site is located within ~~7~~15 miles of a University or Community College campus (1 point);

(VIII) The Development Site is located within 5 miles of a retail shopping center with ~~XX square feet of stores~~ at least 3 retail stores (1point);

(IX) Development Site is located in a census tract where the percentage of adults age 25 and

older with an Associate's Degree or higher exceeds that of the State-wide average ~~is 27% or higher.~~ (1 point);
(X) Development site is within 2 miles of a ~~government-sponsored~~ non-profit museum (1 point);
(XI) Development site is within ~~1~~3 mile of an indoor recreation facility available to the public (1 point);
(XII) Development site is within ~~1~~3 mile of an outdoor recreation facility available to the public (1 point); and
(XIII) Development site is within ~~1~~3 mile of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point).

11.9(c)(5) Educational Quality

We concur with the TAAHP recommendation to remove the scoring item, and add the schools to the Opportunity Index menu.

11.9(c)(8) Proximity to the Urban Core

We recommend that this scoring item not apply to the At-Risk.

11.9(d)(5) Community Support from State Representative

We concur with the TAAHP's recommendation on this section.

11.9(d)(7) Concerted Revitalization Plan

We recommend removing the population limitation of 100,000 in Urban areas.

11.9(e)(2) Cost of Development per Square Foot

We concur with the TAAHP recommendations on this section.

11.9(e)(3) Pre-application Participation

We recommend the flowing language under subparagraph (F).

(F) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number listed at pre-application is the same at Application;

11.9(e)(4) Leveraging of Private, State and Federal Resources

We recommend that the leveraging percentages be returned to the 2016 levels.

(61) MGroup, LLC

MGROUP

October 14, 2016

Ms. Sharon Gamble
Texas Department of Housing & Community Affairs
P.O. Box 13941
Austin, Texas 78711

Email: htc.public-comment@tdhca.state.tx.us

Dear Sharon,

After review of the draft 2017 QAP, we have the following comments and or suggestions:

§11.3 Housing De-Concentration Factors

We believe the concept of de-concentration and linear distance separation for same year awards is prudent to apply statewide and not just in counties with population in excess of one million. With the proposed changes to the QAP for 2017, there will be localized census tracts that will maximize all scoring criteria thus an unintended consequence of the new rules will be *an OVER concentration of housing tax credits* to multiple sites in the same census tract.

The existing Two Mile Same Year Rule does not necessarily work statewide due to rural areas but in urban areas we do not see any limitation that would preclude a same year separation rule. We suggest adding language to the De-Concentration Factors so that in urban areas, regardless of county population, any award is limited to a minimum linear distance de-concentration factor. Several limitations can be incorporated into the rules such as adding a minimum one mile linear separation rule for the same year award for urban areas with population less than one million or alternatively, modify (d) Limitations on Developments In Certain Census Tracts so that no census tract may have more than 20% Housing Tax Credit units per total household regardless if either 1) existing at the time the application cycle begins or 2) *if any multiple awards within the same program year causes the census tract to be more than 20% housing tax credit units per total household*, the application that causes the 20% limit to be exceeded shall be ineligible. Any reference to a place with a population greater than 100,000 should be removed and the provision for Governing Body resolutions should only apply to those applications where existing housing tax credit units already exceed 20%.

§11.9(c)(6) Underserved Area

While we generally support the concept for the proposed changes to underserved areas, we believe the goal of satisfying underserved area points is more appropriate when distinction is made between same types of household. Applications should still be eligible for full points under §11.9(c)(6) (both in singular census tracts and points for those eligible for surrounding census tracts) as long as the same type of household is not being applied for in the same census tract, or those surrounding it. Indeed, if only an existing family deal is located in a census tract and no elderly developments exist within the same tract, an applicant should still be awarded underserved points if an elderly application is proposed.

As a general comment, we believe the concept of *"A census tract within the boundaries of an incorporated area"* is problematic and will lead to contentious debate within the application cycle. We know of several census tracts that have both un-incorporated areas as well as incorporated areas within the same census tract. As currently drafted, is the intent of the rule to require the entire census tract be wholly within the boundaries of an incorporated area before it is eligible for points? If so, we suggest these conditions be clarified otherwise we expect multiple challenges.

Thank you for your consideration of these comments.

Sincerely,

MGROUP HOLDINGS, INC.

MDM/oe

Mark D. Musemeche

MDM/oe

(62) Miller Valentine Group

Miller Valentine Group
Development

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513-774-8400
513-683-6165 Fax

Miller-Valentine Group has the following comments and proposed changes to various sections of the draft Multifamily Rules and QAP:

1. **Comment:** The change in how guarantors are considered for credit cap should be removed and last year's language should be included **(§11.4.(a)).** Any entity with significant involvement in the development and ownership of the property should be considered under the credit cap rules.

   Proposed Language: No change to the wording from last year's rules and qualified application plan.

2. **Comment:** Language allowing State Representatives to rescind their letters of support should be removed. This opens the door for corruption, NIMBY issues, and encourages unethical behavior. Additionally, it creates a situation where a state rep can say they were given false information, which may put the program and development community in a bad light **(§11.9.(d)(5)).**

   Proposed Language: No change to the wording from last year's rules and qualified application plan.

3. **Comment: Subchapter C, Section N (Page 11)** should be reinstated. Applicants that actively work to create opposition to competing applications or disseminate misinformation should be considered ineligible.

   Proposed Language: Reinstate **Subchapter C, Section N (Page 11).**

4. **Comment:** Solar Screens on all windows should not be a requirement. This should be a point item under the Green Building Features point scoring criteria. Solar Screens are consistent with the other items on the Green Building Features list, specifically the Limited Green Amenities list under **§10.101.(b)(5)(C)(xxxiii)(I).**

   Proposed Language: Add Solar Screen as one of the items under the Limited Green Amenities List under **§10.101.(b)(5)(C)(xxxiii)(I).**

5. **Comment:** Special Needs points should revert back to 2016 language, including points for enlisting in the Section 811 program and removing the explicit requirement for all applicants and applications to participate in the Section 811 program.

   Proposed Language: No change to the wording from last year's rules and qualified application plan.

Miller Valentine Group
Development

Miller-Valentine Group
9349 WaterStone Blvd.
Suite 200
Cincinnati, Ohio 45249
513-774-8400
513-683-6165 Fax

6. **Comment:** Rehabilitation and demolition points should be removed (**§11.9.(d).(7)(B)(i),(ii),(iii)).** Unlike the Urban revitalization points, the rehabilitation and demolition points incentivize replacing existing units rather than creating new and quality affordable housing units. The Urban Revitalization points incentivize developments that bring new investment and development to areas that are lacking development. The rehabilitation and demolition points targeted for rural areas incentivizes replacing existing investment rather than creating new investment in rural areas.

   Proposed Language: Remove the rehabilitation and demolition points in **§11.9.(d).(7)(B)(i),(ii),(iii).**

7. **Comment:** Applicants should be given a minimum of 5 days to address deficiencies. Quite often these responses require input or additional work from a third party consultant, many of which are engaged by multiple tax credit clients. It is very likely that multiple applicants will need information from the same company or companies (Architect, Market Analyst, Engineer). Requiring a full response from a third party consultant after only three business days for multiple tax credit clients and tax credit applications will be problematic **(§10.201.(7)(B)).** We understand that this must be balanced with TDHCA's need for quick review, however, reducing the correction period to 3 days has the potential to lead to unexpected consequences.

   Proposed Language: Change the language in **§10.201.(7)(B)** to reflect an Administrative Deficiency correction period of 5 days.

8. **Comment:** With the new changes to the Opportunity Index and Educational Quality scoring, it is important that TDHCA issue the data sets that they will use to for evaluation as quickly as possible. This information should be provided before October. Also, schools scores for sub-regions needs to made available immediately **(§11.9(c)(4) and §11.9(c)(5)).**

(63) National Church Residences

National Church Residences
EXCELLENCE THAT TRANSFORMS LIVES

October 13, 2016

Ms. Sharon Gamble
Tax Credit Program Manager
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Ms. Gamble,

Thank you for the opportunity to present recommendations to the 2017 Qualified Allocation Plan (QAP). Please consider the below recommendations by National Church Residences.

2017 Qualified Allocation Plan

1. **Criteria to Serve Texans most in need – Tenant Services**
   We applaud TDHCA for recognizing the importance of local service providers for low-income households. However, to effectively pair local service providers to affordable housing, a dedicated Service Coordinator must be at the property. Service Coordinators bridge everything from hot meal delivery, home health based services, health education, transportation, insurance & doctor navigation, healthcare system navigation and social activities. Service Coordinators understand what residents need so they can coordinate with providers and tailor the services appropriately to the needs of the residents. Furthermore, Service Coordinators in Elderly developments have proven to reduce Medicaid and Medicare spending by enabling elderly to remain living independently, out of high-cost skilled living and hospitals and improving quality of life (see attached 3 articles and page 33 for QAP recommendations from the Bipartisan Policy Center on Healthy Aging).

   We recommend the following language:
   (B) The Applicant certifies that the Development will have a dedicated Service Coordinator to contact local service providers, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. The Service Coordinator will pro-actively engage and assess residents' needs through direct communication and tailor services appropriately. A Development selecting these points will also provide:
   - Minimum of 1 monthly program on-site provided by a local service provider; AND
   - Minimum of 3 local service providers engaged to provide services to residents; OR
   - The applicant is a non-profit and is self-providing services to residents of the Development.

2. **Underserved Area**
   The proposed language in Underserved Areas does not support TDHCA's intention. Census tracts very greatly in size and do not reflect the monumental population growth that many areas throughout Texas have experienced. At the very least, we recommend adding **"does not have a tax credit development serving the same Target Population**" to (C) and (D) as reflected in the 2016 QAP. For low-income frail seniors, a general population apartment building are not appropriate for their needs to allow for Aging In Place. These properties

typically do not have elevators, have limited accessibility and are not paired with appropriate services that a frail senior will likely need to remain living independently. On the opposite spectrum, a census tract with an Elderly development cannot serve a young household with children.

We recommend:

(C) A census tract within the boundaries of an incorporated area that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development within the past 15 years serving the same Target Population (3 points);
(D) For areas not scoring points for (C) above, a census tract that does not have a Development subject to an active tax credit LURA serving the same Target Population; (2 points);

3. **Concerted Revitalization Plans (CRP) - Rural**
Under the Rural CRP, the only properties allowed to receive points currently exclude HUD properties such as HUD 202 developments. HUD 202s were designed specifically house seniors and persons with disabilities. Since 2012, the HUD 202 Capital program has been eliminated and relies on the LIHTC program to fund preservation of these buildings. In addition, these HUD 202 properties typically have rental assistance making these units available for Extremely Low Income households. Not only has this program ceased to create new units for Seniors, the Elderly population in the US and in TX is exploding, creating a significant shortage of units. Without preservation, this housing stock is at risk of being lost. We recommend:

(i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction in an location meeting the threshold requirements of the Opportunity Index, §11.9(c)(4)(A) of a development in a rural area that is currently leased at 90% or greater by low income households and which was initially constructed prior to 1980 as either public housing or as affordable housing with support from USDA, the HOME program, **a HUD program** or the CDBG program….

(ii) Applications will receive 3 points for the rehabilitation of a development in a rural area that is currently leased at 90% or greater by low income households and which was initially constructed prior to 1980 as either public housing or as affordable housing with support from USDA, the HOME program, **a HUD program** or the CDBG program …

4. **Criteria promoting the efficient use of limited resources – Cost per Square Foot**
While we applaud TDHCA for increasing the $/SF of hard cost by 4%, the first increase in 4 years, the $78 or $104 $/SF allowance remains well below the actual cost. To best house seniors, buildings must be serviced by elevators which require interior hallways and common space such as a community room, library, fitness room and computer room, yet these costs are not included in the Net Rentable calculation. These common areas are also required to facilitate services from local providers. For elderly, who primarily remain home and in their building 90%+ of the time, these common areas are essential for healthy aging and quality of life. Furthermore, restricting cost prohibits more costly up-front green and sustainability features which promote future operational savings and high-quality developments. We recommend:

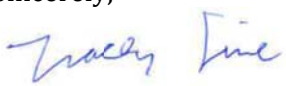
- Developments electing to coordinate with local service providers under Tenant Services and have appropriate community space for services, be allowed an additional 50 ft per unit; OR
- Any development serviced by elevators and includes a service coordinator office, a designated service coordinator AND includes common area for providers to deliver services be allowed an additional 50 ft per unit;

5. **Leveraging of Private, State and Federal Resources**
   National Church Residences recommends this item remain the same as 2016. By encouraging applicants to limit tax credit requests to 7% of total development costs as opposed to 8% encourages financial burden on applicants as they add larger amounts of debt, further stressing the financial integrity of their development. Furthermore, this item will encourage more and more units to be designated as market rate and we will be serving far fewer low-income households to support additional debt loads. This is not the goal of S.42 which is to provide affordable rental housing for low-income households.

6. **Proximity to Urban Core & Urban Core Tie-Breaker**
   We understand the focus on Urban Core locations, but we recommend this criterion does not apply to At-Risk developments. It creates an uneven playing field as these properties do not compete within Urban Regional pools, but state-wide and include both rural and urban applications throughout the state.

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

Sincerely,



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CC:
Eric Walker, Director of Housing

Expanding the World of Possibilities for Aging

LeadingAge Study: Service Coordinators Linked with 18% Reduction in Resident Hospitalizations

by Geralyn Magan
Published On: Nov 23, 2015
Updated On: Dec 08, 2015

The availability of an on-site service coordinator at federally subsidized senior housing reduced the odds of having a hospital admission among residents by 18%.

That's the main finding of a new study by the LeadingAge Center for Housing Plus Services and The Lewin Group.

The John D. and Catherine T. MacArthur Foundation funded the study, which was released on Nov. 20 at the Annual Scientific Meeting of the Gerontological Society of America (GSA).

Alisha Sanders, the center's managing director, presented the study's findings during the GSA meeting.

"The population as a whole is getting grayer and policymakers are under increasing pressure to rein in health care costs," said Sanders. "Federal and state agencies, as well as health care providers, should consider partnering with affordable senior housing properties to coordinate services. Our study indicates that such coordination and collaboration could save Medicare dollars for millions of low-income elderly residents."

About the Housing Plus Services Study

The MacArthur-funded study, described in *Affordable Senior Housing Plus Services: What's the Value?*, is one of the first to examine the association between the availability of onsite services in affordable senior housing properties and residents' health care utilization and spending.

Researchers analyzed health care utilization and spending among 8,706 older adults in 507 properties located in 12 communities around the country. The median age of residents in the study was 80 years old. More than half (56%) of the residents were eligible for both Medicaid and Medicare. About half had 5 or more chronic conditions, which are associated with higher than average health care spending.

Importance of Service Coordinators

The study's key finding—that residents living in housing with onsite service coordinators had significantly lower hospitalization rates than those without this position—supports previous research showing the positive effects associated with service coordination, says Sanders.

Service coordinators help residents of affordable senior housing navigate the complex health care system and gain better access to needed services. Improving access to and coordination of health services for high-cost individuals is a primary component of many health reform efforts.

"The size of the senior housing population, and the health challenges that these residents face, suggest that substantial health care savings could be realized if more housing properties had service coordinators working on site," says Sanders.

The report outlines specific ways that a service coordinator could enhance an individual's ability to better manage his or her health conditions. For example, a service coordinator could:

- Help improve residents' access to primary care physicians by helping to coordinate doctor appointments and transportation to medical appointments.
- Help identify and access resources—like a Medicare Part D plan or a meal delivery program—that could help residents address challenges or barriers to maintaining good health.
- Encourage residents to visit their doctors when early warning signs or concerns are identified, rather than waiting until the condition worsens.

For More Information

Visit LeadingAge.org/housingservices to view all of the components of the Housing Plus Services study:

- Findings from the analysis that researchers conducted to gauge the association between onsite service availability and health care use and spending.
- Results of a survey exploring the availability of onsite services in HUD-assisted senior housing properties in 12 geographic areas.

Home. Community. Opportunity.

Affordable Housing Reduces Medicaid Costs

Affordable Housing Reduces Medicaid Costs, New Report Shows

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[mailto:kwhitaker@enterprisecommunity.org]
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Primary care visits increased, emergency department visits decreased while integrated health services were a key driver of improved health care access and quality

PORTLAND, Ore. – February 25, 2016 – A study released today shows that affordable housing paired with health care services significantly increases access to primary care and reduces emergency department visits while lowering Medicaid costs, according to research from Center for Outcomes Research and Education [http://oregon.providence.org/our-services/c/center-for-outcomes-research-and-education-core/](CORE) and Enterprise Community Partners Inc. (Enterprise). *Health in Housing: Exploring the Intersection between Housing and Health Care* [http://bit.ly/1oGe1nD] analyzed Medicaid claims data from January 2011 to June 2015 for more than 1,600 residents in 145 affordable housing properties in Portland. The study found that after moving into affordable housing, Medicaid costs were $48 lower per resident per month, for an annualized reduction of $936,000 for the study group.

The Enterprise/CORE study is one of the most comprehensive looks at how health care and affordable housing intersect. This report is one of the first studies examining health care in affordable housing using multiple populations: families with children, individuals living in supportive housing, and older adults and residents with disabilities.

The Health in Housing report found:

- Total Medicaid expenditures declined by 12 percent, with the greatest savings among seniors and people with disabilities at 16 percent
- Outpatient primary care use increased 20 percent while emergency department use fell by 18 percent
- Residents reported improved access to health services and quality of care, with about 40 percent saying it was better after move-in
- Housing with integrated health services was a key driver of health care outcomes, suggesting that increasing these services may result in even greater cost savings

"The Health in Housing study holds national implications for health care systems, payers and policy makers looking for upstream solutions to address major health care needs and fulfill reform goals," said Dr. Megan Sandel, associate professor of pediatrics at Boston University School of Medicine and a member of Enterprise's board of trustees. "Housing with integrated health services is an important solution toward bending the health care cost curve."

The Health in Housing report indicates that the presence of health services and staff is a significant driver of reductions in health care expenditures and emergency department usage. As many state Medicaid programs are serving new populations following a 2014 expansion of the program, these states have begun looking at ways to provide better care while managing costs.

"Health reform has increasingly called upon health care systems to recognize the importance of upstream factors that drive health outcomes and affect health care costs. Our research shows that affordable housing is one of those key factors," said Bill Wright, Ph.D., director of CORE and lead researcher on the study. "We live in a profoundly interconnected world, and we may be moving past the time when any sector can go it alone."

CORE partnered with Health Share of Oregon, a local Medicaid coordinated care organization (CCO), to access a comprehensive Medicaid claims database to assess utilization and costs related to physical, behavioral health and dental claims. This database was then matched to 145 affordable housing properties in and near Portland.

"The report provides invaluable insights on how we can work with new partners and advance programs that fulfill the promise of accountable care," noted Janet L. Meyer, CEO, Health Share of Oregon. “Stable, affordable housing provides the foundation to provide readily accessible, patient-focused health care.”

The research has informed Enterprise’s recently released housing policy platform [http://www.investmentinopportunity.org/] and additional work in the field. “Based on the findings of the study, especially those that quantitatively show that affordable housing drives down Medicaid costs and improves health care outcomes, Enterprise strongly advocates for policy and funding changes at the state and federal level that will increase Medicaid investments in affordable housing through capital, rental assistance and service coordination,” said Amanda Saul, senior program director, Enterprise.

The findings also serve as the foundation for a pilot underway in Portland, Oregon, that will demonstrate positive outcomes associated with using Medicaid dollars for housing. This Enterprise-led pilot will test Medicaid Flexible Services funding for rental assistance, eviction prevention, rapid re-housing, transportation and service coordination for people experiencing a health and housing crisis.

Health in Housing was made possible through a grant from the Meyer Memorial Trust. Meyer has also provided support to Enterprise’s Medicaid Flexible Services pilot.

Enterprise’s generational goal is to end housing insecurity in the U.S., which means no more homelessness and no more families paying more than half of their income on housing. As a down payment toward that goal, by 2020 Enterprise will help provide opportunity to 1 million low-income families through quality affordable housing and connections to jobs, good schools, transit and health care.

###

The Center for Outcomes Research and Education is an independent research hub based in Portland, Oregon. They work on research

projects to improve health system transformation and population health, particularly for Medicaid beneficiaries and low-income people. CORE partners with health systems, state agencies, and community groups to help them meet the triple aim of better health, better care and lower costs. Recent work includes quantifying how adverse life events impact health outcomes, and using cutting-edge data science to examine the intersection of health care with services such as housing, education, and corrections.

Affordable Housing Providers Can Improve Health Outcomes and Reduce Costs

In your experience, what are some good examples of health and housing working together in ways that have promoted positive outcomes for seniors? What has made these programs successful? View the full forum.

By Bill Kelly

Most of my experience with constructive partnerships of housing and health care providers has grown out of my work with Stewards of Affordable Housing for the Future (SAHF) members.

SAHF's eleven non-profit members provide affordable rental apartments for 116,000 households—seniors, low-income families, and persons with disabilities. With support from the Kresge and Annie E. Casey Foundations, SAHF is tracking life outcomes of residents across the fields of health and wellness, income and assets, children and education, housing stability, and community engagement and developing ways of assisting residents to improve those outcomes.

With respect to health and wellness for seniors, SAHF members are engaged in a series of ongoing demonstrations around the country and are in discussions with health plans in four states with clusters of member properties, looking to form strategic partnerships.

Some members are partnering with hospitals and health systems through Community Benefit Programs. For example, Mary Washington Hospital in Richmond, Virginia supports a part-time nurse at an NHT/Enterprise property, primarily serving uninsured older adults not covered by Medicaid and not yet eligible for Medicare. The nurse reduces doctor and ER visits by helping residents understand their own health and how to navigate the health system.

In the Sacramento area, Mercy Housing is a host site for the Chronic Disease Self-Management Program sponsored by Dignity Health. Mercy and Dignity Health predict a savings of about $590 per participant who completes the program, primarily due to reduced emergency room visits and hospitalizations.

Massachusetts General Hospital, through its Senior HealthWISE program, holds Weekly Wellness Centers at three Boston properties, including a property run by Preservation of Affordable Housing. The centers provide a variety of health, behavioral and social services, as well as referrals to community collaborators for a wide range of supportive services.

National Church Residences and Mercy Housing have improved quality of life and achieved costs savings by providing housing with supportive services that allows seniors to move into affordable housing from higher levels of care or the street. In the case of Mercy Housing, over a seven-year study period, the cost savings from moving 11 formerly homeless seniors out of a skilled nursing facility and into Mission Creek Apartments more than covered the additional health care costs of providing or arranging for supportive services to 39 formerly homeless seniors who also moved into the senior building. Of course, the benefits of enabling people to lead better lives are incalculable.

What are some of the patterns here? First, affordable housing providers are well-positioned to work with low-income residents to help them address the social determinants of health beyond safe shelter. Staff know the residents, are trusted by them and can assist them directly as well as link them to outside services. Second, the cost structures of housing organizations are radically different from and lower than that of the clinical health care world, opening the prospect for better health and wellness with a better experience and at a lower per capita cost—all in line with the goals of the Affordable Care Act (ACA). Third, the forms of partnership, the roles of each party, the nature of data sharing, and the economic arrangements vary widely based in part on how the ACA is administered in the various states.

Bill Kelly is a strategic advisor for Stewards of Affordable Housing for the Future (SAHF).

Welcome to the BPC Health and Housing Expert Forum. Each month contributors from different parts of the health and housing sectors will be invited to respond to a discussion topic. Have a question you'd like us to consider? Please leave it in the comments.

Any views expressed on this forum do not necessarily represent the views of the Health and Housing Task Force, its co-chairs, or the Bipartisan Policy Center.

Healthy Aging Begins at Home

May 2016

BIPARTISAN POLICY CENTER

SENIOR HEALTH AND HOUSING TASK FORCE

The Bipartisan Policy Center formed the Senior Health and Housing Task Force to underscore the synergies between health care and housing in fostering improved health outcomes, cost savings, and enhanced quality of life for America's aging population.

ACKNOWLEDGMENTS

Supported by grants from the Kresge Foundation and the John D. and Catherine T. MacArthur Foundation. For more information, visit www.kresge.org and www.macfound.org.

DISCLAIMER

The findings and recommendations expressed herein do not necessarily represent the views or opinions of the Bipartisan Policy Center's founders or its board of directors; nor does it represent the views or opinions of Advisory Council members or their respective organizations.

Senior Health and Housing Task Force

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Former Secretary, U.S. Department of Housing and Urban Development

Mel Martinez
Former Secretary, U.S. Department of Housing and Urban Development;
Former U.S. Senator

Allyson Y. Schwartz
Former U.S. Representative

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Special Thanks

Staff at the Bipartisan Policy Center produced this report in collaboration with a distinguished group of senior advisers and experts. BPC would like to thank Senior Vice President G. William Hoagland, Director of Health Innovation Janet Marchibroda, Director of Health Policy Katherine Hayes, Director of the Prevention Initiative Lisel Loy, and Senior Policy Analyst Brian Collins for their contributions.

In addition, BPC thanks all the organizations and individuals who contributed to the Senior Health and Housing Task Force's roundtables, regional forums, and expert blogs for their feedback and support. The Task Force also conducted an online survey in March 2016 on the role of technology to support healthy aging in place. We thank Aging 2.0, the West Health Policy Center, the Stanford Center on Longevity, the Milken Institute Center for the Future of Aging, and the AARP for helping to disseminate the survey. We appreciate the feedback, ideas, and information contributed by survey respondents to inform our ongoing work on this specific policy topic.

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Letter from the Task Force

America stands on the cusp of a major expansion of its senior population, a circumstance that will impose unprecedented strains on the nation's fiscal health as well as its health care and housing systems. Despite the high stakes, public policy has failed to keep pace, underestimating the profound nature of the demographic transformation now underway. As a result, the United States is dramatically unprepared for the challenges that lie just ahead.

By 2030, 74 million Americans, representing more than 20 percent of the overall population, will be 65 years of age or more. Those 85 and above constitute the nation's fastest-growing demographic group. Unfortunately, absent a comprehensive and sustained national response, the well-being and safety of millions of older Americans will be jeopardized by the following realities:

- The current supply of housing that is affordable to the nation's lowest-income seniors is woefully inadequate. As more low-income Americans enter the senior ranks, this supply shortage — *currently measured in millions of units* — will become even more acute.

- The overwhelming majority of seniors say they wish to "age in place" in their own homes and communities. Yet most homes and communities lack the structural features and support services that can make living there independently a safe, realistic option.

- About 70 percent of adults over 65 will eventually require help with bathing, food preparation, dressing, and medication management—assistance that is referred to as "long-term services and supports," or LTSS. Medicare does not cover LTSS, though the costs of this care can consume a large portion of a household's budget. In addition, only a small minority of Americans has long-term care insurance covering these expenses.

- Personal savings are a critical source of retirement funding, but for millions of seniors these savings will fall far short of what is necessary to pay for housing, modifications to make homes safer, LTSS, health care, and other retirement needs.

The Bipartisan Policy Center established the Senior Health and Housing Task Force to draw public attention to these very serious concerns and to offer some solutions. A key premise of this report is that a greater integration of America's health care and housing systems will be absolutely essential to help manage chronic disease, improve health outcomes for seniors, and enable millions of Americans to age successfully in their own homes and communities. A growing body of evidence is also showing that more tightly linking health care with the home can reduce the costs borne by the health care system.

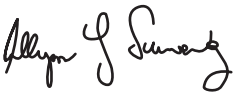
We offer this report with humility and gratitude. We are heartened by the thousands of health care and housing providers across the country who each day enhance the lives of America's oldest citizens. Their work is an inspiration to us.

Over the past year, we have been witness to many success stories: housing providers who made integrating supportive services with the home a central focus of their mission. Health care providers who understood the importance of the home as a site for care and service delivery. Local communities who deployed the power of technology to help seniors remain connected to their neighbors and friends. It is time to scale up these efforts so they become truly national in scope.

Without such a national commitment, one that involves not just the government but the private sector and philanthropic community as well, far too many Americans will likely find their retirement years to be ones of increasing stress and instability. It is our hope that this report, modest in its scope but large in its ambitions, will help provide the spark for this effort.

HENRY CISNEROS

MEL MARTINEZ



ALLYSON Y. SCHWARTZ

VIN WEBER

Executive Summary and Recommendations

In its 2013 report, *Housing America's Future: New Directions for National Policy*, the Bipartisan Policy Center Housing Commission identified meeting the needs of the rapidly increasing number of older Americans as a "new frontier in housing." The work of the Senior Health and Housing Task Force grows out of the Housing Commission's examination of this issue. The Task Force has also benefited from the insights of other BPC projects: the Long-Term Care Financing Initiative, the Prevention Initiative, the Health Innovation Initiative, and the Commission on Retirement Security and Personal Savings.[1]

Over the next 15 years, the explosive growth of the nation's senior population will present unprecedented challenges. Unfortunately, millions of Americans will find they lack enough savings to fund their retirements. Some will struggle to afford their housing, while others will find their housing is ill-suited for living independently. Many will eventually need help with the "activities of daily living," like eating, bathing, and dressing, assistance that can be both costly and taxing on other family members. Most older Americans will suffer from at least one chronic condition.

A successful response will require a much higher level of focus and preparation than exists today in the United States. Experimentation and innovation, as well as a willingness to move beyond established conventions, are essential elements of this process. An ability to see important connections that span across the seemingly disparate disciplines of housing, architecture, health care, information technology, telecommunications, transportation, urban planning, and financial services is critical. Communities across the country

must make meeting the needs of their older residents a priority consideration as they plan for the future. This work must proceed apace with the urgency it deserves.

This report examines four specific aspects of the challenge before us:

- The need for a much greater supply of homes affordable to our nation's lowest-income seniors.
- The importance of transforming homes and communities so that seniors can age with options, a desire shared by the overwhelming majority of older adults.
- The imperative to better integrate health care and supportive services with housing, recognizing that this integration has the potential to improve health outcomes for seniors and reduce the costs borne by the health care system.
- The need to deploy technologies on a far wider scale to help all Americans age successfully.

The recommendations outlined below are a call to action by a variety of actors — the Congress, members of the administration, public officials serving in state and local governments, the private sector, and leaders in the nonprofit and philanthropic communities.

The Task Force recognizes that several of its recommendations propose additional public spending. Nevertheless, the Task Force believes this additional spending is a necessary and worthwhile investment in the health and well-being of America's seniors. Other Task Force recommendations offer the potential to generate savings in health care costs. Achieving the full benefits of the recommendations, including a long-term reduction in federal and state health care expenditures, remains a priority of the Task Force.

Health Begins at Home: The Overriding Need for More Affordable Supply

Monthly mortgage payments — along with property taxes, utility payments, and the cost of home maintenance and upkeep — can be major strains on the budgets of senior households. In fact, for many seniors, housing-related costs constitute their biggest household expenditures.

A major factor contributing to high housing costs is the scarcity of affordable and available rental homes. This supply-demand imbalance most negatively impacts lower-income households, many of whom are older adults living on fixed incomes. In 2013, there were 11.2 million "extremely low-income" renter households competing for only 4.3 million affordable and available rental homes, resulting in a total shortfall of 6.9 million homes. Of the 11.2 million households in this competition, 2.6 million were elderly households with no children. Unfortunately, the current shortage of affordable rental homes will intensify in the years ahead as the low-income senior population grows and more seniors transition from homeownership to rental housing.

The following recommendations aim to provide the foundation for a comprehensive national effort to increase the supply of affordable homes for our nation's oldest citizens. Such an effort must begin with making the prevention and ending of senior homelessness a major national priority. Greater federal investment in the Low-Income Housing Tax Credit will also be necessary, as will the establishment of a new senior-supportive housing program. Federal regulatory policies must work to encourage, not stymie, the production and preservation of new affordable homes. A much broader engagement of the private and nonprofit sectors will also be necessary. And states and communities across the country must be committed to adopting land-use policies that promote a range of affordable housing options for their seniors.

Recommendations

1. Preventing and ending homelessness among older adults should become a major national priority. The U.S. Interagency Council on Homelessness should explicitly adopt a goal to prevent and end homelessness among older adults.

2. Congress and the administration should work together to fund federal rental-assistance programs at adequate levels, particularly since these programs will serve increasingly larger numbers of low-income seniors.

3. Congress and the administration should support continued funding at adequate levels for rental assistance and for service coordination under the Section 202 Supportive Housing for the Elderly program.

4. Congress and the administration should create and fund a new program for senior-supportive housing that uses project-based rental assistance and Low-Income Housing Tax Credits to support new construction and attract funding for services from health care programs.

5. Congress should support the preservation of existing Section 202 units by making them eligible for the Rental Assistance Demonstration program.

6. Congress and the administration should identify ways to more effectively support the service coordination needs of senior housing providers, particularly mission-oriented nonprofits.

7. Congress and the administration should substantially increase federal support for the Low-Income Housing Tax Credit (LIHTC) program to help finance the production and preservation of additional units of affordable rental housing, including affordable homes for low-income seniors.

8. The states should use their National Housing Trust Fund allocations and the U.S. Treasury Department should use the Capital Magnet Fund to support the production and preservation of affordable housing for the nation's lowest-income seniors.

9. States and local communities should consider adopting permissive land-use policies that allow for and encourage alternative housing structures for seniors, such as accessory dwelling units, micro-units, and congregate/group homes. States and local communities should also undertake a comprehensive examination of their existing policies to ensure they promote a range of affordable housing options for their seniors.

10. The Office of Management and Budget should convene an interagency task force that assesses the impact of federal laws and regulations on the production and preservation of new affordable housing, particularly for seniors, and identify ways these laws and regulations can be modified to reduce costs and increase production.

Aging with Options: Transforming Our Homes and Communities

According to a 2014 AARP survey, 88 percent of senior households strongly or somewhat agree that they would like to stay in their current residences as long as possible, while 89 percent strongly or somewhat agree they would like to remain in their community as long as possible.[2] If these preferences continue to hold, there will likely be a growing mismatch between the desire of seniors to age in place in their own homes or communities and their ability to do so.

A big hurdle will be household finances: Over the next 20 years, nearly 40 percent of individuals over the age of 62 are projected to have financial assets of $25,000 or less; 20 percent of those over 62 will have $5,000 or less. For many, this level of savings will be woefully inadequate to cover the expenses of daily living, never mind finance long-term services and supports or the modifications necessary to make living independently at home safe and secure.

In light of these difficult conditions, new solutions will be necessary — solutions that expand the range of housing options and that accommodate a variety of needs and preferences as individuals age. The following recommendations offer ideas that can help seniors age with options in their existing homes and communities and ensure the

needs of seniors are prioritized in community decision making. These recommendations call for better planning and improved data on the needs of existing and future senior households, as well as the availability of housing options to meet those needs. Increased coordination across government agencies will be necessary. So, too, will be greater transparency about existing government programs that can benefit senior households and help spur greater private investment.

Recommendations

1. Congress should authorize a new Modification Assistance Initiative (MAI) that would work on an interagency basis to coordinate federal resources available for home modifications to support aging with options.
2. The U.S. Department of Housing and Urban Development (HUD) should maintain protections and counseling services for the Home Equity Conversion Mortgage insured loan program and consider new products that assist borrowers in safely accessing home equity.
3. Congress should modernize the U.S. Department of Agriculture's (USDA) Section 504 housing repair program.
4. States and municipalities should establish and expand programs to assist low-income seniors with home modifications through property tax credits, grants, or forgivable loans.
5. States should protect and expand property tax circuit breaker programs and other forms of property tax relief that are targeted to assist low- and moderate-income senior taxpayers.
6. Congress should reauthorize and fund the Community Innovations for Aging in Place (CIAIP) initiative to assess community living models for possible replication in low- to moderate-income communities.
7. HUD should update its Consolidated Plan to require states and local jurisdictions to more explicitly assess the housing needs of seniors and the availability of age-friendly housing and community services.
8. The federal agencies involved in the Interagency Transportation Coordinating Council on Access and Mobility should develop a one-call/one-click platform for door-to-door transportation services for older adults.
9. HUD, in partnership with the American Planning Association, should develop a model senior zoning ordinance that local jurisdictions across the United States could adopt.
10. A wide range of professionals and organizations in the health care and housing fields should establish a work group to develop a suitability-rating scale for age-friendly housing and communities.

Integrating Health Care and Supportive Services with Housing

One of the most important public health findings over the last two decades has been that there are a number of factors, beyond medical care, that influence health status and contribute to premature mortality. Of these factors, social circumstances and the physical environment (particularly the home, whether a single-family home or an apartment) impact an individual's health. Housing takes on even greater importance for older Americans, since they spend a significant portion of their days in this setting. The home is also increasingly being seen as a potential site of care for seniors to receive health and wellness services and as an essential tool in chronic care management.

By virtue of the rapid expansion of the senior population, more and more Americans will be living with multiple chronic conditions and experiencing limitations in activities of daily living. Models and interventions that deliver health care and other services to seniors with these conditions in their own homes have the potential to improve health outcomes and reduce health care utilization and costs. In addition, a greater focus on preventing falls has a

tremendous upside: Approximately one in three older adults fall annually, resulting in about 2.5 million emergency-department visits, 700,000 hospitalizations, and approximately $34 billion in health care costs. Falls are the leading cause of injury-related deaths in older adults, and most falls occur in the home setting.

Today, there are several important policy opportunities to help accelerate the integration between health care and housing. Each involves key actors in the nation's health care system: public and private insurers, health care professionals, and hospitals. The following recommendations are designed to help capture these opportunities.

Recommendations

1. The Centers for Medicare and Medicaid Services (CMS) should launch an initiative that coordinates health care and long-term services and supports (LTSS) for Medicare beneficiaries living in publicly assisted housing to test the potential of improving health outcomes of a vulnerable population and reducing health care costs.
2. Congress should consider expanding the Independence at Home Demonstration program into a permanent, nationwide program to maintain optimal health status and to reduce health care costs of frail, medically complex Medicare beneficiaries.
3. The administration should ensure Medicare and other federal programs and policies support substantially reducing the number of older adult falls and their associated financial impacts.
4. CMS should incorporate housing-related questions in health risk assessments used by Medicare providers and Medicare Advantage plans.
5. Congress and the administration should work together to extend the Money Follows the Person Program to support state efforts to rebalance their Medicaid long-term care systems.
6. Medicaid should collect data on state coverage of housing-related activities and services and, where possible, track its impact on beneficiary health outcomes and health costs.
7. Hospitals should incorporate questions about housing as part of their discharge planning to prevent hospital readmissions, and nonprofit hospitals, specifically, should include housing in their triennial IRS-required community health needs assessment.

The Power of Technology to Support Successful Aging

Older adults and their caregivers can benefit considerably from the use of existing and emerging health care technologies, including "telehealth" and remote patient monitoring services, easy access to information contained in their electronic health records, and tools that assist with medication management. Other technologies may help older adults age in place. They include fall monitoring systems, home-based activity monitoring to address cognitive impairments, speech-equipped or visually oriented "smart devices" to support sensory impairments, and social-networking applications to help with loneliness and depression.

Despite growing interest in these technologies, a number of barriers continue to stand in the way of higher levels of adoption. These barriers include high costs for innovators and consumers, lack of reimbursement, interstate licensing requirements, limited Internet access (particularly in rural areas and among low-income Americans), and continued concerns about the privacy and security of sensitive health information. There are also other barriers that prevent effective use of technologies by older adults, including: paying for devices on a fixed income, forgetting or losing the technology, low ease of use, physical challenges, skepticism about benefits, and difficulty learning to use new technologies.

for this purpose. In RAD, public housing units move to a Section 8 platform with a long-term contract that, by law, the owner must renew if appropriations are available. Public housing authorities, or the sponsors and developers they select, then use this steady stream of funding to tap the capital markets for funds to make improvements in their housing stock.

Allowing nonprofit owners of Section 202 PRAC properties to participate in the RAD program would enable them to tap the capital markets for preservation financing. This approach should also make it easier for small organizations that lack the capacity to undertake major property recapitalizations to transfer these properties to other higher-capacity nonprofit owners who have larger portfolios and who can take advantage of greater operating efficiencies. Making PRAC properties eligible for RAD has the potential to preserve at least a portion of the 124,000 units in the PRAC portfolio that are at risk of loss or deterioration. Additional financial tools will be needed to preserve the entire stock of aging properties — both Section 202 properties and those financed under other programs — that serve low-income seniors.

Recommendation #5. Congress should support the preservation of existing Section 202 units (PRAC properties) by making them eligible for the RAD program.

Service coordinators play a critical role in transforming affordable senior housing into a platform for the delivery of supportive services that enable older adults to live independently in communities of other seniors. These services can include connecting seniors to meals-on-wheels, transportation, home health aides, financial counseling, group health initiatives such as falls prevention, and preventative health screening. Service coordinators may also perform activities such as resident health assessments, case management, acting as an advocate or coach, coordinating group programs, or training housing management staff. Service coordination may help many older adults, especially those who are frail or otherwise at risk, reduce their hospital emergency-room visits and avoid permanent placement in more costly nursing homes and other institutional settings.

HUD is currently contributing to the evidence base for the proposition that supportive services and service coordination are essential to senior health through a $15 million Housing with Services Demonstration for low-income seniors in its assisted properties.[73] The Task Force applauds HUD for undertaking this effort. As will be discussed in Chapter 4, health care providers have the ability to build on these efforts to help further scale health and wellness services for low-income seniors residing in congregate settings.

While HUD provides funding for the "service coordination" function to some Section 202 properties, many housing providers without HUD funding have struggled to fund service coordinators. In some instances, these providers, many of whom are mission-oriented nonprofits, have been able to assemble public and private resources on an ad hoc basis to defray the costs of service coordinators, but funding sources are often unstable and the level of support inadequate. As the lower-income senior population grows, it is critical for the federal government to continue its investment in service coordination and commit itself to a better understanding of the most effective service coordination models.

Recommendation #6. Congress and the administration should identify ways to more effectively support the service coordination needs of senior housing providers, particularly mission-oriented nonprofits.

New Construction and Preservation of Affordable Rental Housing

The LIHTC is the nation's most effective policy tool supporting the

How the LIHTC Works

The LIHTC is a capped federal incentive that is allocated to private developers, including nonprofits, through state housing finance agencies that receive an annual per capita allocation of credits indexed to inflation. Developers compete for credit awards through applications that are scored based on how closely the proposed development would meet the affordable housing priorities of the state as laid out in an annual qualified allocation plan. The properties must be rented to tenants with incomes at or below 60 percent of the area median income at rents that are capped for a period of at least 30 years. In practice, the program typically serves households below this income threshold.

new construction and preservation of affordable rental housing. Since the program's creation in the Tax Reform Act of 1986, the LIHTC has leveraged approximately $100 billion in private capital, helping to finance the construction and preservation of almost 2.8 million affordable rental homes for low-income families. About 90,000 to 95,000 units are built or preserved annually due to the LIHTC and the private investment it has brought to the table.[74]

The LIHTC is an important source of financing for rental homes affordable to the nation's lowest-income seniors. According to HUD, nearly 33 percent of reported LIHTC households have a senior member (62+), and more than one-fourth (28.6 percent) have a head of household who is at least 62 years old.[75] The "qualified allocation plans" of some states provide set-asides and other preferences for senior housing projects. In fact, the LIHTC program supports approximately 40,000 senior-restricted affordable units annually.[76]

With the need for affordable rental housing so great today — a need that affects not just seniors but individuals of all ages — the Task Force joins the call of other organizations in urging a significant expansion of federal support for the LIHTC. For example, the BPC Housing Commission recommended a 50 percent increase in funding for the LIHTC along with additional resources for LIHTC "gap" financing. Others have gone further, calling for the gradual doubling of the annual LIHTC allocation with sufficient funds for gap financing to support this expansion.[77] Investor interest in the LIHTC is currently very strong, far exceeding available authority. The United States must seize this opportunity to leverage even greater private investment in the production of new affordable housing, particularly for the nation's lowest-income seniors whose ranks will swell in the coming years.

The Task Force strongly encourages the states to provide robust preferences and set-asides in their annual LIHTC qualified allocation plans for projects that serve older adults and to adopt scoring systems that appropriately reflect the critical importance of these projects.

In addition, the states should use their qualified allocation plans as a tool to encourage applications for LIHTC projects that are designed to be close to transit and essential services and that include accessibility features enabling living independently and the better integration of health care and other services with housing.[78] To the extent feasible, LIHTC-supported properties should:

- Use space efficiently to ensure the greatest possible number of seniors are served.
- Include common areas that can serve as a platform for the delivery of health care, wellness, and other services for residents as well as potentially for the broader community.
- Include universal design features such as no-step entries; single-floor living that eliminates the need to use stairs; switches and outlets accessible at any height; extra-wide hallways and doors to accommodate walkers and wheelchairs; and lever-style door and faucet handles in new construction and, where feasible, in rehabilitation.
- Maintain onsite service coordinators in significant measure to address the social determinants of health and serve as a bridge to service providers.

The 2016 Qualified Allocation Plan of the Commonwealth of Pennsylvania

The Commonwealth of Pennsylvania is an example of a state promoting the development of new senior housing through its LIHTC qualified allocation plan. In its most recent qualified allocation plan, Pennsylvania provided a preference for senior housing projects, reserving credits for a minimum of two senior-occupancy developments targeting persons 62 years of age and above in both an urban and suburban/rural "pool."[79] To be eligible
for the preference, an applicant must demonstrate that services will be provided to residents in the proposed project that will enable them to continue to live independently.

The Pennsylvania qualified allocation plan also requires that projects seeking credits conform to minimum "visitability" requirements. These requirements include:

- The building and units must have at least one zero-step entrance with a 36-inch-wide door.
- All doorways and passages on the entry-level floor should have a width of 36 inches.
- There should be clear pathways to bathrooms and powder rooms, and these rooms should include a minimum 24-inch grab-bar beside the toilet on a reinforced wall, which can also serve as a towel bar.
- There should be clear pathways to living rooms and dining areas.
- Promote healthy living through good lighting, opportunities for walking, and no-smoking policies.

Recommendation #7. Congress and the administration should substantially increase federal support for the LIHTC program to help finance the production and preservation of additional units of affordable rental housing, including affordable homes for low-income seniors.

Additional Opportunities for Affordable Housing Production and Preservation

The Housing and Economic Recovery Act of 2008 created the National Housing Trust Fund (NHTF) and the Capital Magnet Fund (CMF) to help support new affordable housing production. The NHTF is administered by HUD, which has developed a formula by which money will be distributed to the states. The CMF, an account within the Community Development Financial Institutions Fund overseen by the U.S. Treasury Department, funds a competitive grant program for community development financial institutions and nonprofit housing agencies.

The Housing and Economic Recovery Act required Fannie Mae and Freddie Mac to set aside 4.2 basis points of their business volume each year for the NHTF and the CMF, with the NHTF receiving 65 percent of these funds and the CMF 35 percent. While this requirement was temporarily suspended when Fannie and Freddie were placed under government conservatorship in September 2008, the suspension was lifted in December 2014. HUD announced nearly $174 million in total funding for the NHTF in 2016, which may rise in future years.[80] By law, most of the NHTF funds must be used to serve very low-income persons, of whom seniors are a significant share.

The NHTF and CMF can become vital sources of funding for the production and preservation of homes affordable to our nation's lowest-income seniors and help stimulate innovative strategies

(64) New Hope Housing

New Hope Housing

October 14, 2016

Ms. Marni Holloway
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
Delivered via email

Dear Marni,

This letter brings with it our deep appreciation to you and the Department for the changes made in response to the development community's input throughout the 2016 review cycle. Of particular value to Supportive Housing are: the revisions to Cost Per Square Foot, the point values associated with sites located in the urban core, and decoupling of educational excellence from income quartiles. We have seen tremendous progress this year, and with a few more modifications we will have a QAP and MF Rules that appropriately level the playing field for Supportive Housing, an important endeavor to ensuring availability of deeply affordable units and the services necessary to keep Texas' most fragile residents stably housed. Below you will find our comments on the current draft, with additional markups attached.

Multifamily Rules - Subchapter B – Section 10.101(a)(3)
Undesirable Neighborhood Characteristics
Once again, we respectfully request the complete removal of Undesirable Neighborhood Characteristics from the Multifamily Rules. This section of the rules is largely biased against urban core development and inhibits redevelopment in the most rapidly gentrifying parts of major metro areas. In light of the ICP case dismissal, removal of this provision would allow developers the opportunity to invest in urban core and inner loop areas that have the greatest access to transportation, services, and community amenities. The two projects TDHCA has approved for New Hope Housing in 2016, New Hope Housing at Harrisburg and New Hope Housing at Reed – both landmark developments in Houston – were exceptionally challenging and costly to move forward and the newly proposed rules only tighten the passageway for other similar projects. New Hope's inability to construct safe, affordable, decent housing leaves our most vulnerable populations (now including children) living on the streets, in cars, and other places not meant for human habitation. We can do better, and together we must do better for the least among us.

Should you elect to keep the provision, we respectfully request the attached modifications to the proposed language, particularly in two areas. 1) Single Room Occupancy should be added to the exemption to Met Standard School threshold as it has the same adult-only occupancy standard as Elderly Limitation. 2) Paragraph E, language is especially confusing and it would be helpful to tidy it up. Additions and deletions are highlighted, with the most imperative amendments in red.

Multifamily Rules - Subchapter B – Section 10.101(b)(7)

Tenant Supportive Services

We fully support the Department's addition of the following language to this paragraph. We feel this significantly enhances the quality of service to residents and it is an appropriate expectation that qualified personnel administer any supportive programs selected.

These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider.

QAP §11.9(c)(3)(B)

Tenant Services

We respectfully request the following modification to the existing language.

> *(B) The Applicant certifies that the Development will have a dedicated Service Coordinator to contact local service providers, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. The Service Coordinator will pro-actively engage and assess residents' needs through direct communication and tailor services appropriately. A Development selecting these points will also provide:*
>
> - *Minimum of 1 monthly program on-site provided by a local service provider; AND*
> - *Minimum of 3 local service providers engaged to provide services to residents; OR*
> - *The applicant is a non-profit and is a self-providing services to residents of the Development.*

The changes we are requesting here would increase the feasibility of direly needed Supportive Housing across the State of Texas. Should you wish to speak with me personally, I welcome hearing from you at any time.

Sincerely,

Joy Horak-Brown
President and CEO

CC: Tim Irvine, Teresa Morales

(3) Undesirable Neighborhood Characteristics.

(A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. An Applicant may choose to disclose the presence of such characteristics at the time the pre-application (if applicable) is submitted to the Department. Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit the documentation described under subparagraphs (C) and (D) of this paragraph at pre- application and staff may perform an assessment of the Development Site to determine Site eligibility. The Applicant understands that any determination made by staff or the Board at the time of bond inducement regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the undesirable neighborhood characteristics become available while the full Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board. Should staff determine that the Development Site has any of the characteristics described in subparagraph (B) of this paragraph and such characteristics were not disclosed, the Application may be subject to termination. Termination due to non-disclosure may be appealed pursuant to §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)). The presence of any characteristics listed in subparagraph (B) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit, and include, where applicable, a review as described in subparagraph (C) of this paragraph. The assessment of the Development Site and neighborhood will be presented to the Board with a recommendation with respect to the eligibility of the Development Site. Factors to be considered by the Board, despite the existence of the undesirable neighborhood characteristics are identified in subparagraph (E) of this paragraph. Should the Board make a determination that a Development Site is ineligible, the termination of the Application resulting from such Board action is not subject to appeal.

(B) The undesirable neighborhood characteristics include those noted in clauses (i) – (iv) of this subparagraph and additional information as provided in subparagraphs (C) and (D) must be submitted in the Application. If an Application for a Development Site involves three or more undesirable neighborhood characteristics, in order to be found eligible it will be expected that, in addition to demonstrating satisfactory mitigation for each characteristic disclosed, the Development Site must be located within an area in which there is a concerted plan of revitalization already in place or that private sector economic forces, such as those referred to as gentrification are already underway and indicate a strong likelihood of a reasonably rapid transformation of the area to a more economically vibrant area. In order to be considered as an eligible Site despite the presence of such undesirable neighborhood characteristic, an Applicant must demonstrate actions being taken that would lead a reader to conclude that there is a high probability the undesirable characteristic will be sufficiently mitigated within a reasonable time, typically prior to placement in service, and that the undesirable

characteristic will either no longer be present or will have been sufficiently mitigated such that it would not have required disclosure.

a. The Development Site is located within a census tract that has a poverty rate above ~~40~~30 40 percent for individuals

~~b. The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.~~

c. The Development Site is located within 1,000 feet (measured from nearest boundary of blighted structure) of ~~multiple~~ at least 5 vacant structures visible from the street, which that have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.

d. The Development Site is l~~o~~cated within the attendance zones of an elementary school~~, a middle school or a high school~~ that does not have a Met Standard rating by the Texas Education Agency. ~~Any school in the attendance zone that has not achieved Met Standard for three consecutive years and has failed by at least one point in the most recent year, unless there is a clear trend indicating imminent compliance, shall be unable to mitigate due to the potential for school closure as an administrative remedy pursuant to Chapter 39 of the Texas Education Code.~~ In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary~~, middle and high school, respectively,~~ which may possibly be attended by the tenants in determining whether or not disclosure is required. The applicable school rating will be the 2016~~5~~ accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K- 6), ~~middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12)~~, the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. ~~Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating.~~ Development Sites subject to an Elderly Limitation or Single Room Occupancy is considered exempt and does not have to disclose the presence of this characteristic.

(C) Should any of the undesirable neighborhood characteristics described in subparagraph (B) of this paragraph exist, the Applicant must submit the Undesirable Neighborhood Characteristics Report that contains the information described in clauses (i)-(viii) of this subparagraph and subparagraph (D) of this paragraph so that staff may conduct a further Development Site and neighborhood review.

(i) A determination regarding neighborhood boundaries, which will be based on the review of a combination of natural and manmade physical features (rivers, highways, etc.), apparent changes in land use, the Primary Market Area as defined in the Market Analysis, census tract or municipal boundaries, and information obtained from any Site visits;

(ii) An assessment of general land use in the neighborhood, including comment on the prevalence of residential uses;

(iii) An assessment concerning any of the features reflected in paragraph (3) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (3);

(iv) An assessment of the number of existing affordable rental units (generally includes rental properties subject to TDHCA, HUD, or USDA restrictions) in the Primary Market Area, including comment on concentration based on the size of the Primary Market Area;

(v) An assessment of the percentage of households residing in the census tract that have household incomes equal to or greater than the median household income for the MSA or county where the Development Site is located; ~~and~~

An assessment of the number of market rate multifamily units in the neighborhood and their current rents and levels of occupancy;

(vii) An assessment of school performance for each of the schools in the attendance zone containing the Development that did not achieve the Met Standard rating, for the previous two academic years (regardless of whether the school Met Standard in those years), that includes the TEA Accountability Rating Report, a discussion of performance indicators and what progress has been made over the prior year, and progress relating to the goals and objectives identified in the campus improvement plan in effect; and

(viii) Any additional information necessary to complete an assessment of the Development Site, as requested by staff.

(D) Information regarding mitigation of undesirable neighborhood characteristics should be relevant to the undesirable characteristics that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application and may include, but is not limited to, the measures described in clauses (i)-(iv) of this subparagraph. In addition to those measures described herein, documentation from the local municipality may also be submitted stating the Development is consistent with their obligation to affirmatively further fair housing. The mitigation must be accompanied by a report summarizing the data and to support the conclusion of a reasonable expectation by staff and the Board that the issues will be resolved or significantly improved by the time the Development is placed into service. Conclusions for such reasonable expectation must be affirmed by an industry professional, as appropriate.

(i) Evidence that the poverty rate within the census tract has decreased over the five-year period preceding the date of Application, or that the census tract is contiguous to a census tract with a poverty rate below ~~20%~~ 40% and there are no physical barriers between them such as highways or rivers which would be reasonably considered as separating or dividing the neighborhood containing the proposed Development from the low poverty area must be submitted. Other mitigation may include, but is not limited to, evidence of the availability of adult education and job training that will lead to full-time permanent employment for tenants, a description of additional tenant services to be provided at the development that address root causes of poverty, evidence of gentrification in the area (which may include contiguous census tracts) and a clear and compelling reason that the Development should be located at the Site. ~~Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility.~~

(ii) Evidence that crime rates are ~~substantially~~ decreasing, based on violent crime data from the city's police department or county sheriff's department, for the police beat or patrol area within which the Development Site is located, based on the population of the police beat or patrol area that would yield a crime rate below the threshold indicated in this section. The instances of violent crimes within the police beat or patrol area that encompass the census tract, calculated based on the population of the census tract, may also be used. A map plotting all instances of violent crimes within a one-half mile radius of the Development Site may also be provided that reflects that the crimes identified are not at a level that would warrant an ongoing concern. The data must include incidents reported during the entire 2015 and 2016 calendar year. Violent crimes reported through the date of Application submission may be requested by staff as part of the assessment performed under subparagraph (C) of this paragraph. A written statement from the local police department or local law enforcement agency, including a description of efforts by such enforcement agency addressing issues of crime and the results of their efforts may be provided, and depending on the data provided by the Applicant, such written statement may be required, as determined by staff. For Rehabilitation or Reconstruction Developments, to the extent that the high level of criminal activity is concentrated at the Development Site, documentation may be submitted to indicate such issue(s) could be remedied by the proposed Development. Evidence of such remediation should go beyond what would be considered a typical scope of work and should include a security plan, partnerships with external agencies, or other efforts to be implemented that would deter criminal activity. Information on whether such security features have been successful at any of the Applicant's existing properties should also be submitted, if applicable.

(iii) Evidence of mitigation efforts to address blight or abandonment may include new construction in the area already underway that evidences public and/or private investment. ~~Acceptable mitigation to address extensive blight should go beyond the acquisition or demolition of the blighted property and identify the efforts and timeline associated with the completion of a desirable permanent use of the site(s) such as new or rehabilitated housing, new business, development and completion of dedicated municipal or county-owned park space.~~ In instances where blight exists but may only include a few properties, mitigation efforts could include partnerships with

local agencies to engage in community-wide clean-up efforts, or other efforts to address the overall condition of the neighborhood.

(iv) Evidence of mitigation for all of the schools in the attendance zone that have not achieved Met Standard will include documentation from a school official with oversight of the school in question that indicates current progress towards meeting the goals and performance objectives identified in the Campus Improvement Plan. For schools that have not achieved Met Standard for two consecutive years, a letter from the superintendent, member of the school board or a member of the transformation team that has direct experience, knowledge and oversight of the specific school must also be submitted. The letter should, at a minimum and to the extent applicable, identify the efforts that have been undertaken to increase student performance, decrease mobility rate, benchmarks for re-evaluation, increased parental involvement, plans for school expansion, and long-term trends that would point toward their achieving Met Standard by the time the Development is placed in service. ~~The letter from such education professional should also speak to why they believe the staff tasked with carrying out the plan will be successful at making progress towards acceptable student performance considering that prior Campus Improvement Plans were unable to do so.~~ Such assessment could include whether the team involved has employed similar strategies at prior schools and were successful. In addition to the aforementioned letter from the school official, information should also be provided that addresses the types of services and activities offered at the Development or external partnerships that will facilitate and augment classroom performance.

(E) In order for the Development Site to be found eligible by the Board, despite the existence of undesirable neighborhood characteristics, the Board must find that the use of Department funds at the Development Site must be consistent with achieving at least one of the goals in clauses (i) – (iii) of this subparagraph.

(i) Preservation of existing occupied affordable housing units, subject to federal or state income restrictions and mitigating evidence supports a conclusion that the characteristic will be remedied in an appropriate time period, which may be after placement in service; or ~~to ensure they are safe and suitable, or development of new high quality affordable housing units that are subject to federal rent or income restrictions; and~~

(ii) Factual determination that the undesirable characteristic(s) that has been disclosed are not of such a nature or severity that ~~they~~ should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph. Such information sufficiently supports a conclusion that the characteristic(s) will be remedied by the time the Development places into service; Or

(iii) The Development satisfies HUD Site and Neighborhood Standards or is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order.

(65) The Brownstone Group

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F. 713.432.0120

October 14, 2016

Via email htc.public-comment@tdhca.state.tx.us

Ms. Sharon Gamble
9% Competitive Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

Re: Public Comments on QAP and MF Rules

Dear Sharon:

Attached are our comments on the proposed 2017 QAP and Multifamily Rules, submitted in accordance with the notice published in the September 23, 2016, edition of the Texas Register. Please let us know if you have any questions.

Sincerely,

Brownstone Affordable Housing, Ltd., a Texas limited partnership

By: Three B Ventures, Inc., a Texas corporation, its general partner

By:_____
Doak D. Brown, Vice President
doak@thebrownstonegroup.net

enclosures

11.6(3)(C)(ii) – statutory reference missing (2306.6711(g))

11.7 Tie Break Factors

We agree with the TAAHP that the 4th tie break factor, related to Educational Quality score, should be removed.

We offer the following recommendation to the 3rd tie break factor, related to the Opportunity Index menu items above the maximum Opportunity Index Score. It is the confluence of items from this menu that equates to high opportunity, not any individual item. An Application with 4 or more above the cap items should move on to the next tie breaker.

> (3) Applications having achieved the maximum Opportunity Index Score and ~~the highest number of~~ have at least four (4) additional point items on the Opportunity index menu that they were unable to claim because of the 7 point cap on that item.

11.9(c)(3)(B) Tenant Services

> "The Applicant certifies that the Development will contact local service providers, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. (1 point)"

We recommend striking this language from 11.9(c)(3), due to its ambiguity, and adding it as an option under 10.101(7) in more clearly defined terms.

11.9(c)(4) Opportunity Index

We offer the following blackline for Opportunity Index.

(A) A ~~P~~proposed Development is eligible for a maximum of seven (7) opportunity index points if it is located in a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and ~~meets the requirements in (i) or (ii) below.~~ has:

(i) ~~The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and~~ an income rate in the two highest quartiles within the uniform service region~~.~~; (2 points)

(ii) ~~The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with~~ an income rate in the third quartile within the region, ~~and~~ is contiguous to a census tract in the first or second quartile~~,~~ without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the first or second quartile census tract~~s~~. and, (1 point)

(B) An application that meets the foregoing criteria may qualify for additional points up ~~to seven (7) points~~ for any one or more of the following factors. Each facility or amenity may be used only once for scoring purposes, regardless of the number of categories it fits~~:~~.

(i) For Developments located in an Urban Area~~:, an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIV) of this subparagraph.~~

(I) The Development site is located less than 1/2 mile on an ~~accessible route~~ from a public park with an ~~accessible~~ playground (1 point);

(II) The Development Site is located less than ½ mile ~~on an accessible route~~ from Public Transportation with a route schedule that provides regular service to employment and basic services (1 point);

(III) The Development site is located within 1 mile of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of

the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items~~.~~ (1 point);

(IV) The Development is located within 3 miles of either an emergency room or an urgent care facility (1 point);

(V) The Development Site is within 2 miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten (1 point);

(VI) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less, as defined by neighborhoodscout.com (1 point);

(VII) The development site is located within 1 mile of a public library (1 point);

(VIII) The Development Site is located within 5 miles of a University or Community College campus (1 point);

(IX) The Development Site is located within 3 miles of a concentrated retail shopping center ~~of at least 1 million square feet or~~ that includes at least 4 ~~big box~~ national retail stores (1 point);

(X) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher exceeds that of the State-wide average ~~is 27% or higher.~~ (1 point);

(XI) Development site is within 2 miles of a ~~government-sponsored~~ non-profit museum (1 point);

(XII) Development site is within 1 mile of an indoor recreation facility available to the public (1 point);

(XIII) Development site is within 1 mile of an outdoor recreation facility available to the public (1 point); and

(XIV) Development site is within 1 mile of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point).

(ii) For Developments located in a Rural Area~~; an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIII) of this subparagraph.~~

(I) The Development site is located within ~~2~~5 miles of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items~~.~~ (1 point);

(II) The Development is located within 4 miles of health~~-~~related facility, such a full service hospital, community health center, or minor emergency center. Physician specialty offices are not considered in this category~~.~~ (1 point);

(III) The Development Site is within 3 miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten (1 point);

(IV) The Development Site is located in a census tract with a property crime rate 26 per 1,000 or less, as defined by neighborhoodscout.com (1 point);

(V) The development site is located within 3 miles of a public library (1 point);

(VI) The development site is located within 3 miles of a public park (1 point);

(VII) The Development Site is located within ~~7~~15 miles of a University or Community College campus (1 point);

(VIII) The Development Site is located within 5 miles of a retail shopping center with ~~XX square feet of stores~~ at least 3 retail stores (1point);

(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher exceeds that of the State-wide average ~~is 27% or higher.~~ (1 point);

(X) Development site is within 2 miles of a ~~government sponsored~~ non-profit museum (1 point);

(XI) Development site is within ~~1~~3 mile of an indoor recreation facility available to the public (1 point);

(XII) Development site is within ~~1~~3 mile of an outdoor recreation facility available to the public (1 point); and

(XIII) Development site is within ~~1~~3 mile of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point).

11.9(c)(5) Educational Quality

We agree with the TAAHP recommendation to remove the Educational Quality scoring item and move individual school with a Met Standard to the Opportunity Index menu (not included in the above blackline).

11.9(c)(8) Proximity to the Urban Core

We recommend that this scoring item not apply to the At-Risk.

11.9(d)(5) Community Support from State Representative

We agree with TAAHP's recommendations on this section.

11.9(d)(7) Concerted Revitalization Plan

We recommend removing the population limit for cities eligible for Urban CRP points. If a limitation must be included, we recommend 25,000 or more.

11.9(e)(2) Cost of Development per Square Foot

We agree with the recommendations made by the Texas Coalition of Affordable Housing Developers.

11.9(e)(3) Pre-application Participation

We believe allowing wholly new sites between pre-application and full application circumvents the Statutory purpose of the Pre-Application. We recommend the language revert to the 2016 construct.

11.9(e)(4) Leveraging of Private, State and Federal Resources

We recommend that the leveraging percentages revert to the 2016 levels.

Subchapter A

10.3 Definitions

We do not believe that Special Limited Partners generally possess factors or attributes that give them Control, although some may. Therefore, we offer the following recommendation to the definition of Control.

(29) Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. Controlling entities of a partnership include the general partners, may include special limited partners when applicable, but not investor limited partners or special limited partners who do not possess other factors or attributes that give them Control. Controlling entities of a limited liability company include but are not limited to the managers, managing members, any members with 10 percent or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership, but not investor members who do not possess other factors or attributes that give them Control. Controlling individuals or entities of a corporation, including non-profit corporations, include voting members of the corporation's board, whether or not any one member did not participate in a particular decision due to recusal or absence. Multiple Persons may be deemed to have Control simultaneously.

The current definition of Elderly Preference Development does not preclude an Application from choosing this type of Elderly Development even if HUD funding (or other federal assistance) is not used; however, the 2016 Application conflicted with this plain language and did not allow for that type of a choice to be made. If the intention of the Elderly Preference Development definition is that it only apply to developments with HUD funding or other types of federal assistance, that should be clearly articulated in the definition.

We offer the following recommendation for the definition of Principal. The first relates to the unclear nature of whether "Persons" is capitalized because it refers to the defined term, or simply because it is the first word in the sentence. The context leads us to believe that it is the generalized term, which informs our recommendation. The second relates to our earlier comment on the definition of Control.

(98) Principal--Any ~~P~~persons~~s~~ that will exercise Control (which includes voting board members pursuant to §10.3(a)(29) of this chapter) over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) partnerships, Principals include all General Partners, ~~special limited partners,~~ and Principals with ownership interest, and special limited partners with ownership interest who also possess factors or attributes that give them Control;

(B) corporations, Principals include any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation, and any individual who has Control with respect to such stock holder; and

(C) limited liability companies, Principals include all managers, managing members, members having a 10 percent or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.

Subchapter B

10.101(a)(2) Undesirable Site Features

We make the following recommendations to this section.

(2) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph maybe considered ineligible as determined by the Board. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs ("VA") may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application and must include a letter stating the Rehabilitation of the existing units is consistent with achieving at least one or more of the stated goals as outlined in the State of Texas Analysis of Impediments to Fair Housing Choice or, if within the boundaries of a participating jurisdiction or entitlement community, as outlined in the local analysis of impediments to fair housing choice and identified in the participating jurisdiction's Action Plan. The distances are to be measured from the nearest boundary of the Development Site to the ~~nearest boundary of the property or easement containing the~~ undesirable feature. ~~The minimum distances noted assume that the land between the proposed Development Site and the particular undesirable feature has no significant intervening barriers or obstacles such as waterways or bodies of water, major high speed roads, park land, or walls, such as noise suppression walls adjacent to railways or highways.~~ Where there is a local ordinance that ~~regulates the~~ for closer proximity ~~of~~ to such undesirable feature ~~to a multifamily development that differs from~~ than the minimum distances noted below, documentation, such as a copy of the local ordinance identifying such distances relative to the Development Site, must be included in the Application. ~~The distances identified in subparagraphs (A) - (J) of this paragraph are intended primarily to address sensory concerns such as noise or smell, social factors making it inappropriate to locate residential housing in proximity to certain businesses. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes.~~ If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (K) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

(A) Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Transportation Code, §396.001;

(B) Development Sites located within 300 feet of a solid waste or sanitary landfills;

(C) Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local Government Code, §243.002, or as zoned, licensed and regulated as such by the local municipality;

(D) Development Sites in which the buildings are located within 100 feet of the easement of any overhead high voltage transmission line, or support structures for high voltage transmission lines~~, or other similar structures~~. This does not apply to local service electric lines and poles;

(E) Development Sites located within ~~500~~100 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail;

(F) Development Sites located within 500 feet of heavy industrial (i.e. facilities that require extensive capital investment in land and machinery, are not easily relocated and produce high levels of external noise such as manufacturing plants, fuel storage facilities (excluding gas stations) etc.);

(G) Development Sites located within 10 miles of a nuclear plant;

(H) Development Sites in which the buildings are located within one-quarter mile of the accident zones or clear zones of any airport;

(I) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids. Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance ("PIPA");
(J) Development Sites located within 2 miles of refineries capable of refining more than 100,000 barrels of oil daily; or
(K) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated.

10.101(a)(3) Undesirable Neighborhood Characteristics

We agree with the language recommendations made by TAAHP.

10.101(b)(4) Mandatory Development Amenities

We agree with TAAHP's recommendation to strike the requirement for solar screens.

10.101(b)(5) Common Amenities

We recommend leaving furnished community room as a 2 points.

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

In-unit laundry equipment should be a 3 point item.

10.101(b)(7) Tenant Supportive Services

We agree with TAAHP's recommendation to this section of the Rule. We also recommend increasing scholastic tutoring 5 points.

Subchapter C

10.201(7) Administrative Deficiency Process

The Administrative Deficiency deadline should remain 5 days.

10.203 Public Notifications

We agree with TAAHP's recommendation on this section.

10.204(6) Experience Requirement

The 2014 criteria for experience certificates is exactly the same in 2015 and 2016, so 2014 certificates should still count.

10.204(16) Section 811 Project Rental Assistance Program

We agree with TAAHP's recommendations on this item.

Subchapter D

10.302(e)(1)(C) Acquisition from Seller without current Title

We agree with Oryx Compliance, LLC's comment on this section.

10.302(e)(9) Reserves

New language has been added to the 5th sentence of this section, and we recommend the following changes.

> In no instance at initial underwriting will total reserves exceed twelve (12) months of stabilized operating expenses plus debt service (and only for USDA or HUD financed rehabilitation transactions the initial deposits to replacement reserves, initial deposits to required voucher reserves and transferred replacement reserves ~~for USDA or HUD financed rehabilitation transactions~~).

Subchapter G

10.901(5) Third Party Underwriting Fee

The third party underwriter language has been removed from 10.201(5), so this fee is no longer applicable and should be removed.

10.901(12) Extension Fees

Construction Status Reports should not need to be extended. We recommend removing this reference from the Extension Fee section.

(66) O-SDA Industries

O-SDA INDUSTRIES

5714 Sam Houston Circle Austin, TX 78731 (830) 330-0762 megan@o-sda.com

October 14, 2016

Via Email – tim.irvine@tdhca.state.tx.us
Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, Texas 78701

Re: Comments - Draft 2017 Qualified Allocation Plan and Multifamily Rule

Dear Mr. Irvine,

Thank you for allowing us the opportunity to weigh in on the 2017 QAP. Please accept the following comments O-SDA Industries, LLC.

Equality in Scoring Among Population Types

In 2015, the Texas Legislature passed House Bill 3311, which disallowed TDHCA from awarding a different number of points to a general population application and a senior population application. During the development of the 2016 QAP, staff considered this bill when proposing scoring criteria and purposefully limited Educational Excellence points for supportive housing developments to 2 out of 5 possible points in order to maintain parity among population types. In the November 12, 2015, board book, staff wrote the following:

"In response to commenters (1), (23), (32), (45), and (49) regarding parity in points achievable for Aging in Place and Educational Excellence, staff has also considered recent legislation regarding parity between Elderly and general population Developments in recommending that Supportive Housing Developments be limited to two (2) points under Educational Excellence. This limitation would allow parity between a Supportive Housing general population Development and an Elderly Development."

The draft 2017 QAP includes points for Educational Quality, but the proposed language does not limit supportive housing developments to 2 points. Supportive housing developments (only) qualify for 3 additional points through Rent Levels of the Tenants and Tenant Services, which creates a scoring advantage should all other scoring categories be the same. Supportive housing

developments already receive special consideration in excess of these additional points. For example, supportive housing developments do not need to comply with Unit Size requirements and automatically receive 8 points for Unit Sizes without meeting the size minimums. They also start with a base score on Unit and Development features and therefore are not required to provide as many features as non-supportive housing developments. They are allowed to make owner contributions to the development without the risk of losing points under the Leveraging of Private, State, and Federal Resources scoring item that limits deferred developer fee (which would include owner contributions for non-supportive housing developments). They also receive feasibility allowances under the REA rules.

In order to maintain parity, I ask that staff revisit the 2016 QAP and limit the points available to supportive housing developments under the Educational Quality scoring item. Should educational Quality be deleted or its idea relocated under another scoring item, I ask that staff limit supportive housing developments in some other scoring area such that they do not have an overall 3 point advantage. All population types should have parity in scoring
We respectfully submit these suggested changes for staff's consideration and inclusion in the final 2017 QAP and Multifamily Rules. Please do not hesitate to contact me with any questions.

General eligibility

The addition of adaptive reuse as it relates to one for one replacement makes no sense. If you have an adaptive reuse then by definition that building included no units because it was being used for other purposes. So, how would the minimum replacement of one for one be applied in this situation? Adaptive reuse should be removed from this ineligibility section.

> A Development utilizing a Direct Loan that is subject to the Housing and Community Development Act, 104(d) requirements and proposing Rehabilitation, or Reconstruction ~~or Adaptive Reuse~~, if the Applicant is not proposing at least the one-for-one replacement of the existing unit mix. Adding additional units would not violate this provision.

Public Office Notifications

If there is a change from pre-app to app, to notify within 14 days of the person taking office. This should be kept as it was drafted in 2016 with the re-notifications occurring prior to submission of the full application. It is very difficult to keep track of newly elected or appointed officials, especially with respect to school districts and school superintendents. The 14-day period creates yet another pitfall for Applicants who are trying to coordinate many evolving bits of information.

> In addition, should a change in elected official occur between the submission of a pre-application and the submission of an Application, Applicants are required to notify the newly elected (or appointed) official ~~within fourteen (14) days of when they take office~~ prior to submission of a full application.

Contents of public notification

Townhomes were removed as a development type. This development type is an acceptable community in the application therefore removing it as a type does not seem consistent. Townhomes should be included as a type of development for public notification purposes.

> the physical type of Development being proposed (e.g. single family homes, duplex, apartments, ~~townhomes~~, high-rise etc.)

Architectural drawings

A requirement was added to describe flood mitigation with the site plan. This information is not handled by the architect generally but by the civil engineer and makes more sense to be included in the feasibility report than on the face of a site plan. Please move this requirement to one included as part of the civil feasibility report rather than on the site plan.

> describe, if applicable, how flood mitigation or any other required mitigation will be accomplished

Preliminary Site Plan

There is a new requirement for the site plan to identify accessible routes. Accessible routes are subject to very nominal slopes and grades, 5%, 8% with handrails and 2% cross slopes and those generally cannot be determined until full topography is known and grading plans are complete. At the time of application, not enough information or work has been determine to make informed decisions on accessible routes. A statement by the architect or engineer that the site will comply

with the requirement to have an accessible route would be more appropriate than requesting that they be identified on the site plan.

811 program

Under paragraph a – an applicant must use an existing development to the extent there is one in the applicant's portfolio. An applicant is only eligible for paragraph b (setting aside units in current application) if there is not a development that can be utilized under para a. Any requirement to implement a new program and/or use agreement on an existing development must provide for lender and investor approval and if such approval cannot be obtained the applicant should be allowed to default to paragraph b without penalty.

Site Changes from Pre-App to Full App

The revised language indicates that any change in site may not require new notification. This notification prohibition should be for the position the person holds, not the person itself – i.e. an applicant notifies the county judge but a new judge is elected, so the person holding that position changed – an applicant could re-notify without penalty. But if the applicable judge changed because the site changed, then this prohibition would apply.

> A change in the site from pre-application to full Application may not result in a requirement to notify any new position or entity not required to have been notified at pre-application.

Leveraging

The economic impact of lowering the leveraging is devastating to deals and results in developments that are significantly less financially sound. Below is an example of the financial impact on a generic deal:

> Assume the average Tax Credit Request is $1.5M, the average deal cost at that tax credit request is $18,750,000. ($18,750,000 * 8% = $1.5M). Now reduce the 8% to 7% ($18,750,000 * 7% = $1,312,500) - instead of $1.5M in credits, you can only request $1,312,500 in credits – a $187,500 reduction in annual credits. **Multiply that by the 10 year credit period and a 1% reduction in leveraging results in $1,875,000 LESS sources to fund the deal the exact same deal.**

There simply are not enough soft money resources available to bridge financing gaps this significant. The leveraging points should revert to those used in 2016.

Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii))

"Voluntarily included in eligible basis" should apply to both Building Costs and Hard Costs, not just to Hard Costs. The purpose of modifying this section of the QAP was to allow applicants to provide actual total costs while still limiting and encouraging an efficient use of tax credits in financing the development. Building Cost is the measurement most often used in applications and therefore to provide meaningful change, Building Cost used for scoring should be that voluntarily included in eligible basis, same as the change made for Hard Costs. The measurement factor for Hard Costs is used by applicants on a very limited basis due to the limited amount allowed for an expanded set of construction cost categories. Therefore allowing the eligible basis option for only Hard Costs will not produce the desired result.

> An Application may qualify to receive up to twelve (12) points based on the amount voluntarily included in eligible basis for either the Building Cost or the Hard Costs per square foot of the proposed Development ~~voluntarily included in eligible basis~~ ("Eligible Hard Cost"), as originally submitted in the Application.

Mandatory Development Amenities – Solar Screens

A better, more effective solution to consider would instead be mandating a specific window value (SHGC) minimum, appropriate per climate zone; and/or further still, mandating compliance with an above-code third party green certification program --or at the very least, exempting an entity who already includes delivery of a green cert program, as window & shading values are inherently included with a minimum standard window within these programs for higher level energy compliance.

I believe the requirement to include solar screens will cause ongoing maintenance issues and will potentially be in violation of certain city building codes. In addition, I believe it will create an environment with less natural light for the tenant, which will require the tenant to turn on their lights earlier in the evening, perhaps increasing energy use. Higher quality windows are a more effective longer-lasting solution.

Sincerely,

Megan Lasch
O-SDA Industries, LLC

Cc: Marni Holloway, TDHCA
Sharon Gamble, TDHCA
Teresa Morales, TDHCA

(67) Palladium USA

October 13, 2016

Texas Department of Housing and Community Affairs
Attn: Sharon Gamble
P.O. Box 13941
Austin, TX 78711-3941

RE: Public Comment concerning the 2017 QAP and Multifamily Rules

Dear Sharon,
Our team has spent some time digesting the current draft of the QAP and Multifamily Rules and would like to give some observations and suggestions based on what we believe would be in the best interest of the industry, and will help to deliver the best products at the best locations. We understand staff's intentions to do just that and hope that input such as ours, and others, will be helpful for the Department to gain a better understanding of the real world challenges and consequences we, as developers, face when we submit to current rules in our efforts to get quality affordable communities on the ground.

11.9(c)(5) Educational Quality
We understand the necessity of housing choice in our industry. However, it is a grave concern to us that TAAHP is arguing for the removal or the minimizing of Educational Quality in the QAP. Everyone evaluates schools when weighing housing decisions. The argument that school quality should be compromised for the sake of housing choice is inherently flawed. It would be easier as a developer to find cheap land in undesirable areas, the same areas some have argued passionately as needing new housing investment, but that really is not good for our residents and it fundamentally is not good real estate. Removing or reducing the point magnitude of Educational Quality would incentivize much of the 2017 applications to go to urban neighborhoods where land is cheap and opposition is not likely and opportunity for families and our residents is very low. No real estate investment should or would go on its own to these places. However, if this point category is minimized, we would have to go there as well in order to be competitive. I realize my argument makes development harder. It is hard and expensive to develop where schools are good, which tends to be the path of growth. However, developing in the path of growth is fundamental to good real estate and provides the type of real opportunity our residents need. I do not buy into the theoretical idea that placing a new affordable housing development in an undesirable urban neighborhood is the economic driver to lift that neighborhood into renewal. I also don't buy that it is "too hard" to do development in high opportunity areas. In the 2016 round, we won awards for two 9% deals that are both great examples of good real estate, great location for workforce housing while providing excellent school choice. Our 2016 award in Garland is minutes from downtown Dallas and thousands of employers located right on Interstate 30. Just because it does not fall in the City of Dallas city limits does not matter. These high opportunity deals can and do get done.

<u>Our recommendation</u>: leave Educational Quality points as written in the draft QAP.

11.9(c)(4) Opportunity Index

While we are thankful and agree with the broadening of this point category to include some 3rd quartile census tracts and believe that change will open up new areas of possibility, we still believe that census tracts that earn the highest median income really do in the real world represent the most desirable places people want to live. This is because many 1st quartile census tracts are suburban neighborhoods with excellent opportunity in terms of schools and positive growth and now that the Opportunity Index incentivizes proximity to important services, there is little risk of developers seeking 1st quartile tracts in the middle of nowhere. However, they are also the hardest deals to get done in terms of support and land cost. Therefore, we believe that a development that fights those battles and wins over public support to be in the best places in Texas, should have a point advantage. Below is our recommendation to give 1st quartile census tracts a one point advantage over 2nd and 3rd quartile census tracts. If 1st quartile sites are as hard as we all believe them to be, this point advantage will really only reward the few developments that put in the time and effort to win over those hard to win highest of opportunity areas.

Our 1st recommendation:

(A) A Proposed Development is eligible for a maximum of eight~~seven~~ (8~~7~~) opportunity index points if it is located in a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and meets the requirements in (i) or (ii) below.

(i) The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and an income rate in the ~~two~~ highest quartile~~s~~ within the uniform service region. (2 points)

(ii) The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with income in the second quartile or the third quartile within the region, as long as~~and~~ the third quartile census tract is contiguous to a census tract in the first or second quartile, without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. and, (1 points)

(B) An application that meets the foregoing criteria may qualify for an additional ~~points up to~~ six~~seven~~ (6~~7~~) points for any one or more of the following factors. Each facility or amenity may be used only once for scoring purposes, regardless of the number of categories it fits:

Our 2nd recommendation:

We propose to add zoning to the list of amenity point items under 4(B)(i) as that item shows readiness to proceed as well as the fact that city planning has already happened. Therefore, if a site already has appropriate zoning in place to allow the proposed use, that should be worth at least one (1) or more points on the list of items to make up Opportunity Index points.

(XVI) Development site is appropriately zoned for the proposed use by March 1, 2017 (1 point)

11.9(c)(6) Underserved Area

We believe that there should be an opportunity to claim Underserved Area points for being in a census tract that does not have an active tax credit development serving the same Target Population.

Our recommendation:

(D) For areas not scoring points for (C) above, a census tract that does not have ~~a Development subject to an active tax credit LURA~~an active tax credit development serving the same Target Population; (2 points);

10.101(b)(4) Mandatory Development Amenities

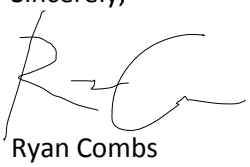
We believe a clarification is necessary in the rules in relation to parking. Since the cap of 1.5 million dollars of tax credits has existed, many urban developments include market rate units and with those units covered parking as a way to add additional income to help make a development feasible. The current rule is too limiting in its language and does not allow for flexibility in relation to parking.

Our recommendation:

(M) Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be one and a half (1.5) spaces per Unit for non-Elderly Developments and one (1) space per Unit for Elderly Developments. The minimum number of required spaces must be available to the ~~tenants~~ affordable units at no cost.

We want to thank you and the rest of the TDHCA staff for your diligence in effort and openness to suggestions from the industry. You are the guardians of the integrity of the affordable housing industry in the State of Texas and while it is important to get input from the industry, it is also important to weigh input with what is best for this program and ultimately our residents who live in the housing we develop and manage. We look forward to another great year working with you and the TDHCA team.

Sincerely,



Ryan Combs
Palladium USA

(68) Prospera Housing Community Services

From: McMurray, Bradford (BradfordMc@prosperahcs.org)
To: Sharon Gamble
Cc: Marni Holloway
Subject: 2017 QAP & Rules Public Comment
Date: Friday, October 14, 2016 8:49:31 AM

Dear Ms. Gamble:

We would like to offer our support for the comments submitted by the Texas Affiliation of Affordable Housing Providers (TAAHP) related to the New Proposed Rules at 10 Texas Administrative Code (TAC), Chapter 10, Subchapter A, B, C, D, and G.

We would also like to support TAAHP's comments on the 2017 Qualified Allocation Plan (QAP) or the New Proposed Rule at 10 TAC Chapter 11 with one reservation. Specifically, a revision related to Chapter 11.9(c)(6) regarding underserved points. We applaud the proposed revision to item (E) of this section included in the Board Book for the TDHCA Board meeting on September 8, 2016 as:

(E) A census tract within the boundaries of an incorporated area and all contiguous census tracts for which neither the census tract in which the Development is located nor the contiguous census tracts have received an award or HTC allocation within the past 15 years and continues to appear on the Department's inventory (5 points).

We feel this is an excellent change because:

- It will increase dispersion and deconcentration of new 9% tax credit developments;
- The new Opportunity Index menu will ensure that development is maintained in only underserved areas that offer quality amenities.
- Areas like Calallen in Corpus Christi that has received a 9% award in 3 of the last 4 funding rounds and that was the location of all three competitive applications in the 2016 9% funding round may have a reduced tax credit focus in their area;
- Other areas that have good schools, while not the highest performing, can now be competitive in the 9% funding round; and
- Residents who are happy with their neighborhoods and schools can potentially have a greater opportunity to live in the same neighborhood and go to the same schools with new developments receiving an award in their current location.

Unfortunately, in the revisions issued for public comment posted in the Texas Register, an additional constraint was added to item 11.9(c)(6)(E) which was:

"This item will apply to cities with a population of 500,000 or more, and will not apply in the At-Risk set-Aside."

While still benefitting the larger cities, this change eliminates the benefit to more moderately-sized cities like Arlington (pop. 388,125), Corpus Christi (pop. 324,074), Plano (pop. 283,558), Laredo (pop. 255,473), Lubbock (pop. 249,042), Garland (236,897), and Irving (236,607), that all have populations over 200,000. We recognize the need to include a population qualifier to ensure that new 9% tax credit developments are not directed away from the larger cities in an MSA to bedroom

communities; however, we feel that TDHCA is missing an opportunity to address and prevent the concentration of tax credit developments in moderately sized citifies in Texas by making this population constraint too high at 500,000.

We support a population constraint but believe it should be reduced to 200,000 to include the top 13 largest Texas cities that have the current or potential circumstance of a concentration of 9% tax credit developments. Therefore we propose the following item 11.9(c)(6)(E):

(E) A census tract within the boundaries of an incorporated area and all contiguous census tracts for which neither the census tract in which the Development is located nor the contiguous census tracts have received an award or HTC allocation within the past 15 years and continues to appear on the Department's inventory. This item will apply to cities with a population of **200,000** or more, and will not apply in the At-Risk set-Aside. (5 points).

Sincerely,

Brad McMurray
Development Director

PROSPERA
HOUSING COMMUNITY SERVICES

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Welcome to ***PROSPERA,*** our new name, logo and brand identity reflecting our evolving role of delivering quality affordable housing and services throughout South Texas. Housing and Community Services, Inc. now operates as **Prospera Housing Community Services** and Wedge Management, Inc. operates as **Prospera Property Management**. For nearly a quarter of a century, the work of these organizations has earned the trust and respect of our diverse partners and stakeholders. Although our names and logo are changing to enhance our brand familiarity and expand relationships, our core mission, vision and values, which define who we are and what we stand for, remain constant.

(69) Purple Martin Real Estate

PURPLE MARTIN REAL ESTATE

October 14, 2016

Multifamily Finance Division
Texas Department of Housing and Community Affairs
Attn: Marni Holloway, Director
221 East 11th Street
Austin, Texas 78701

Re: Public Comment – 2017 Draft Uniform Multifamily Rules ("Rules") and Qualified Allocation Plan ("QAP)

Dear Ms. Holloway:

Thank you for the opportunity to comment on the proposed 2017 Rules and QAP. I appreciate staff's efforts to consider stakeholder input throughout the year, and its efforts in preparing these drafts for public comment.

Subchapter B – Site and Development Requirements and Restrictions

Section 10.101(a)(2) Undesirable Site Features

Requested Changes:
(2) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph maybe considered ineligible as determined by the Board. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs ("VA") may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application ~~and must include a letter stating the Rehabilitation of the existing units is consistent with achieving at least one or more of the stated goals as outlined in the State of Texas Analysis of Impediments to Fair Housing Choice or, if within the boundaries of a participating jurisdiction or entitlement community, as outlined in the local analysis of impediments to fair housing choice and identified in the participating jurisdiction's Action Plan~~. The distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the undesirable feature. The minimum distances noted assume that the land between the proposed Development Site and the particular undesirable feature has no significant intervening barriers or obstacles such as waterways or bodies of water, major high speed roads, park land, or walls, such as noise suppression walls adjacent to railways or highways, in which case this section does not apply. Where there is a local ordinance that regulates the proximity of such undesirable feature to a multifamily development that ~~differs from~~ has smaller distances than the minimum distances noted below, documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application. The distances identified in subparagraphs (A) - (J) of this paragraph are intended primarily to address sensory concerns such as noise or smell, social factors making it inappropriate to locate residential housing in proximity to certain businesses. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements

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regarding separation for safety purposes. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (K) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

(A)Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Transportation Code, §396.001;

(B)Development Sites located within 300 feet of a solid waste or sanitary landfills;

(C)Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local Government Code, §243.002, or as zoned, licensed and regulated as such by the local municipality;

(D)Development Sites in which the buildings are located within ~~100 feet~~ of the easement of any overhead high voltage transmission line, support structures for high voltage transmission lines, or other similar structures. This does not apply to local service electric lines and poles; high voltage transmission are lines that carry 138 Kv of power or greater.

(E)Development Sites located within ~~5~~ 100 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail, or the Applicant submits a noise study with the application and commits at the time of commitment to provide sound attenuation of noise levels in excess of 65 decibels;

(F)Development Sites located within 500 feet of heavy industrial (i.e. facilities that require extensive capital investment in land and machinery, are not easily relocated and produce high levels of external noise such as manufacturing plants, fuel storage facilities (excluding gas stations) etc.);

(G)Development Sites located within 10 miles of a nuclear plant;

(H)Development Sites in which the buildings are located within ~~one-quarter mile~~ of the accident zones or clear zones of any airport;

(I)Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids. Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance ("PIPA");

(J)Development Sites located within 1000 feet ~~2 miles~~ of refineries capable of refining more than 100,000 barrels of oil daily; or

(K)Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated.

Justification: The radii in previous years' QAP are more appropriate. With regard to proximity to railroad tracks, the proposed change is consistent with HUD's guidelines on proximity to active railroad tracks which are more appropriate guidelines to use because they address the impact to the resident, rather than redline entire swaths of urban areas.

Section 10.101(a)(2)(B) Undesirable Neighborhood Characteristics.

Consistent with TAAHP comments, I request that this entire section be deleted.

Justification: This section is a remnant of the remediation plan and should be removed from the rules in the wake of the dismissal of the ICP litigation. It is an anti-urban provision that works to eliminate large swaths of urban areas from the competition. Furthermore, because that data sources like neighborhood scout and school performance data are inherently faulty and produce inconsistent results, such measures are of questionable value in determining the worth of certain neighborhoods.

In the event that TDHCA does not support an entire removal of this section, I recommend the below revisions.

Requested Changes:

(A)If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. An Applicant may choose to disclose the presence of such characteristics at the time the pre-application (if applicable) is submitted to the Department. Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit the documentation described under subparagraphs (C) and (D) of this paragraph at pre-application and staff may perform an assessment of the Development Site to determine Site eligibility. The Applicant understands that any determination made by staff or the Board at the time of bond inducement regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the undesirable neighborhood characteristics become available while the full Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board. Should staff determine that the Development Site has any of the characteristics described in subparagraph (B) of this paragraph and such characteristics were not disclosed, the Application may be subject to termination. Termination due to non-disclosure may be appealed pursuant to §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)). The presence of any characteristics listed in subparagraph (B) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit, and include, where applicable, a review as described in subparagraph (C) of this paragraph. The assessment of the Development Site and neighborhood will be presented to the Board with a recommendation with respect to the eligibility of the Development Site. Factors to be considered by the Board, despite the existence of the undesirable neighborhood characteristics are identified in subparagraph (E) of this paragraph. Should the Board make a determination that a Development Site is ineligible, the termination of the Application resulting from such Board action is not subject to appeal.

(B)The undesirable neighborhood characteristics include those noted in clauses (i) - (iv) of this subparagraph and additional information as provided in subparagraphs (C) and (D) of this paragraph must be submitted in the Application. ~~If an Application for a Development Site involves three or more undesirable neighborhood characteristics, in order to be found eligible it will be expected that, in addition to demonstrating satisfactory mitigation for each characteristic disclosed, the Development Site must be located within an area in which there is a concerted plan of revitalization already in place or that private sector economic forces, such as those referred to as gentrification are already underway and indicate a strong likelihood of a reasonably rapid transformation of the area to a more economically vibrant area~~. In

order to be considered as an eligible Site despite the presence of such undesirable neighborhood characteristic, an Applicant must demonstrate actions being taken that would lead a reader to conclude that there is a high probability the undesirable characteristic will be sufficiently mitigated within a reasonable time, typically ~~prior to~~ 5 years after placement in service, and that the undesirable characteristic will either no longer be present or will have been sufficiently mitigated such that it would not have required disclosure.

(i)The Development Site is located within a census tract that has a poverty rate above ~~30~~ 40 percent for individuals.

~~(ii)The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.~~

(iii)The Development Site is located within 1,000 feet (measured from nearest boundary of the Site to the nearest boundary of blighted structure) of ~~multiple~~ at least 15 vacant structures that have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.

(iv)The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met Standard rating by the Texas Education Agency. ~~Any school in the attendance zone that has not achieved Met Standard for three consecutive years and has failed by at least one point in the most recent year, unless there is a clear trend indicating imminent compliance, shall be unable to mitigate due to the potential for school closure as an administrative remedy pursuant to Chapter 39 of the Texas Education Code.~~ In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required. The applicable school rating will be the 2016 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating. Development Sites subject to an Elderly Limitation or Single Room Occupancy is considered exempt and do~~es~~ not have to disclose the presence of this characteristic.

(C)Should any of the undesirable neighborhood characteristics described in subparagraph (B) of this paragraph exist, the Applicant must submit the Undesirable Neighborhood Characteristics Report that contains the information described in clauses (i) - (viii) of this subparagraph and subparagraph (D) of this paragraph so that staff may conduct a further Development Site and neighborhood review.

(i)A determination regarding neighborhood boundaries, which will be based on the review of a combination of natural and manmade physical features (rivers, highways, etc.), apparent changes in land use, the Primary Market Area as defined in the Market Analysis, census tract or municipal boundaries, and information obtained from any Site visits;

(ii)An assessment of general land use in the neighborhood, including comment on the prevalence of residential uses;

(iii)An assessment concerning any of the features reflected in paragraph (3) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (3) of this subsection;

(iv)An assessment of the number of existing affordable rental units (generally includes rental properties subject to TDHCA, HUD, or USDA restrictions) in the Primary Market Area, including comment on concentration based on the size of the Primary Market Area;

(v)An assessment of the percentage of households residing in the census tract that have household incomes equal to or greater than the median household income for the MSA or county where the Development Site is located;

(vi)An assessment of the number of market rate multifamily units in the neighborhood and their current rents and levels of occupancy;

(vii)An assessment of school performance for each of the schools in the attendance zone containing the Development that did not achieve the Met Standard rating, for the previous two academic years (regardless of whether the school Met Standard in those years), that includes the TEA Accountability Rating Report, a discussion of performance indicators and what progress has been made over the prior year, and progress relating to the goals and objectives identified in the campus improvement plan in effect; and

(viii)Any additional information necessary to complete an assessment of the Development Site, as requested by staff.

(D)Information regarding mitigation of undesirable neighborhood characteristics should be relevant to the undesirable characteristics that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application and may include, but is not limited to, the measures described in clauses (i) - (iv) of this subparagraph. In addition to those measures described herein, documentation from the local municipality may also be submitted stating the Development is consistent with their obligation to affirmatively further fair housing~~. The mitigation must be accompanied by a report summarizing the data and to support the conclusion of a reasonable expectation by staff and the Board that the issues will be resolved or significantly improved by the time the Development is placed into service. Conclusions for such reasonable expectation must be affirmed by an industry professional, as appropriate.~~

~~1.~~ (i)Evidence that the poverty rate within the census tract has decreased over the five-year period preceding the date of Application, or that the census tract is contiguous to a census tract with a poverty rate below ~~4~~20% and there are no physical barriers between them such as highways or rivers which would be reasonably considered as separating or dividing the neighborhood containing the proposed Development from the low poverty area must be submitted. Other mitigation may include, but is not limited to, evidence of the availability of adult education and job training that will lead to full-time permanent employment for tenants, a description of additional tenant services to be provided at the development that address root causes of poverty, evidence of gentrification in the area (which may include contiguous census tracts), and a clear and compelling reason that the Development should be located at the Site~~. Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility.~~

(ii)~~Evidence that crime rates are substantially decreasing, based on violent crime data from the city's police department or county sheriff's department, for the police beat or patrol area within which the Development Site is located, based on the population of the police beat or patrol area that would yield a crime rate below the threshold indicated in this section. The instances of violent crimes within the police~~

~~beat or patrol area that encompass the census tract, calculated based on the population of the census tract, may also be used. A map plotting all instances of violent crimes within a one-half mile radius of the Development Site may also be provided that reflects that the crimes identified are not at a level that would warrant an ongoing concern. The data must include incidents reported during the entire 2015 and 2016 calendar year. Violent crimes reported through the date of Application submission may be requested by staff as part of the assessment performed under subparagraph (C) of this paragraph. A written statement from the local police department or local law enforcement agency, including a description of efforts by such enforcement agency addressing issues of crime and the results of their efforts may be provided, and depending on the data provided by the Applicant, such written statement may be required, as determined by staff. For Rehabilitation or Reconstruction Developments, to the extent that the high level of criminal activity is concentrated at the Development Site, documentation may be submitted to indicate such issue(s) could be remedied by the proposed Development. Evidence of such remediation should go beyond what would be considered a typical scope of work and should include a security plan, partnerships with external agencies, or other efforts to be implemented that would deter criminal activity. Information on whether such security features have been successful at any of the Applicant's existing properties should also be submitted, if applicable.~~

(iii)Evidence of mitigation efforts to address blight or abandonment may include new construction in the area already underway that evidences public and/or private investment. ~~Acceptable mitigation to address extensive blight should go beyond the acquisition or demolition of the blighted property and identify the efforts and timeline associated with the completion of a desirable permanent use of the site(s) such as new or rehabilitated housing, new business, development and completion of dedicated municipal or county owned park space.~~ In instances where blight exists but may only include a few properties, mitigation efforts could include partnerships with local agencies to engage in community-wide clean-up efforts, or other efforts to address the overall condition of the neighborhood.

(iv)Evidence of mitigation for all of the schools in the attendance zone that have not achieved Met Standard will include documentation from a school official with oversight of the school in question that indicates current progress towards meeting the goals and performance objectives identified in the Campus Improvement Plan. For schools that have not achieved Met Standard for two consecutive years, a letter from the superintendent, member of the school board or a member of the transformation team that has direct experience, knowledge and oversight of the specific school must also be submitted. The letter should, at a minimum and to the extent applicable, identify the efforts that have been undertaken to increase student performance, decrease mobility rate, benchmarks for re-evaluation, increased parental involvement, plans for school expansion, and long-term trends that would point toward their achieving Met Standard by the time the Development is placed in service. ~~The letter from such education professional should also speak to why they believe the staff tasked with carrying out the plan will be successful at making progress towards acceptable student performance considering that prior Campus Improvement Plans were unable to do so.~~ Such assessment could include whether the team involved has employed similar strategies at prior schools and were successful. In addition to the aforementioned letter from the school official, information should also be provided that addresses the types of services and activities offered at the Development or external partnerships that will facilitate and augment classroom performance.

(E~~)In order for the Development Site to be found eligible by the Board, despite the existence of undesirable neighborhood characteristics, the Board must find that the use of Department funds at the Development Site must be consistent with achieving the goals in clauses (i) and (ii) of this subparagraph.~~

~~(i)Preservation of existing occupied affordable housing units to ensure they are safe and suitable or development of new high quality affordable housing units that are subject to federal rent or income restrictions; and~~

~~(ii)Factual determination that the undesirable characteristic(s) that has been disclosed are not of such a nature or severity that should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph. Such information sufficiently supports a conclusion that the characteristic(s) will be remedied by the time the Development places into service.~~

Section 10.101(b)(7) Tenant Supportive Services

I request deletion of the new language regarding who provides these services.

Justification: Many properties, especially smaller rural ones, cannot financial support a separate staff person or a third party provider to provide supportive services. In many rural communities, those third party providers are not even available.

Subchapter C: Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications

Section 10.201(7)(B) Administrative Deficiencies for Competitive HTC Applications.

I recommend changing the period to cure a deficiency from three days to five days.

Justification: More times than not, requests for deficiencies create a ripple effect, where making a change to one document requires the applicant to change several other documents to be consistent. When one of the documents requires input from a third party, addressing the deficiency takes time. Five days is more appropriate than three days.

§10.203 Public Notifications

I request deletion of the new 14-day requirement.

Justification: It is very difficult to keep track of newly elected or appointed officials, especially with respect to school districts and school superintendents. The 14-day period creates yet another pitfall for Applicants who are trying to coordinate many evolving bits of information. Under prior rules Applicants have until the date of full application to notify newly elected/appointed officials.

Section 10.204(16) Section 811 Project Based Rental Assistance Program

I request that this Section be moved to the scoring criteria under the QAP as in past years. I believe this change can be made since the QAP addresses the Section 811 Program under the Tenants with Special Needs section of the QAP. Adding this provision back into the QAP would be a natural outgrowth of the Tenants with Special Needs section.

The justification for moving back to the scoring section is that as threshold, this provision burdens 4% developments in two ways. First, administering 811 units creates an added operating expenses to deals that often need tax exemptions or soft money to work. Second, adding this requirement limits the ability

to position these developments as “workforce housing” and gives neighbors another reason to strongly oppose.

In the event that TDHCA determined that it cannot be moved back to scoring, I request the 4% tax credit/tax exempt bond transactions are exempted from this threshold provision.

Regardless of whether this section remains as a threshold item or a scoring item, I request that this rule revert back to previous version where the Applicant has a choice regarding placing Section 811 residents in existing developments or in the development for which an application is submitted. This flexibility is important to applicants, especially when committing existing developments to accept Section 811 residents requires lender and investor approval. I recommend language allowing applicants to choose to locate the Section 811 residents in an existing development or in the development for which the application is submitted. Additionally, I request language that an Applicant be exempt from locating 811 residents in existing development if applicant provides evidence that it cannot receive approval from either its lender or investor.

Additionally, I recommend that for developments with 100 or fewer units, the unit requirement be 10% of total units, not 10 units.

Qualified Allocation Plan

Section 11.9 Competitive HTC Selection Criteria

(c)(7) Tenant Populations with Special Needs

I recommend moving the Section 811 requirements back to this scoring category as previously discussed.

(e)(2) Cost of the Development per Square Foot

Requested Changes:
An Application may qualify to receive up to twelve (12) points based on the amount voluntarily included in eligible basis for either the Building Cost or the Hard Costs per square foot of the proposed Development ~~voluntarily included in eligible basis~~ (“Eligible Hard Cost”), as originally submitted in the Application.

Justification: “Voluntarily included in eligible basis” should apply to both Building Costs and Hard Costs, not just to Hard Costs. The purpose of modifying this section of the QAP was to allow applicants to provide actual total costs while still limiting and encouraging an efficient use of tax credits in financing the development. Building Cost is the measurement most often used in applications and therefore to provide meaningful change, Building Cost used for scoring should be that voluntarily included in eligible basis, same as the change made for Hard Costs. The measurement factor for Hard Costs is used by applicants on a very limited basis due to the limited amount allowed for an expanded set of construction cost categories. Therefore, allowing the eligible basis option for only Hard Costs will not produce the desired result.

(3) Leveraging of Private, State and Federal Resources

Requested Changes (reversion to 2016 language):

(A)An Application may qualify to receive up to three (3) points if at least five (5) percent of the total Units are restricted to serve households at or below 30 percent of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) - (iv) of this subparagraph:

(i)the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 9 percent of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or

(ii)if the Housing Tax Credit funding request is less than eight ~~seven~~ (~~8~~7) percent of the Total Housing Development Cost (3 points); or

(iii)if the Housing Tax Credit funding request is less than ~~eight~~ nine (~~8~~9) percent of the Total Housing Development Cost (2 points); or

(iv)if the Housing Tax Credit funding request is less than ~~nine~~ ten (~~9~~ 10) percent of the Total Housing Development Cost (1 point).

(B)The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50 percent of the developer fee can be deferred. Where costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect

Justification: There are several other provisions that create a cap on credits per application. This one is very difficult to achieve and results in an under-leverage of credits.

Subchapter D – Underwriting and Loan Policy

§10.304(d)(10)(B) Appraisal Rules and Guidelines: Value Estimates, Developments with Project-Based Rental Assistance.

Requested Changes:

(B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value". ~~inclusive of the value associated with the rental assistance.~~ For public housing converting to project-based rental assistance or project-based vouchers under the Rental Assistance Demonstration (RAD) program, the value must be based on the ~~post conversion restricted rents and must consider any other~~ ~~on-going restrictions that will remain in place even if not affecting rents~~ unrestricted market rents. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates and/or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter.

Justification: Nationwide a number of closed RAD transactions have been awarded acquisition credits based on building values derived using market rents under the income approach, including those in

including Colorado, Florida, Georgia, New Jersey, Pennsylvania, South Carolina, and Virginia. Tax counsel for these transactions have opined that this approach is reasonable, as have national accounting and appraisal firms. The reason this approach has been accepted nationwide is that in the "As Is" condition public housing developments operate on a breakeven basis, preventing an accurate valuation under the income approach. There are several ways in which HUD may allow the release of public housing restrictions. For public housing converting to Section 8 assistance, at the closing of RAD transactions, the existing public housing restrictions are removed and the property is unencumbered. This release of public housing restrictions supports the use of a market-rent derived value.

For public housing converting to Section 8 assistance, at the closing of RAD transactions, the existing public housing restrictions are removed and the property is unencumbered. This release of public housing restrictions supports the use of a market-rent derived value. The additional resources generated by this approach can be significant in markets with strong rental markets, where affordability crises often exist. For example, in Austin the differential between appraised value based on market rents versus RAD rents represented approximately $5 million in additional tax credit equity generated from acquisition tax credits.

Sincerely,

Audrey Martin
Principal

(70) Saigebrook Development

Saigebrook Development

October 14, 2016

Texas Department of Housing and Community Affairs
Tim Irvine, Executive Director
221 E. 11th Street
Austin, Texas 78701

Re: Comments - Draft 2017 Qualified Allocation Plan and Multifamily Rule

Dear Mr. Irvine,

Thank you for the opportunity to submit comments relating to the proposed 2017 Qualified Allocation Plan (QAP) and Multifamily Rules (Rules). We appreciate your consideration of the thoughts outlined below and look forward to further discussion and final implementation.

1. Cost per Development per Square Foot - "Voluntarily included in eligible basis" should apply to both Building Costs and Hard Costs, not just to Hard Costs. The purpose of modifying this section of the QAP was to allow applicants to provide actual total costs while still limiting and encouraging an efficient use of tax credits in financing the development. Building Cost is the measurement most often used in applications and therefore to provide meaningful change, Building Cost used for scoring should be that voluntarily included in eligible basis, same as the change made for Hard Costs. The measurement factor for Hard Costs is used by applicants on a very limited basis due to the limited amount allowed for an expanded set of construction cost categories. Therefore allowing the eligible basis option for only Hard Costs will not produce the desired result.

   Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii)) An Application may qualify to receive up to twelve (12) points based on the amount voluntarily included in eligible basis for either the Building Cost or the Hard Costs per square foot of the proposed Development ~~voluntarily included in eligible basis~~ ("Eligible Hard Cost"), as originally submitted in the Application.

2. Leveraging Points - The economic impact of lowering the leveraging is devastating to deals and results in developments that are significantly less financially sound. Below is an example of the financial impact on a generic deal:

   *Assume the average Tax Credit Request is $1.5M, the average deal cost at that tax credit request is $18,750,000. ($18,750,000 * 8% = $1.5M). Now reduce the 8% to 7% ($18,750,000 * 7% = $1,312,500) - instead of $1.5M in credits, you can only request $1,312,500 in credits – an $187,500*

reduction in annual credits. ***Multiply that by the 10 year credit period and a 1% reduction in leveraging results in $1,875,000 LESS sources to fund the deal the exact same deal****.*

There simply are not enough soft money resources available to bridge financing gaps this significant. Without those soft financing sources, to increase the leverage required creates more financial stress on the development in a time when developers are experiencing significant cost increases in land and construction, increased requirements due to code changes and green building features and a desire to provide more services and housing for those at the lowest income levels. The leveraging points should revert to those used in 2016.

I appreciate your consideration of these comments.

Sincerely,

Lisa M. Stephens
President

CC:
Sharon Gamble
Brent Stewart
Marni Holloway

(71) Stoneleaf Companies

From:	Sharon Gamble
To:	HTC Public Comment
Subject:	FW: 2017 QAP Public Comment
Date:	Wednesday, September 28, 2016 4:21:56 PM
Attachments:	Public Comment 1.pdf Public Comment 2.pdf Public Comment 3.pdf

---

Saving

Regards,

Sharon D. Gamble MSW, PMP
Competitive Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
(512) 936-7834

Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b) there are important limitations and caveats (Also see 10 TAC §10.2(b)).

About TDHCA
The Texas Department of Housing and Community Affairs administers a number of state and federal programs through for-profit, nonprofit, and local government partnerships to strengthen communities through affordable housing development, home ownership opportunities, weatherization, and community-based services for Texans in need. For more information, including current funding opportunities and information on local providers, please visit www.tdhca.state.tx.us

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From: Ben Dempsey [mailto:ben@stoneleafcompanies.com]
Sent: Wednesday, September 28, 2016 4:05 PM
To: Sharon Gamble
Cc: Mike Sugrue; Victoria Sugrue; lauren@stoneleafcompanies.com
Subject: 2017 QAP Public Comment

Ms. Gamble,

Please see our attached Public Comments for specific sections of the 2017 QAP staff draft. Please let me know if you require any further clarifications or have any questions. Thank you for your time, consideration and commitment to Texans in need of affordable housing.

Additionally, please respond to this email confirming receipt of the attached documents. Thank you.

Ben Dempsey, CGP
StoneLeaf Companies
1920 South 3rd St.
Mabank, TX 75147
903-887-4344

StoneLeaf Companies

9/28/2016

Texas Department of Housing and Community Affairs
Attn: Sharon Gamble
P.O. Box 13941
Austin, Texas 78711-3941

Ms. Gamble,

This letter serves as our public comment on the following item:

§11.9(c)(4)(B)(ii)For Developments located in a Rural Area, an Application may qualify to receive points through a combination of requirements in clauses (1) through (13) of this subparagraph.

(I) The Development site is located within 2 miles of a full service grocery store or pharmacy……(1 point)

Why does this distance keep changing? The 2016 QAP listed the distance for rural to be 3 miles and urban to be 1.5 miles. For the 2016 QAP this was a "threshold item". Therefore, it is assumed that someone did at least a minimal amount of research to justify the distances.

Rural communities throughout Texas typically have one grocery store and/or one pharmacy in the entire City due to the size of the customer base that can support the stores. These locations are overwhelmingly within the vicinity of the downtown area. This is due to the traffic density and zoning restrictions.

New construction in rural communities is almost exclusively going to be located on the "edge" of town due to availability of land. Further reducing the allowable distance to a grocery store or pharmacy severely restricts the physical size of a rural City that a developer can consider. This does nothing to improve the affordable housing shortage that rural communities are facing.

The US Census Bureau list the average travel time to work in the United States to be 25.4 minutes. The attached map shows a sample of rural areas within Texas that exceed that. It can be realistically assumed that majority of the individuals and/or families living in these rural areas would stop at a grocery store while traveling to or from work.

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It is recommended that the previous 3 mile distance for pharmacy and/or grocery locations in rural communities remain unchanged.

Ben Dempsey
Vice President
StoneLeaf Companies

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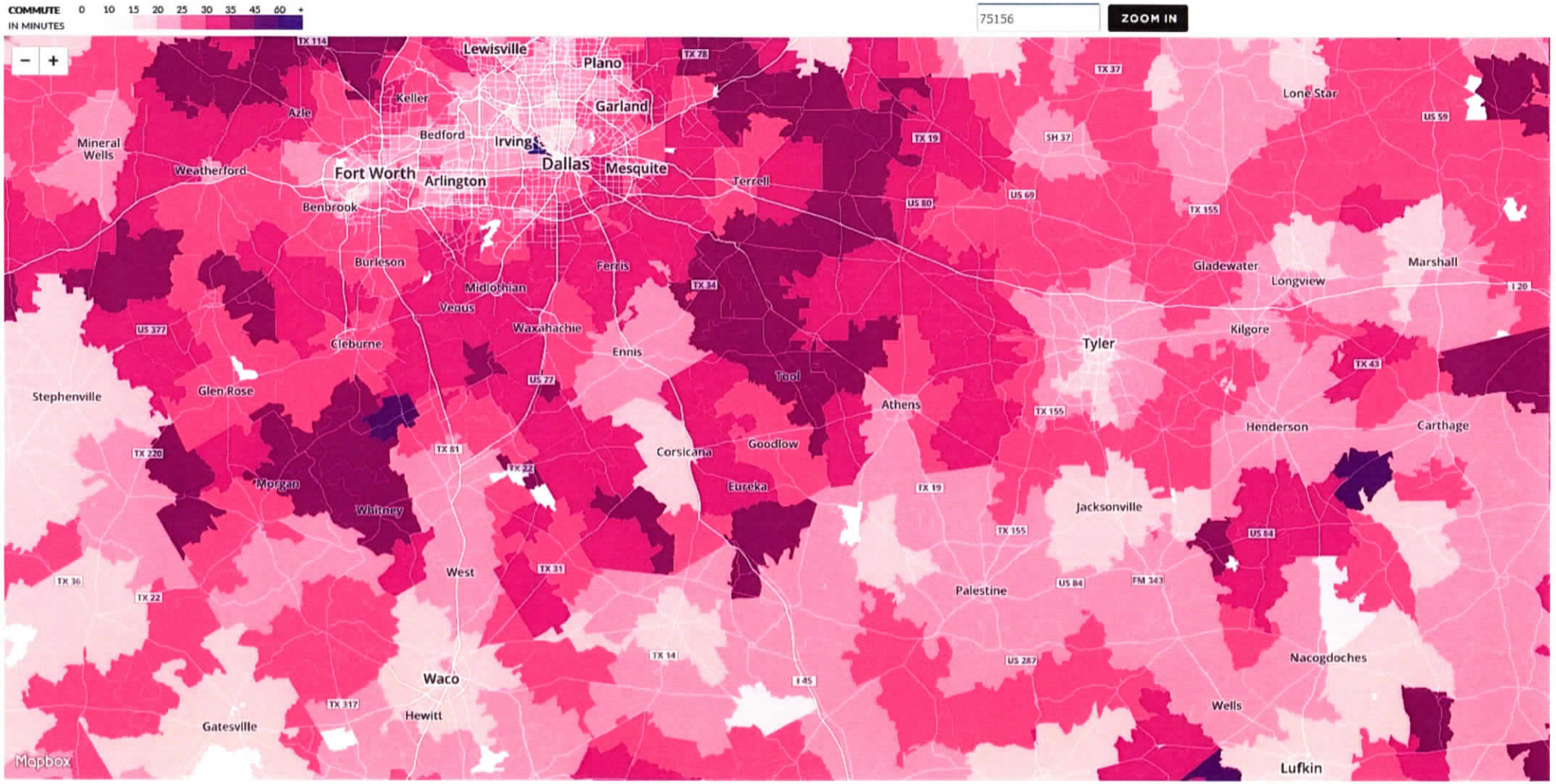
WNYC Average Commute Times

The average travel time to work in the United States is 25.4 minutes, according to the U.S. Census Bureau. Move around the map or enter your town or zip code to find commute times for your area.



StoneLeaf Companies

9/28/2016

Texas Department of Housing and Community Affairs
Attn: Sharon Gamble
P.O. Box 13941
Austin, Texas 78711-3941

Ms. Gamble,

This letter serves as our public comment on the following item:

§11.9(c)(4)(B)(ii)For Developments located in a Rural Area, an Application may qualify to receive points through a combination of requirements in clauses (1) through (13) of this subparagraph.

(V) The Development site is located within 2 miles of a government sponsored museum (1 point)

Assuming that the purpose of this scoring item is based upon the fact that museums are primarily focused on historical education and social enrichment for the local community, it appears that idea behind it is not a bad one. However, according to Ford W. Bell, the outgoing president of the American Association of Museums, the majority of museums in the United States are nonprofits that receive majority of their funding sources from private/charitable giving (36.5% in a 2009 study by the American Association of Museums). In fact, government support is third on the list of sources (24.4%) behind earned income (27.6%).

Certain rural communities within the State of Texas do have museums located inside the City limits and this does offer an opportunity to make the tax credit program more competitive within the rural community applications. However, is more common for these museums to be sponsored by a 501(c)3 organization than it is a government sponsored museum. These museums still offer the same educational benefits as well as historical preservation. It seems reasonable to allow points to be scored under this item if a museum is sponsored by a nonprofit organization.

Regarding the distance, the rural communities throughout Texas that actually have a museum will typically have only one in the entire City due to the size of the customer/support base. These locations are overwhelmingly within the vicinity of the downtown area. This is due to, among other things, the traffic density, zoning restrictions, and historical relevance. New construction in rural communities is almost exclusively going to be located on the "edge" of town, away from the

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downtown area, due to availability of land. Reducing the allowable distance to a museum will restrict the physical size of a rural City that a developer can consider. This does nothing to improve the affordable housing shortage that rural communities are facing.

It is recommended that the language for this scoring item be changed to allow for nonprofit organizations to be included in the sponsorship of the museums and the allowable distance be increased to 4-7 miles. These changes will still allow the applications to be competitive and the developments to have viable amenities within an acceptable commutable distance.

Ben Dempsey
Vice President
StoneLeaf Companies

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How Are Museums Supported Financially in the U.S.?

By Ford W. Bell

The line forms at the Metropolitan Museum of Art in New York. ©*AP Images*

"The majority of museums in the United States are nonprofits."

If you were to walk up to the typical U.S. museum director and ask, "How are American museums funded?" you would get a simple, straightforward answer.

"Precariously."

Unlike the model found in most of the world, where museums are largely supported by the national government, American museums keep their operations going by cobbling together a mosaic of funding sources, from government sources, from the private sector and, increasingly, from earned income.

Like most cultural institutions — orchestras, theater groups, ballets, etc. — the majority of museums in the United States are nonprofits. Under U.S. law, that exempts museums from a significant tax burden. Imagine if the Metropolitan Museum of Art in New York City were forced to pay property taxes on its fabulous Fifth Avenue edifice. That figure would stagger the mind.

But nonprofit status also means that museums must stitch together sustainable revenue streams from a range of sources, while being as much at the whim of the marketplace as for-profit enterprises. Witness the economic downturn from which we seem to be emerging in the spring of 2012. Museums and all American nonprofits were hit hard by the Great Recession of 2008. The bad economy forced museums to display their entrepreneurial side, cutting here, re-adjusting there, creating new

A Mattel designer explains a corporate-sponsored Cars exhibit at the Peterson Automotive Museum in Los Angeles. ©*AP Images*

revenue streams in order to sustain and grow their institutions.

At the American Association of Museums, we have over the years compiled data into the funding sources of American museums. Broadly defined, the four main categories of museum funding are government grants, private donations, earned revenue and investment income. Let me explain each briefly.

Government support comes from agencies at all levels — federal, state and local. As you see from the accompanying graph, the typical U.S. museum derives just over 24 percent of its operating revenue from such sources. Over the years, the bulk of this has come from state and local governments, with a small percentage coming from the federal level. This revenue stream is trending downward; in 1989, the average U.S. museum received 38 percent of its funding from government sources.

The largest share of museum operating revenue (38 percent) comes from donors in the private sector. This is defined as individuals, charities and philanthropic foundations, as well as corporate sponsors. Often these funds are pegged to a particular exhibition or initiative, frequently focused on education. (U.S. museums invest more than $2 billion annually in education programs.)

The third operating revenue segment is commonly referred to as earned revenue. This is defined as those revenues resulting directly from museum exhibitions, programs, retail sales or rentals. Admission fees are included in this category, although such fees account for a very small percentage of museum revenue — generally around 5 percent. Many find this surprising, but it is understandable considering that the average admission price for a U.S. museum is just $7, and 37 percent of American museums offer free admission.

How Are Museums Supported Financially in the United States?

Washington's National Portrait Gallery's courtyard is rented for events. *Adam Fagen*

This segment of museum revenue also encompasses income from gift shops, bookstores and restaurants. A trend among American museums is to upgrade the offerings in these venues, with the goal of increasing revenue. A number of large U.S. institutions have added top-flight restaurants, some managed by notable chefs. The strategic approach behind these investments is to make the museum restaurant a destination in itself, thus helping to create additional community connections to the museum.

Another growth area in this revenue stream is rentals. Often, U.S. museums boast the most impressive structures in town, inside and out. Museums have been able to capitalize on this important asset, renting out space for corporate gatherings, ceremonial occasions and even weddings. The average U.S. museum draws 27 percent of its revenue from earned income.

The fourth revenue category is investment income. The largest U.S. museums have endowments. For art museums, these are largely committed to acquiring new works for the collection. The standard for our museums is that 5 percent of the endowment is available for spending each year, with the remaining 95 percent invested in a range of securities, bonds and other financial instruments that are selected to (directors hope) ensure the continued growth of the endowment. As you can imagine, investment income was hard to come by for many museums in the period between late 2007 through early 2010.

Average Mix of Funding Sources for U.S. Museums (2009)

Government support (all levels)	Private (charitable) giving	Earned income	Investment income
24.4%	36.5%	27.6%	11.5%

source: American Association of Museums

On average, U.S. museums derive nearly 12 percent of revenue from investments.

Given the revenue streams outlined above, one can see how the Great Recession had a significant impact on American museums. In many ways it was a perfect storm of economic calamity: a tumbling stock market that reduced the wealth of the corporate and philanthropic foundations, making them less able to contribute to museums; a similar decline in museum endowments; the overall economic trough, resulting in reduced museum memberships; and, perhaps most important, the drop in tax receipts that forced state and local governments to make draconian budget cuts, with museums and nonprofits first on the chopping block.

A 2010 American Association of Museums survey on museums and the economy found that fully two-thirds of U.S. institutions reported suffering moderate to severe financial stress. A similar survey published in March 2012 found that number had declined slightly, to just over half. This is obviously not a dramatic improvement, but we are headed in the right direction. And while the economy continues to improve, American museum leaders will continue to be creative and entrepreneurial in ensuring the financial stability of their institutions.

Ford W. Bell has served as the president of the American Association of Museums since 2007. He is a board-certified veterinary oncologist and credits museums for his lifelong love of nature and science. *Courtesy Photo/AAM*

Got a question about the U.S.?

Ask us using your phone.

Published March 20

StoneLeaf Companies

9/28/2016

Texas Department of Housing and Community Affairs
Attn: Sharon Gamble
P.O. Box 13941
Austin, Texas 78711-3941

Ms. Gamble,

This letter serves as our public comment on the following item:

§11.9(c)(4)(B)(ii)For Developments located in a Rural Area, an Application may qualify to receive points through a combination of requirements in clauses (1) through (13) of this subparagraph.

(XII) The Development site is located within 7 miles of a University or Community College campus (1 point)

Seven miles is an unrealistic distance for a rural community in regards to a University or Community College. According to the National Student Clearinghouse (NSC), which tracks student enrollment and degree attainment for more than 3,100 two and four year colleges and universities in the United States, the national median distance students go away for college is 94 miles. The State of Texas median distance a student travels to go to college is 74 miles (4yr college or university). When broken down into income categories, the national median for a student with parental income of less than $30,000 is 63 miles (4yr college or university). The national median for a student with parental income of $30,000-50,000 is 78 miles (4yr college or university). When categorized by race/ethnicity, the national median for a student (4yr college or university) of Hispanic race/ethnicity is 39 miles, Asian American race/ethnicity is 60 miles, African American race/ethnicity is 98 miles, White race/ethnicity is 102 miles, and American Indian race/ethnicity is 103 miles.

In February 2016, the University of Alabama's Education Policy Center drafted an issue brief for the Rural Community College Alliance addressing numerous issues and challenges that rural community colleges face nationwide. Attached, from that brief, is a map that shows the Associate's Colleges nationwide that serve rural communities. A zoom-in of Texas is also attached. The map of Texas shows that there are a limited number of rural serving Associate's Colleges within the State. This shows that Texas rural communities have limited options available to them, especially in certain regions. In the American College Testing (ACT) program 2015 College Choice Report, the national median distance to 2 year colleges (for students that specifically met the ACT benchmarks) range between 11-12 miles.

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Living within a commutable distance to a community college or university has the potential to provide a great opportunity to a low income family. However, the designated commutable distance must be reasonable. The lowest national average distance (in the most restrictive study of only researching 2 year college students that met the specific ACT benchmarks) is 11 miles. The distance for this scoring item should be increased to at least 11 miles. The primary role of a community college is to serve the needs of their community or service region. It is reasonable to assume that the communities and/or service regions will be larger than a 7 mile radius.

Ben Dempsey
Vice President
StoneLeaf Companies

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Student Choice of College:

How Far Do Students Go For An Education?

DR. KRISTA MATTERN is an associate research scientist at the College Board and is primarily responsible for conducting research on test validity. Krista received her Ph.D. in Industrial/Organizational Psychology with a minor in Quantitative Psychology from the University of Illinois, Urbana-Champaign in 2006. Subsequently, she joined the College Board in June of 2006.

JEFFREY WYATT has been employed as a data analyst at the College Board since 2006. He currently works in the Higher Education group and is pursuing his Ph.D. in Educational Psychology from Fordham University (NY).

By Dr. Krista Mattern and Jeff N. Wyatt

Abstract

The topic of distance from home is often discussed when students begin narrowing down colleges they want to apply to; however, there is a scarcity of research actually examining student behavior. The purpose of this study is to address this research gap using data based on a national sample of nearly one million students. Distance was computed in miles based on the zip code of the student's home and the zip code of his/her college. The median distance students go away for college is 94 miles (25th percentile = 23 miles and 75th percentile = 230 miles). We also examined average distance from home by state, SAT score, high school GPA, parental income, parental education, ethnicity, and gender. Results reveal that the average distance students go for college does vary as a function of these variables. Implications are discussed.

Students often consider the location, specifically the distance from home, of a college/university when narrowing down the ones they want to apply to. Despite this fact, there is a limited amount of research investigating actual student behavior. High schools may examine their own graduating class and college and universities may report the percentage of in-state and out-state students, but very little is known at the national level. The current study addresses this research gap by using a national sample of nearly one million students to examine the median distance students travel for college at the national level as well as the state level. Furthermore, data were examined by student characteristics such as academic achievement (i.e., high school grade point average [HSGPA], SAT scores) parental income, parental education, race/ethnicity, and gender.

Review of Past Findings

There is limited published research on the topic of the distance students travel to college. For example, the Higher Education Research Institute (HERI) published a study (Pryor et al. 2005) that indicated that first-generation students, students whose parents have no college experience, are more likely to stay closer to home. Whereas 50 percent of first-generation students attended schools within 50 miles of their home, only 36 percent of their non first-generation peers stayed that close. The data are based on a national survey of college freshman for the class of 2005.

Another study conducted by the Post-Gazette (Chute 2006) with data on more than 13,800 students who graduated from high school in 1995 in Allegheny, PA (or surrounding counties) found that 69 percent of students travel less than 100 miles away for college. Although interesting, these results may not generalize to other cities in Pennsylvania, other states, or the nation. The study reported that the 1995 HERI annual American college freshman survey (Sax et al. 1996) found that 56 percent of students attend a college within 100 miles of their home, indicating that Allegheny students tend to stay closer to home than students in other parts of the nation.

Another report by HERI (Pryor et al. 2007) provided trend data over the last 40 years on many academic outcomes, including the distance students travel for college. They found that in 1969, 35.9 percent of students stayed within 50 miles of their permanent home. In 2006, this percentage remained roughly the same, with 35.3 percent of students staying within 50 miles of home. The report also provided results of distance traveled by gender. In 1969, 34.4 percent of males stayed within 50 miles as compared to 37.9 percent of females. In 2006, the percentage of males staying that close remained roughly the same, 34.6 percent, whereas the number dropped slightly for females, to 35.6 percent. Besides the HERI report disaggregating results by gender, very little is known about the impact of student characteristics on distance traveled to attend college.

SAT Scores

Scores on the SAT were obtained from official College Board records. The SAT was comprised of two sections[4], Math and Verbal, with possible scores ranging from 200 to 800. A single index for SAT was created by combining the most recent scores for each section resulting in score scale range of 400 to 1600. An additional variable, SAT score band, was created by partitioning these scores into 100-point bands.

High school GPA

Self-reported HSGPA was obtained from the SAT-Q and is reported on a scale from F (below 65) to A+ (97-100). Due to small sample sizes for grades below a C, all values between F and C- were collapsed into a single category titled "Below C".

Parental income

Household income is also obtained from the SAT-Q and was collapsed into five categories; less than $30,000, between $30,000 and $50,000, between $50,000 and $70,000, between $70,000 and $100,000, and more than $100,000.

Parental education

Parental education was created from responses to the SAT-Q items asking students about their mothers' and fathers' highest level of educational attainment. Parental education level was assigned according to the highest degree earned by either parent. The six categories include less than high school diploma, high school diploma, associate's degree, bachelor's degree, master's degree, and graduate degree.

Ethnicity

Ethnicity is self-reported from the SAT-Q[5]. The response options include American Indian or Alaska Native, Asian, Asian American, or Pacific Islander, black or African American, Mexican or Mexican American, Puerto Rican, other Hispanic, Latino, or Latin American, white, and other. The three categories of Mexican or Mexican American, Puerto Rican, and other Hispanic, Latino, or Latin American were collapsed into a single broader category labeled "Hispanic."

Analyses and Results

Overall Sample

Based on a sample size of 916,466 students, the median distance traveled to college was 94 miles (25th percentile = 23 miles and 75th percentile = 230 miles). Furthermore, 72.1 percent of students attended a school in their home state, 11.9 percent went to a school in a bordering state, and 16.0 percent went to a school in a non-bordering state. As is evident by the intraquartile range, there was much variability across students, and the distribution is positively skewed with some students going thousands of miles away for college with a mean distance of 268 miles (standard deviation (SD) = 467). Table 1 provides the frequency distribution of miles traveled for college for the total group. For example, similar to the HERI national survey (1995), which found that 56 percent of students attend a college within 100 miles of their home; the percentage was 51.4 percent for the current sample.

Table 2 provides the average distance students travel from home to college by state. First, students from Utah stayed the closest with a median distance from home of only 21 miles. Furthermore, the median distance from home was 100 miles or less for 31 states. On the other hand, students from Hawaii traveled the farthest (median = 2,520 miles), perhaps unsurprisingly, given its isolation from the rest of the United States. In the second to last column, the percentage of students who stay within their home state for college is provided. The College Board (CB) participation rate[6] by state for 1999 is also presented in Table 2 to provide information on the percentage of high school students who took either the PSAT/NMSTQT, SAT or AP for each state. It should be pointed out that CB participation rates vary greatly as a function of the state. Even though roughly 24 percent (n = 218,856) of the sample is comprised of non-SAT takers, the state results should be interpreted with caution as states with low CB participation rates may have students who are not typical of their student population. This percentage will provide an indication of how many high school students were excluded from the analyses. However, it should be pointed out that not all students who take one of those examinations end up enrolling in college and therefore would have been excluded from the analyses either way.

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[4] In 2005, the College Board revised the SAT reasoning test. Changes included renaming the Verbal section to Critical Reading and adding a Writing section, which resulted in a new composite score scale of 600 – 2400. However, the data used for the current analyses were collected prior to this change; therefore, we refer to the Verbal section and report scores on the old composite score scale of 400 – 1600 accordingly.

[5] Ethnicity and home zip code were obtained from alternative College Board records (e.g., AP, PSAT records) for students who did not take the SAT or did not complete the SAT Questionnaire.

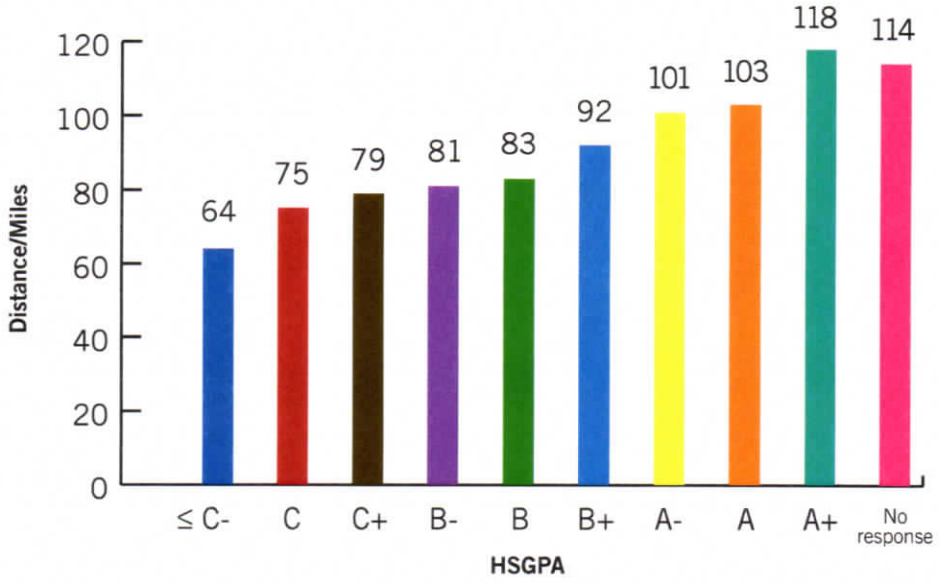
[6] For all states, this percentage was computed using the number of 1999 high school graduates reported by the 2008 edition of the Western Interstate Commission for Higher Education (WICHE) as the denominator and the number of students in the class of 1999 who took the PSAT/NMSTQT, SAT, or AP. The participation rate for the District of Columbia is the estimated 2000 participation rate, determined by an internal estimate of the number of 2000 high school graduates and the number of students in the class of 2000 who took the SAT Reasoning Test.

Table 3. Average (median) distance a student traveled to go to college in a specific state (listed in ascending order)

State	N	Median	25%	75%	% In-State
HI	1,898	13	5	164	81
AK	2,179	37	6	507	80
CT	13,046	42	17	85	62
MD	16,783	43	16	154	64
KY	12,608	51	11	98	76
DE	5,071	52	12	133	43
CA	78,015	58	15	289	89
GA	29,746	59	18	169	82
LA	13,614	62	12	214	74
WV	6,843	63	23	155	59
OH	36,509	66	18	148	79
OK	7,352	66	27	195	69
CO	16,059	69	24	775	68
MA	32,697	73	32	172	52
TX	53,197	74	14	177	92
PA	72,814	78	25	150	71
NH	8,520	80	43	106	44
RI	8,981	80	30	171	24
WI	19,921	81	32	165	71
AR	6,849	86	26	191	71
IN	13,221	87	29	194	63
ME	6,245	89	31	181	64
KS	9,430	89	30	166	79
SC	17,721	91	27	204	70
AL	13,474	97	34	208	64
OR	10,402	99	35	294	69

State	N	Median	25%	75%	% In-State
NC	34,260	104	47	223	70
SD	3,082	105	46	321	68
IL	31,098	106	24	173	76
FL	38,395	110	14	277	83
WA	14,589	111	29	254	76
VA	32,062	114	44	223	68
IA	8,821	116	56	208	62
AZ	15,317	118	14	766	62
TN	16,949	122	19	329	60
VT	4,667	129	53	207	31
NY	81,220	140	27	189	76
NJ	14,173	151	25	167	84
ND	2,186	163	40	1218	57
WY	969	196	86	282	64
UT	11,249	217	15	666	49
ID	5,420	224	52	621	47
DC	6,318	278	123	458	4
MS	5,302	298	115	1089	60
MN	16,521	476	100	1043	68
NE	2,562	523	11	2437	71
MI	26,792	540	68	623	81
NM	4,161	666	52	1893	74
MO	16,170	968	164	1066	63
NE	6,849	1210	344	1250	75
MT	4,139	1777	272	1901	68

Figure 2. Median Number of Miles Between a Student's Home and his/her 4-Year College or University by HSGPA



Note. The sample sizes per HSGPA grade are ≤ C-= 4,013, C= 14,871, C+= 28,878, B-= 53,431, B= 115,010, B+= 115,672, A-=122,049, A= 123,796, A+= 58,028, No response= 61,862.

For students who reported that their parent's highest education level was less than a high school diploma, the median distance from home was 28 miles. On the other hand, students who reported their parent's highest education level to be a graduate or professional degree tended to go 130 miles.

would tend to go farther away to college because they would have more resources with which to do so. Therefore, we expected a positive correlation between both parental income and education with distance from home. No specific hypotheses were made in regards to gender and ethnicity.

Parental Income

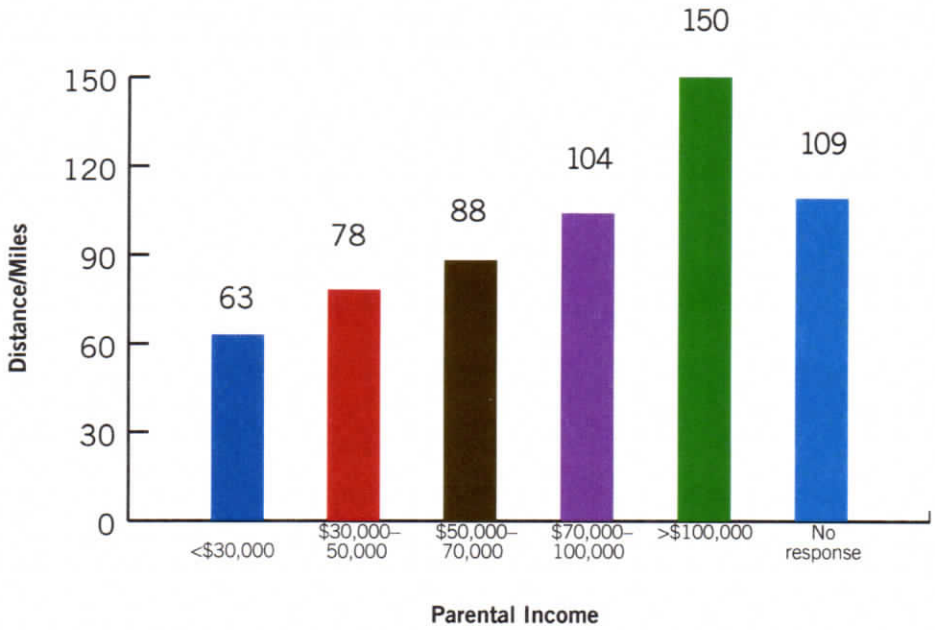
Figure 3 provides the average distance per income band. Again, a positive trend is apparent (r = 0.10, p <.001). For example, students who reported a family income of less than $30,000 ($n$ = 108,918) went a median distance of 63 miles.

For students who reported a family income of more than $100,000 ($n$ = 98,911), the median distances increased to 150 miles. These results emulate what was found for our academic indicators. As expected, students from families with more income tended to go farther away for college. Several explanations could be offered to account for these results. For one, higher-income families have more money to pay out-of-state tuition and are therefore more likely to have children that go farther away for college. Furthermore, given the fact that parental income is positively related to SAT scores, these students may also be more academically able and therefore are afforded the opportunity to go to more prestigious schools that may not be near their homes.

Parental Education

Similar to parental income, students whose parents have more education tended to go farther away for college. The correlation between parental education and distance was 0.12 (p <.001). For students who reported that their parent's highest education level was less than a high school diploma (n=19,847) the median distance from home was 28 miles. On the other hand, students who reported their parent's highest education level to be a graduate or professional degree (n=183,427) tended to go 130 miles. Median distance by parental education categories is provided in Figure 4. The pattern of results for both parental income and education is similar to that reported in the *Postsecondary Education Opportunity* article (1996).

Figure 3. Median Number of Miles Between a Student's Home and his/her 4-Year College or University by Parental Income

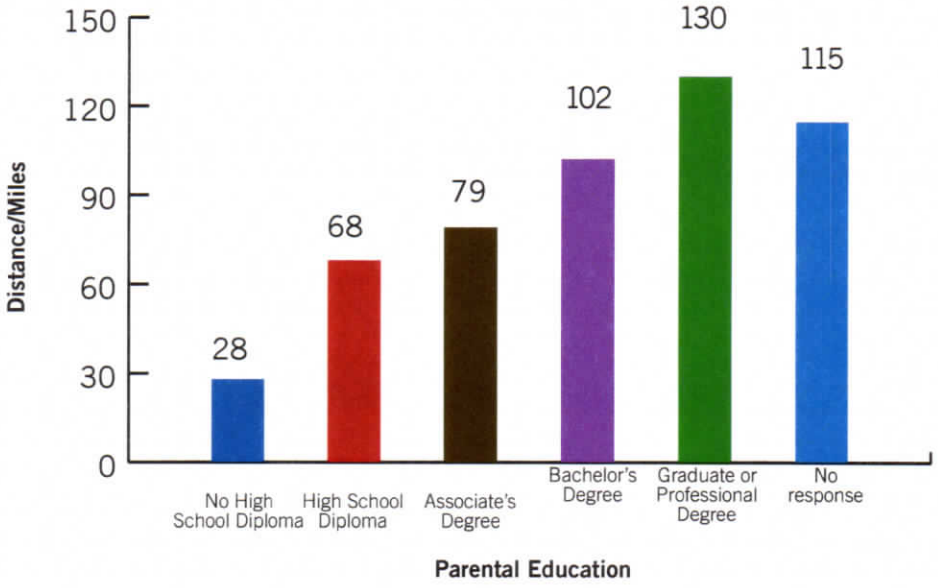


Note. The sample sizes per parental income band (starting from lowest score band to highest) are B1= 108,918, B2= 124,440, B3=115,537, B4=113,116, B5= 98,911, No response = 136,688.

Race/Ethnicity

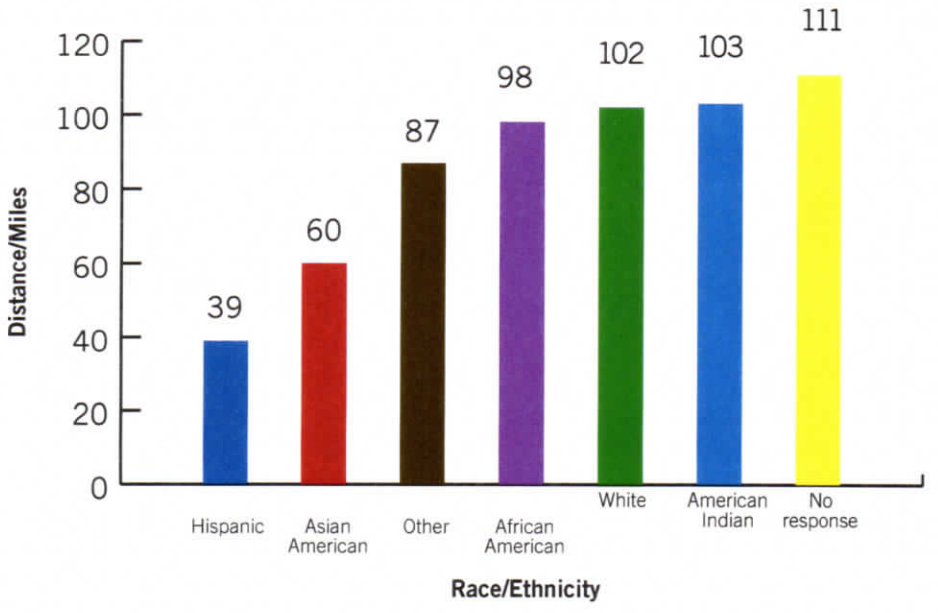
The median distance from home by ethnicity is provided in Figure 5. In general, American-Indian students tended to go the farthest away from home (103 miles). However, these numbers are based on a relatively small sample size with an *n* of 4,331. Next are white students (*n* = 461,186) who travel, on average, 102 miles away for college. Contrary to the results reported from the HERI data (1995), which found that African-American students go the farthest for college than all ethnic groups, we found that African-American students (median = 98 miles) traveled roughly the same number of miles for college as white and American-Indian students. Hispanic (*n* = 45,943) and Asian (*n* = 52,872) students stayed the closest to home with median distances of 39 miles and 60 miles, respectively. These results are displayed in Figure 5.

Figure 4. Median Number of Miles Between a Student's Home and his/her 4-Year College or University by Parental Education



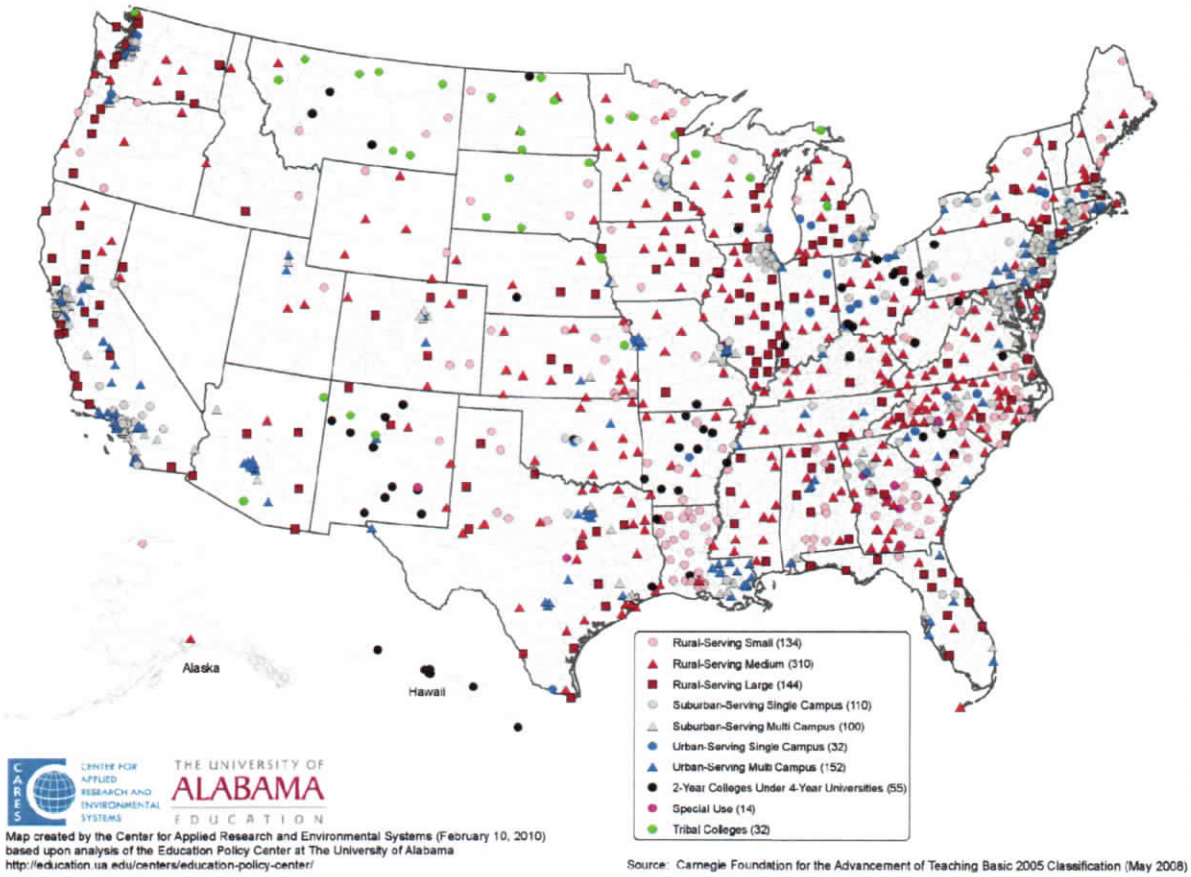
Note. The sample sizes per parental education band (starting from lowest score band to highest) are B1= 19,478, B2= 178,034, B3= 48,203, B4= 194,358, B5= 183,427, No response = 74,110

Figure 5. Median Number of Miles Between a Student's Home and his/her 4-Year College or University by Race/Ethnicity



Note. Sample sizes per ethnicity are Hispanic= 45,943, Asian American= 52,872, Other= 20,090, African American= 64,400, White= 461,186, American Indian= 4,331, No Response= 48,788.

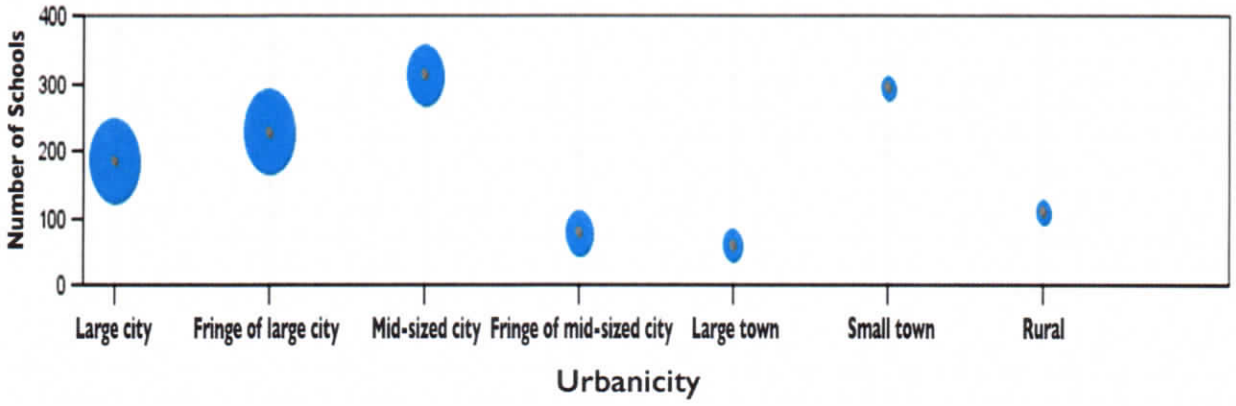
Figure 6: Associate's Colleges in the United States According to the 2005 Basic Classification of the Carnegie Foundation for the Advancement of Teaching



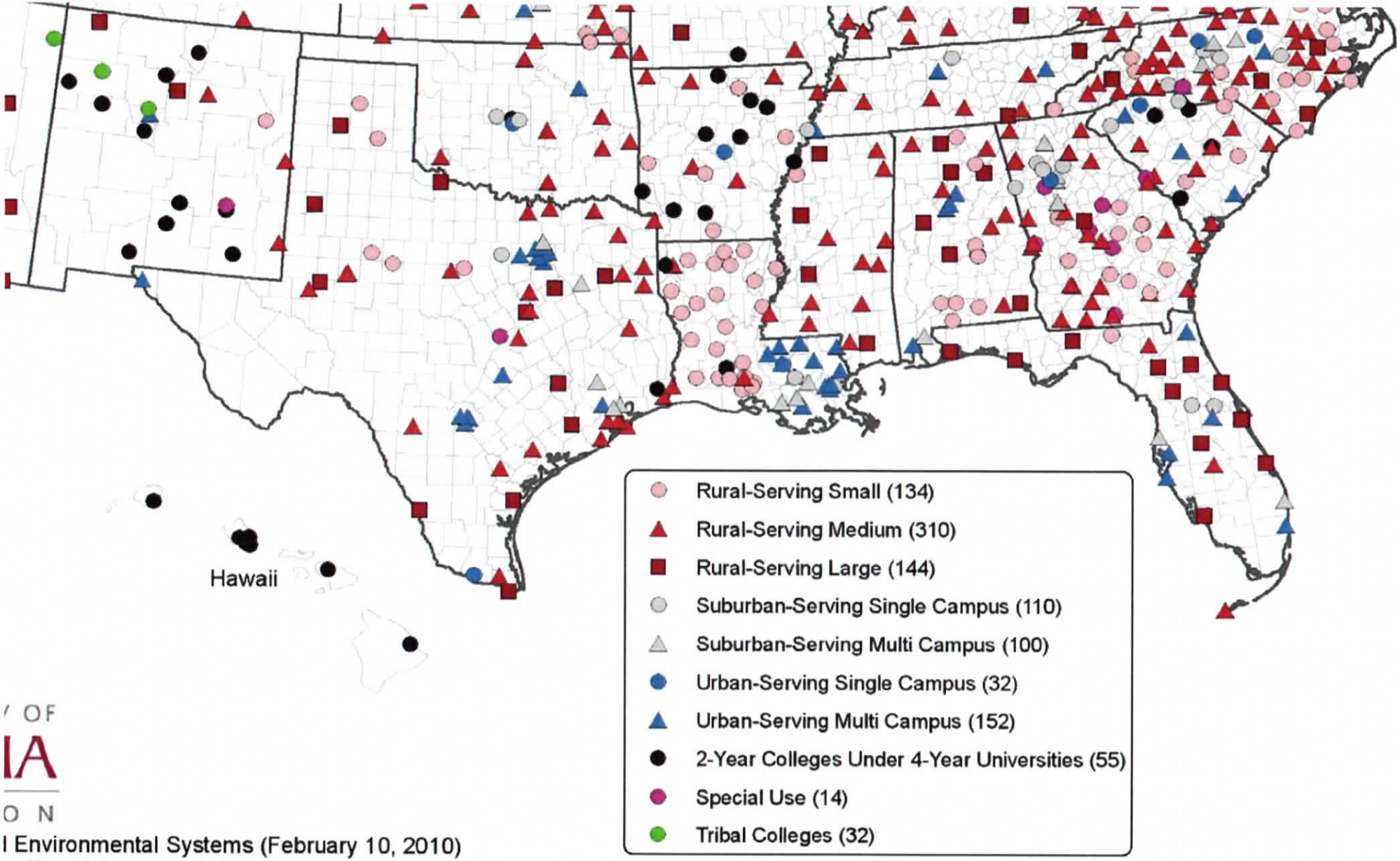
Map created by the Center for Applied Research and Environmental Systems (February 10, 2010) based upon analysis of the Education Policy Center at The University of Alabama http://education.ua.edu/centers/education-policy-center/

Source: Carnegie Foundation for the Advancement of Teaching Basic 2005 Classification (May 2008)

Figure 7: Number of Colleges, Urbanicity, and Institutional Size (Bubble Represents Average Enrollment)



Source: 2003 U.S. Department of Education's Integrated Postsecondary Education Data System



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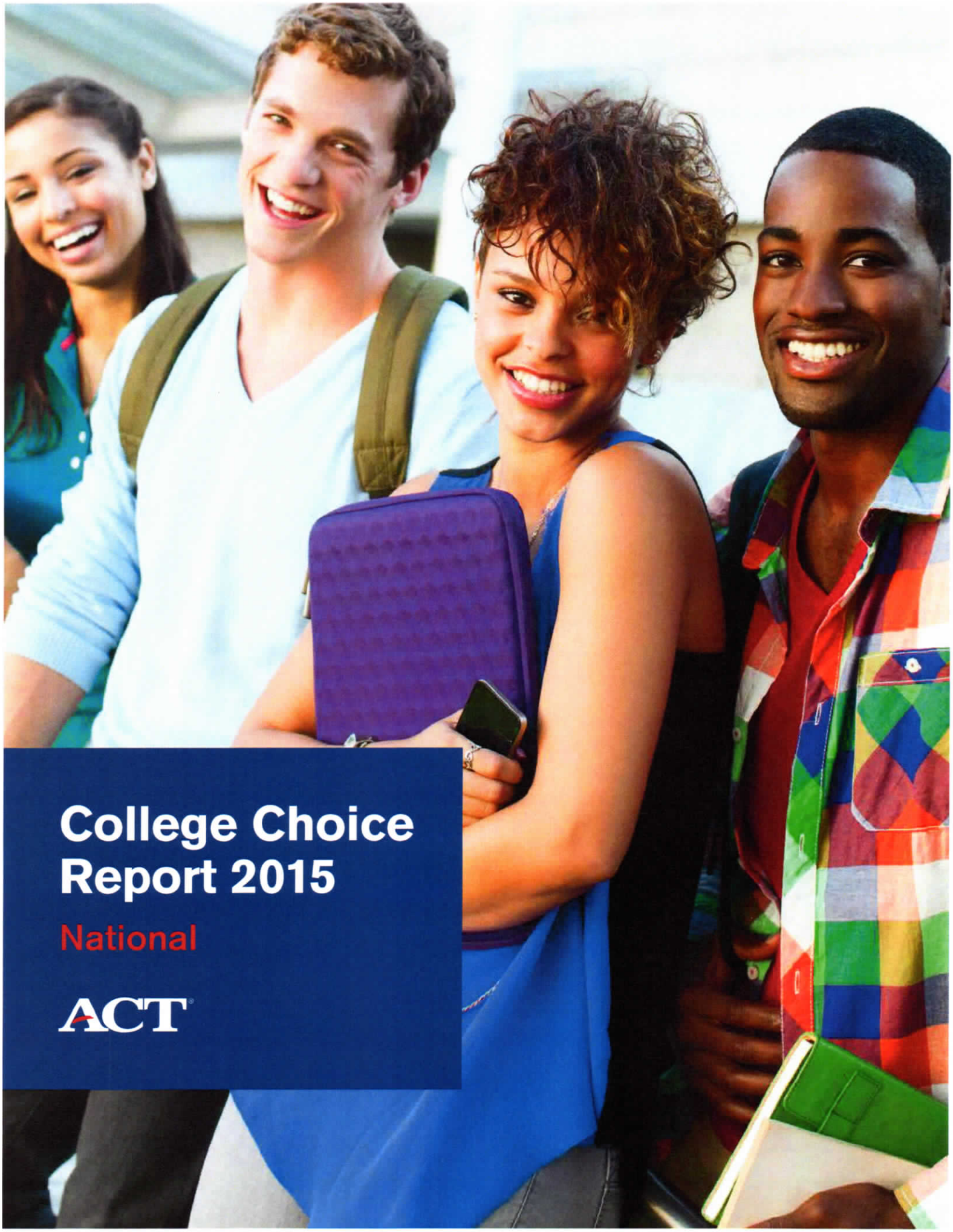
l Environmental Systems (February 10, 2010)
at The University of Alabama



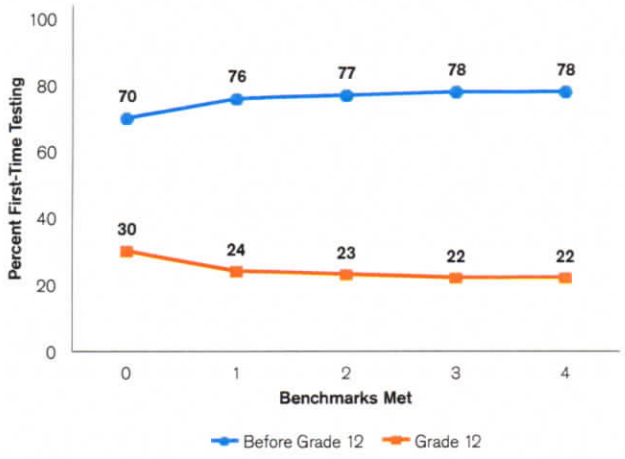
College Choice Report 2015

National

ACT

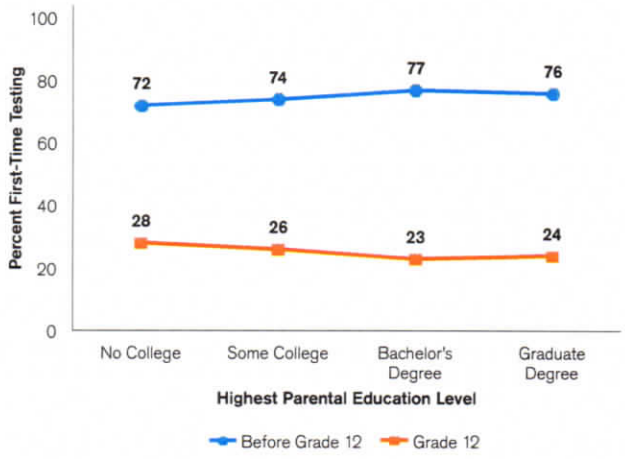
2-Year Students

Figure 31. Percent of First-Time Testers by Time of First Testing and Number of ACT Benchmarks Met



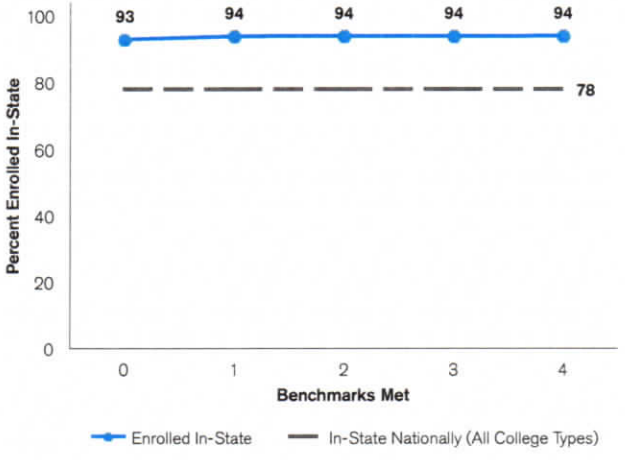
Avg. ACT Composite	15.3	18.6	20.9	23.0	26.1
N =	134,044	63,315	46,702	31,856	33,435

Figure 32. Percent of First-Time Testers by Time of First Testing and Highest Parental Education Level



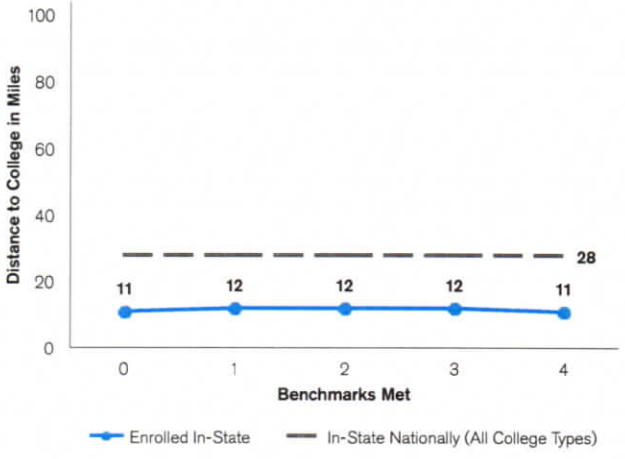
Avg. ACT Composite	17.6	18.8	19.7	20.3
N =	69,274	90,554	66,054	33,221

Figure 33. Percent of Students Enrolled In-State by Number of ACT Benchmarks Met



Avg. ACT Composite	15.3	18.6	20.9	23.0	26.1
N =	134,044	63,315	46,702	31,856	33,435

Figure 34. Median Distance to College by Number of ACT Benchmarks Met



Avg. ACT Composite	15.3	18.6	20.9	23.0	26.1
N =	134,044	63,315	46,702	31,856	33,435

(72) Allgeier, Dan

From: Dan Allgeier
To: HTC Public Comment
Subject: comments about 2017 QAP
Date: Monday, September 26, 2016 5:26:22 PM

In the proposed QAP, Paragraph 11.9 Competitive HTC Selection Criteria, Section (c) Criteria to serve and support Texans most in need, (4) Opportunity Index, (B) additional points, (ii) Rural - the distances to a museum, indoor and outdoor recreation facility and community, civic or service organization are the same as in urban areas. **These distance should be increased to at least 5 miles for a museum and 3 miles for indoor and outdoor recreation facility and community, civic or service organizations. The balance of the distances to amenities in rural areas should be doubled. It takes much less time to travel in rural areas than in an urban area.**

For both the Urban and Rural additional points in Section (B) how are we to verify the square footage of a retail shopping center? Tax appraisal districts information doesn't always include square footages of buildings and isn't available everywhere, particularly in rural counties. Are we to measure the buildings? This minimum square footage requirement seems difficult to verify and unnecessary in this day of on line purchases delivered to the front door. Retail stores are getting smaller. For example a Walmart Express can be as small as 10,000 SF. The proposed requirement for an acceptable retail shopping center is a million square feet. This is very large requirement in today's retail environment. How will national big box retail stores be defined? Are Brookshires or HEB national chains? They have stores in "big box" centers. Half Price Books operates in 17 states and REI in 36 states according to Wikipedia. If national means 50 states, they are not national retail stores.

You should define this requirement in both urban and rural areas as a retail center with at least 3 stores that sell goods to the general public and are open at least from 10 am to 5 pm Monday thru Friday. That's verifiable and practical.

6b

BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

NOVEMBER 10, 2016

Presentation, Discussion, and Possible Action on orders adopting the repeal of 10 TAC Chapter 10 Subchapter A, concerning General Information and Definitions; Subchapter B, concerning Site and Development Requirements and Restrictions; Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules; and Subchapter G, concerning Fee Schedule, Appeals, and Other Provisions; and orders adopting the new Subchapter A, concerning General Information and Definitions; Subchapter B, concerning Site and Development Requirements and Restrictions; Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules for Applications; and Subchapter G, concerning Fee Schedule, Appeals, and Other Provisions; and directing their publication in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, the Uniform Multifamily Rules contain eligibility, threshold and procedural requirements relating to applications requesting multifamily funding;

WHEREAS, changes have been proposed that improve the efficiency of the funding sources involved; and

WHEREAS, the proposed repeal and proposed new Chapter 10 were published in the September 23, 2016, issue of the *Texas Register* for public comment;

NOW, therefore, it is hereby

RESOLVED, that the final order adopting the repeal of 10 TAC Chapter 10 Subchapter A, General Information and Definitions, Subchapter B, Site and Development Requirements and Restrictions, Subchapter C Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules, and Subchapter G Fee Schedule, Appeals and Other Provisions; and the final order adopting the proposed new 10 TAC Chapter 10, Subchapters A, B, C, and G concerning Uniform Multifamily Rules, together with the preambles presented to this meeting, are approved for publication in the *Texas Register*; and

FURTHER RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the repeal and new Uniform Multifamily Rules, together with the preambles in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The Board approved the proposed repeal and proposed new Chapter 10 regarding the Uniform Multifamily Rules at the September 8, 2016, Board meeting to be published in the *Texas Register* for

public comment. In keeping with the requirements of the Administrative Procedures Act, staff has reviewed all comments received and provided a reasoned response to each comment.

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Preamble, Reasoned Response, and Repealed Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules Subchapter A §§10.1 - 10.4, concerning General Information and Definitions without changes to the proposed text as published in the September 23, 2016, of the *Texas Register* (41 TexReg 7299) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs. Accordingly, the repeal provides for consistency and minimizes repetition among the programs.

The Department accepted public comments between September 23, 2016, and October 14, 2016. Comments regarding the repealed were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on November 10, 2016.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is adopted pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

§10.1. Purpose.
§10.2. General.
§10.3. Definitions.
§10.4. Program Dates.

Preamble, Reasoned Response, and Repealed Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules Subchapter B §10.101, concerning Site and Development Requirements and Restrictions without changes to the proposed text as published in the September 23, 2016, issue of the *Texas Register* (41 TexReg 7308) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs. Accordingly, the repeal provides for consistency and minimizes repetition among the programs.

The Department accepted public comments between September 23, 2016 and October 14, 2016. Comments regarding the repeal were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on November 10, 2016.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is adopted pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

§10.101. Site and Development Requirements and Restrictions.

Preamble, Reasoned Response, and Repealed Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules Subchapter C §§10.201 - 10.207, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules without changes to the proposed text as published in the September 23, 2016, issue of the *Texas Register* (41 TexReg 7317) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs. Accordingly, the repeal provides for consistency and minimizes repetition among the programs.

The Department accepted public comments between September 23, 2016 and October 14, 2016. Comments regarding the repeal were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on November 10, 2016.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is adopted pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

§10.201. Procedural Requirements for Application Submission.
§10.202. Ineligible Applicants and Applications.
§10.203. Public Notifications.
§10.204. Required Documentation for Application Submission.
§10.205. Required Third Party Reports.
§10.206. Board Decisions.
§10.207. Waiver of Rules for Applications.

Preamble, Reasoned Response, and Repealed Rule

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter G §§10.901 - 10.904, concerning Fee Schedule, Appeals and Other Provisions, without changes to the proposed text as published in the September 23, 2016, issue of the *Texas Register* (41 TexReg 7350) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs. Accordingly, the repeal provides for consistency and minimizes repetition among the programs.

The Department accepted public comments between September 23, 2016 and October 14, 2016. Comments regarding the repeal were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on November 10, 2016.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is adopted pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

§10.901. Fee Schedule.
§10.902. Appeals Process.
§10.903. Adherence to Obligations.
§10.904. Alternative Dispute Resolution (ADR) Policy.

Preamble, Reasoned Response, and New Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter A, §§10.1 – 10.4 concerning General Information and Definitions. Sections 10.3 and 10.4 are adopted with changes to the text as published in the September 23, 2016, issue of the *Texas Register* (41 TexReg 7299). Sections 10.1 and 10.2 are adopted without changes and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the sections will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition. The comments and responses include both administrative clarifications and corrections to the Uniform Multifamily Rule based on the comments received. After each comment title numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the proposed Uniform Multifamily Rule as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Public comments were accepted through October 14, 2016, with comments received from (28) Locke Lord Attorneys and Counselors, (33) Anderson Development and Construction, LLC, (40) Dominium, (42) Evolie Housing Partners, (43) Flores Residential, LLC, (54) Leslie Holleman and Associates, Inc., (60) Mears Development, and (73) The Brownstone Group.

1. §10.3 – Subchapter A – Definitions – Qualified Nonprofit Organization (28)
COMMENT SUMMARY: Commenter (28) indicated this definition presents confusion regarding property transfer issues in that not all property transfers involving a nonprofit organization require that organization comply with §2306.6706 of the Texas Government Code. Commenter (28) recommended the following modification:

> "(107) Qualified Nonprofit Organization--An organization that meets the requirements of §42(h)(5)(C) of the Code for all purposes, and for an allocation in the nonprofit set-aside or subsequent transfer of the property, when applicable, meets the requirements of Tex. Gov't Code §2306.6706, and §2306.6729, and §42(h)(5) of the Code."

STAFF RESPONSE: Staff agrees and has made the modification as requested by commenter (28). Moreover, staff recommends a modification to the definition for Right of First Refusal to be consistent with changes proposed in Chapter 10, Subchapter E relating to the eligible entities can purchase a property under a Right of First Refusal. Staff proposes the following modification:

> "(116) Right of First Refusal ("ROFR")--An Agreement to provide a right to purchase the Property to a Qualified Entity or a Qualified Nonprofit Organization, as applicable, with priority to that of any other buyer at a price established in accordance with an applicable LURA."

2. §10.4(4) – Subchapter A – Definitions – Administrative Deficiency Deadline (28)
COMMENT SUMMARY: Commenter (28) requested this section be modified for consistency with the 3-day timeframe by which to respond to a deficiency as indicated in §10.201(7)(B) of the Uniform Multifamily Rules. Moreover, commenter (28) suggested the 3-day timeframe is too short and should revert to 5-days as was the case for 2016.

STAFF RESPONSE: In response to comments received regarding the proposed 3-day deadline for administrative deficiencies, staff modified the timeframe to 5 days which corrects any inconsistency between sections in the rule.

Staff does not recommend any further changes based on this comment.

3. §10.3(10) – Subchapter A – Definitions – Bedroom (40)
COMMENT SUMMARY: Commenter (40) expressed concern over the phrase "has at least one window that provides exterior access" in this definition. Specifically, commenter (40) noted the following: the international building code does not require a window provided the new construction building is fully sprinkled with a NFPA 13 sprinkler system; such windows can be problematic in new construction mid-rise buildings that are served by an elevator and double-loaded corridor since many times an internal bedroom is built; this could be problematic in adaptive re-use developments where the existing building does not necessarily allow for a feasible re-development if all bedrooms had to be located on an exterior wall with a window; and further indicated that buried bedrooms are not only allowed under code but are well accepted in the market. Commenter (40) further stated the requirement for a window that provides exterior access reduces the feasibility of certain new construction and historic adaptive re-use developments.

STAFF RESPONSE: Staff believes the modification as proposed by commenter (40) would require additional consideration by the Department and would constitute a substantive change that would necessitate additional public comment.

Staff recommends no change based on this comment.

4. §10.3(29) – Subchapter A – Definitions – Control (42), (43), (54), (60), (73)
COMMENT SUMMARY: Commenters (42), (43), (54), (60), (73) stated that they do not believe Special Limited Partners generally possess factors or attributes that give them control, although some may and; therefore, recommended the following modification to the definition.

> "(29) Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. Controlling entities of a partnership include the general partners, may include special limited partners when applicable, but not investor limited partners or special limited partners who do not possess other factors or attributes that give them Control. Controlling entities of a limited liability company include but are not limited to the managers, managing members, any members with 10 percent or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership, but not investor members who do not possess other factors or attributes that give them Control. Controlling individuals or entities of a corporation, including non-profit corporations, include voting members of the corporation's board, whether or not any one member did not participate in a particular decision

due to recusal or absence. Multiple Persons may be deemed to have Control simultaneously."

STAFF RESPONSE: Staff does not object to the proposed modification and has made the change as suggested. Moreover, staff notes there was a comment proposed by commenter (28) with respect to Subchapter C regarding how the concept of Persons is used throughout the rules that triggers implications regarding certifications and how such Persons are treated. Staff believes the most appropriate way to address those concerns raised by commenter (28) is through a modification to the definition of control and; therefore, proposes the following, taking into account those requested changes by commenters (42), (43), (54), (60), (73).

"(29) Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. As used herein "acting in concert" involves more than merely serving as a single member of a multi-member body. For example a single director on a five person board is not automatically deemed to be acting in concert with the other members of the board because they retain independence of judgment. However, if that director is one of three directors on a five person board who all represent a single shareholder, they clearly represent a single interest and are presumptively acting in concert. Similarly, a single shareholder owning only a five percent interest might not exercise control under ordinary circumstances, but if they were in a voting trust under which a majority block of shares were voted as a group, they would be acting in concert with others and in a control position. However, even if a member of a multi-member body is not acting in concert and therefore does not exercise control in that role, they may have other roles, such as executive officer positions, which involve actual or apparent authority to exercise control. Controlling entities of a partnership include the general partners, may include special limited partners when applicable, but not investor limited partners or special limited partners who do not possess other factors or attributes that give them Control. Controlling entities of a limited liability company include but are not limited to the managers, managing members, any members with 10 percent or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership, but not investor members who do not possess other factors or attributes that give them Control. Controlling individuals or entities of a corporation, including non-profit corporations, include voting members of the corporation's board, whether or not any one member did not participate in a particular decision due to recusal or absence. Multiple Persons may be deemed to have Control simultaneously."

5. §10.3(47) – Subchapter A – Definitions – Elderly Development (42), (43), (54), (60), (73)
COMMENT SUMMARY: Commenter (42), (43), (54), (60), (73) indicated the Elderly Preference component of this definition does not preclude an applicant from choosing this type of Elderly Development even if HUD funding (or other federal assistance) is not used. Commenter (42), (43), (54), (60), (73) stated the 2016 application conflicted with this plain language and didn't allow for that type of choice to be made. Commenter (42), (43), (54), (60), (73) recommended that if the intention of the Elderly Preference definition is that it only apply to developments with HUD funding or other types of federal assistance then such intention should be clearly articulated in the definition.

STAFF RESPONSE: Staff acknowledges the oversight in the 2016 Uniform Multifamily Application that allowed an applicant to select from the drop down menu the specific type of HUD funding involved if Elderly Limitation was selected. Staff will correct this oversight in the 2017 Uniform Multifamily Application. Staff does not believe the definition needs to be modified to include the exhaustive list of the specific types of HUD or other federal funding that would trigger a development to be classified as Elderly Preference but believes this is best handled through the Application Submission Procedures Manual and Uniform Multifamily Application.

Staff does not recommend any changes based on these comments.

6. §10.3(98) – Subchapter A – Definitions – Principal (42), (43), (54), (60), (73)
COMMENT SUMMARY: Commenter (42), (43), (54), (60), (73) stated it is unclear whether "Persons" is capitalized because it refers to the defined term, or simply because it is the first word in the sentence and further indicated that the context seems to indicate that it is the generalized term and; therefore, recommended the following modification, which also incorporates a prior suggestion by commenter (42), (43), (73) relating to the definition of control.

> "(98) Principal~~--~~ —Any ~~P~~persons that will exercise Control (which includes voting board members pursuant to §10.3(a)(29) of this chapter) over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:
>
> > (A) partnerships, Principals include all General Partners, ~~special limited partners,~~ and Principals with ownership interest, and special limited partners with ownership interest who also possess factors or attributes that give them Control;
> >
> > (B) corporations, Principals include any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation, and any individual who has Control with respect to such stock holder; and
> >
> > (C) limited liability companies, Principals include all managers, managing members, members having a 10 percent or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company."

STAFF RESPONSE: The proposed modification to change "person" to lower case could create doubt to exactly any person means; staff recommends no change in this regard. Staff does not object to the modifications to subparagraph (A) as requested by the commenters and has made the change accordingly.

7. §10.4(6) – Subchapter A – Definitions – Resolution Delivery Date (33)
COMMENT SUMMARY: Commenter (33) indicated the new language in this section regarding Direct Loan applications not layered with housing tax credits implies that resolutions will be required in the future. Commenter (33) stated that resolutions are not required by statute and the

requirement for resolutions in this section seems to work contradictory to Affirmatively Furthering Fair Housing and will thus make development more difficult.

STAFF RESPONSE: Staff agrees that the resolutions are not required by statute and recommends the modification as noted below.

> **(6) Resolutions Delivery Date.** Resolutions required for Tax-Exempt Bond Developments ~~or Direct Loan Applications not layered with Housing Tax Credits~~ must be submitted no later than fourteen (14) calendar days before the Board meeting at which consideration of the award will occur. If the Direct Loan Application is made in conjunction with an Application for Housing Tax Credits, or Tax-Exempt Bond Developments, the Resolution Delivery Date for those programs will apply to the Direct Loan Application.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are adopted pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

Preamble, Reasoned Response, and New Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC, Chapter 10 Uniform Multifamily Rules, Subchapter B, §10.101 concerning Site and Development Restrictions and Requirements, with changes to the proposed text as published in the September 23, 2016, issue of the *Texas Register* (41 TexReg 7309).

REASONED JUSTIFICATION. The Department finds that the adoption of the section will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition. The comments and responses include both administrative clarifications and corrections to the Uniform Multifamily Rule based on the comments received. After each comment title, numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the Uniform Multifamily Rule as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Public comments were accepted through October 14, 2016, with comments received from (4) Senator Jose Menendez, (9) City of Harlingen, (13) Fort Worth Housing Solutions, (17) 5th Ward Community Redevelopment Corporation, (19) Texas Association of Community Development Corporations, (22) Texas Affiliation of Affordable Housing Providers, (23) Texas Coalition of Affordable Developers, (24) Low Income Housing Information Service, (25) Center for Supportive Housing (28) Locke Lord Attorneys and Counselors, (33) Anderson Development and Construction, LLC, (34) BETCO Consulting, LLC (39) DMA Companies, (40) Dominium, (41) Endeavor Real Estate Group, (42) Evolie Housing Partners, (43) Flores Residential, LLC, (44) Foundation Communities, (50) Hoke Development Services, LLC, (51) Investment Builders, Inc., (52) ITEX Group, (54) Leslie Holleman and Associates, Inc., (58) Mark-Dana Corporation, (59) Marque Real Estate Consultants, (60) Mears Development, (63) National Church Residences, (64) New Hope Housing, (65) OM Housing, (69) Purple Martin Real Estate, (72) Structure Development, (73) The Brownstone Group, (74) Alyssa Carpenter, (78) Coats Rose.

8. §10.101(a)(2) – Subchapter B – Undesirable Site Features (4), (9), (17), (19), (22), (23), (24), (28), (33), (39), (40), (41), (42), (43), (44), (51), (52), (54), (58), (59), (60), (65), (69), (73), (74)
COMMENT SUMMARY: Commenter (4) expressed concern over the proposed change in proximity to a railroad track from 100 feet to 500 feet stating that many Texas communities were settled on the railroad and; therefore, many of the historic structures are near them. Commenter (4) further stated that such historical structures should be repurposed for affordable housing and the increased distance requirement thwarts that effort and could affect revitalization efforts in many of these areas. Commenter (4) suggested that historic structures be exempt from the distance requirements for railroad tracks. Commenter (9) expressed similar concerns as commenter (4) and further stated that this increased distance requirement would result in no historic building being eligible to be rehabbed into residences, no matter how appropriate and desirable. Commenter (9) also indicated that there is a difference between rehabbing a building that has been sitting near a railroad track for 50 to 100 years and allowing new construction within 500 feet of such railroad track. Similar to that of commenter (4), commenter (9) requested that should the distance requirement of 500 feet remain, that historical buildings be exempt from the requirement. Commenter (72) recommended that rehabilitation developments be exempt from the railroad distance separation requirement on the basis that it is impossible or cost prohibitive to move an existing building.

Similarly, commenters (22), (39), (41), (65), (81) stated that the distance in prior year rules are more appropriate and commenters (22), (39), (41), (81) further stated that HUD guidelines on proximity to active railroad tracks are more appropriate guidelines to use because they address the impact to the resident, rather than redline entire swaths of urban areas. Commenters (22), (39), (41), (69) recommended the following changes to this section:

"**(2) Undesirable Site Features.** Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph maybe considered ineligible as determined by the Board, unless the Applicant provides information regarding mitigation of the applicable undesirable site feature(s). Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs ("VA") may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application. ~~and must include a letter stating the Rehabilitation of the existing units is consistent with achieving at least one or more of the stated goals as outlined in the State of Texas Analysis of Impediments to Fair Housing Choice or, if within the boundaries of a participating jurisdiction or entitlement community, as outlined in the local analysis of impediments to fair housing choice and identified in the participating jurisdiction's Action Plan.~~ The distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the undesirable feature. The minimum distances noted assume that the land between the proposed Development Site and the particular undesirable feature has no significant intervening barriers or obstacles such as waterways or bodies of water, major high speed roads, park land, or walls, such as noise suppression walls adjacent to railways or highways. Where there is a local ordinance that regulates the proximity of such undesirable feature to a multifamily development that has smaller distances than ~~differs from~~ the minimum distances noted below, documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application…

(D) Development Sites in which the buildings are located within ~~100 feet of~~ the easement of any overhead high voltage transmission line, support structures for high voltage transmission lines, or other similar structures. This does not apply to local service electric lines and poles; high voltage transmission are lines that carry 138 Kv of power or greater;

(E) Development Sites located within 100~~500~~ feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail, or the Applicant submits a noise study with the Application and commits at the time of commitment to provide sound attenuation of noise levels in excess of 65 decibels;

(H) Development Sites in which the buildings are located within ~~one-quarter mile of~~ the accident zones or clear zones of any airport;

(J) Development Sites located within ~~2 miles~~1,000 feet of refineries capable of refining more than 100,000 barrels of oil daily; or

(K) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely

affect the health and safety of the residents and which cannot be adequately mitigated."

Commenter (17) noted that while this section allows the Board to find a site eligible despite the undesirable site feature, applicants will not spend their time, money and effort to pursue a site that might not receive Board approval due to its proximity to such feature. Commenter (59) stated several of the changes proposed add significant barriers to the site selection and inner city development and re-development activities. Commenters (17), (59) requested the language in this section remain as written in 2016.

Commenter (58) requested the distance to the undesirable feature be modified such that it be measured from the nearest residential building of the development site to the nearest undesirable feature (rather than from the nearest boundary of the site to the nearest boundary of the property or easement containing the feature). Commenter (58) stated that if the development site is large, the residential building could actually be farther away from the undesirable feature than residential buildings on a small site that meet the boundary to boundary distances. Commenter (58) also requested the proximity to railroads not be considered an undesirable site feature if the development will provide adequate noise attenuation inside the residential units and further indicated that many high opportunity neighborhoods that back up to railroads, such as West University Place in Houston. In line with these comments, the suggested modifications from commenter (58) included the following:

"**(2) Undesirable Site Features.** Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph maybe considered ineligible as determined by the Board. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs ("VA") may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application ~~and must include a letter stating the Rehabilitation of the existing units is consistent with achieving at least one or more of the stated goals as outlined in the State of Texas Analysis of Impediments to Fair Housing Choice or, if within the boundaries of a participating jurisdiction or entitlement community, as outlined in the local analysis of impediments to fair housing choice and identified in the participating jurisdiction's Action Plan.~~ The distances are to be measured from the nearest residential building ~~boundary~~ of the Development Site to the nearest ~~boundary of the property or easement containing the~~ undesirable feature. The minimum distances noted assume that the land between the proposed Development Site and the particular undesirable feature has no significant intervening barriers or obstacles such as waterways or bodies of water, major high speed roads, park land, or walls, such as noise suppression walls adjacent to railways or highways, in which case this section does not apply.. Where there is a local ordinance that regulates the proximity of such undesirable feature to a multifamily development that has smaller distances than ~~differs from~~ the minimum distances noted below, then such smaller distances shall be used and documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application…

(D) Development Sites in which the buildings are located within ~~100 feet of~~ the easement of any overhead high voltage transmission line, support structures for high voltage transmission lines, or other similar structures. This does not apply

to local service electric lines and poles; high voltage transmission are lines that carry 138 Kv of power or greater;

(E) Development Sites located within ~~500~~100 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail, or the Applicant submits a noise study with the Application and commits at the time of Commitment to provide sound attenuation of noise levels in excess of 65 decibels;

(H) Development Sites in which the buildings are located within ~~one-quarter mile of~~ the accident zones or clear zones of any airport;

(J) Development Sites located within ~~2 miles~~1,000 feet of refineries capable of refining more than 100,000 barrels of oil daily; or"

Commenters (19), (44) expressed support for the language added to this section indicating that proximity to such site features "may" be determined by the Board to be ineligible compared to prior language indicating the presence of such feature "will" be determined to be ineligible. Commenters (19), (44) indicated that it is important for staff and the Board to have the flexibility to waive the presence of such features if the developer can demonstrate that the feature would not negatively impact residents.

Commenters (23), (33) expressed concern over how the proposed distance modifications were derived and suggested that they should mirror HUD requirements. Commenter (23) requested an explanation as to why the changes were made and what they were based on as it relates to the proximity to a railroad track, high voltage lines and the distance from a refinery.

Commenter (24) recommended that, at a minimum, the distances in this section should remain at the greater of the 2016 distances or those proposed in the 2017 draft on the basis that while most of us have many housing choices available to us and would choose not to live in proximity to some of the undesirable site features, there is no reason to believe the desires of a low-income household would be any different.

Commenters (28), (42), (54) requested clarification on what is meant by use of the term "intervening barriers" in this section as it relates to the distance between the undesirable site feature and the proposed development site. Specifically, commenter (28) questioned if a there is an intervening barrier (i.e. river) that separates a development site from a nuclear plant, for example, whether the nuclear plant is considered an undesirable site feature. Similarly, commenters (28), (42) questioned if there is a noise suppression wall between a railroad track and a development site then whether this constitutes an undesirable site feature, even if the railroad track is within the applicable distance from the development site. Commenters (42), (54) asserted much of the new language in this section is far too subjective and questioned how the Department intends to define such things as high speed roads, which are listed separately from highways. Commenters (42), (43), (54), (60), (73) proposed the modifications listed below and commenters (42), (54) further explained the language regarding the primary purpose of the list should be removed since a number of the items relate to safety (i.e. nuclear power plants and airport accident zones). Commenters (42), (54) expressed support for the changes to high voltage power lines since fire burning near them can create electrical arcs or flashovers which could endanger near-by residents and also expressed support for the distance from a nuclear power plant state such change is in line with the Nuclear Regulatory Commission's first (of two) Emergency Planning Zone (plume exposure pathway zone).

"**(2) Undesirable Site Features.** Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph may be considered ineligible as determined by the Board. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs ("VA") may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application and must include a letter stating the Rehabilitation of the existing units is consistent with achieving at least one or more of the stated goals as outlined in the State of Texas Analysis of Impediments to Fair Housing Choice or, if within the boundaries of a participating jurisdiction or entitlement community, as outlined in the local analysis of impediments to fair housing choice and identified in the participating jurisdiction's Action Plan. The distances are to be measured from the nearest boundary of the Development Site to the ~~nearest boundary of the property or easement containing the~~ undesirable feature. ~~The minimum distances noted assume that the land between the proposed Development Site and the particular undesirable feature has no significant intervening barriers or obstacles such as waterways or bodies of water, major high speed roads, park land, or walls, such as noise suppression walls adjacent to railways or highways.~~ Where there is a local ordinance that ~~regulates the~~ for closer proximity ~~of~~to such undesirable feature ~~to a multifamily development that differs from~~ than the minimum distances noted below, documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application. ~~The distances identified in subparagraphs (A) – (J) of this paragraph are intended primarily to address sensory concerns such as noise or smell, social factors making it inappropriate to locate residential housing in proximity to certain businesses. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes.~~ If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (K) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not…

(D) Development Sites in which the buildings are located within 100 feet of the easement of any overhead high voltage transmission line, or support structures for high voltage transmission lines~~, or other similar structures~~. This does not apply to local service electric lines and poles;
(E) Development Sites located within 100~~500~~ feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail..."

Commenter (74) questioned that if there are significant intervening barriers between a site and an undesirable site feature, what is the process for submission and proof that those barriers provide mitigation of any sensory concerns and additionally questioned whether these would be Board determinations that must be submitted at a certain point in the application process. Commenter (74) also stated the new language in this section that speaks to addressing sensory concerns such as noise or smell, there should be an avenue for the applicant to prove existing mitigation or provide mitigation of any sensory concerns for a site that would otherwise be ineligible within such distances. Commenter (74) provided by way of example, a site located 1.99 miles from an oil

refinery, would be extremely unlikely to have any sensory noise or smell factors that would render it undesirable and ineligible.

Commenter (52) recommended proximity to transmission lines be removed as an undesirable site feature. Should it remain; however, commenter (52) recommended that it be modified to state that buildings should not be placed within a power company right-of-way. Commenter (52) indicated that these right-of-ways are sized based on the amount of power carried over the lines.

Commenter (52) recommended the following modification based on their observation that there have been uninformed challenges to applications where the challenger made statements or assumptions that were incorrect, for example, the presence of oil refineries in the area means the air quality is bad. Commenter (52) believed that such burden of proof should be on the challenger, especially in instances where, in this example, the air quality data indicates it is below national and state air quality standards.

> "(K) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that ~~may adversely affect~~have proven adverse affects on the health and safety of the residents and which cannot be adequately mitigated."

Commenter (33) stated the new language that requires documentation "such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application" is unduly burdensome and creates an opportunity for a challenge if a developer is unaware of a particular ordinance after reasonable due diligence on the matter.

Commenter (51) recommended the proximity to the railroad track be modified to state the 500 feet should be measured from the centerline of the railroad tracks to the nearest property boundaries.

Commenter (47) stated the 500 feet distance from a railroad track is excessive and should be relaxed to 200 to 300 feet.

Commenter (77) stated the Department of Transportation does not regulate development nor does it have any separation requirements from railroads.

Commenter (72) indicated easements on other people's property will not be revealed on a survey and; therefore, requested the distance requirements relating to high voltage power lines revert to the 2016 requirements.

Commenter (40) recommended 4% applications for existing residential developments (i.e. HUD Project Based Section 8 and existing Section 42 developments) should be exempted on the basis that such developments should be encouraged considering it is not feasible or practical to relocate existing housing. Commenter (40) further stated that the applicability of these site features is more appropriate for 9% applications.

STAFF RESPONSE: In response to comments recommending that rehabilitation developments be exempt from the railroad distance separation requirement, staff notes that there is language in this section that speaks to an exemption that may be granted by the Board for a development with ongoing and existing federal assistance from HUD, USDA or Veterans Affairs. This provision has worked well over the several years that it has been in the rule and staff does not believe there is a sound, policy reason by which it should be modified.

In response to those commenters requesting clarification regarding use of the term "intervening barriers" in this section, staff agrees that the additional language creates confusion and recommends the additional language be removed. Staff also agrees with the suggestion by commenter (74) to remove the language that speaks to sensory concerns and has removed it accordingly.

In response to those comments requesting historic preservation developments be exempt, staff has modified the language to include such developments, provided they would qualify as historic preservation under §11.9(e)(6) of the QAP. In response to other recommendations to reduce the distance requirement, staff proposes the distance remain at 500 feet but proposes to modify the measurement from the closest rail to the nearest boundary of the development site. Staff also notes that this section includes an option for mitigation to be provided should the distance be less than 500 feet.

Staff does not believe the language proposed by commenter (52) under option (K) is necessary in that should staff identify an environmental factor that could affect the health and safety of the residents, the applicant would have an opportunity, as the item suggests, to provide documentation that such environmental factor is adequately mitigated. Staff recommends no change based on this comment.

In response to those comments suggesting the distance from a high voltage transmission line be removed and the language just state that residential buildings cannot be in the easement of such lines, staff does not understand how a building would ever be in the easement. Staff recommends the distance remain at within 100 feet of the transmission line but has added clarifying language that it be within the nearest line or structural element. In response to those comments suggesting to define high voltage transmission lines as those that carry 138 Kv of power or greater, staff believes it would be difficult to document the actual KiloVolts associated with such transmission lines such that the undesirable site feature is not present. Moreover, data or other documentation was not provided by the commenters to substantiate that 138Kv is the threshold to be considered high voltage. Preliminary research by staff seemed to indicate such threshold could be as low as 115 Kv and be considered high voltage. Staff does not recommend any changes based on these comments and appreciates the support for this item from commenters (42) and (54).

In response to those comments that suggest the proximity from a refinery be reduced from 2 miles to 1,000 feet, staff has not received any data or other documentation to indicate the lesser distance is more appropriate than the current distance. Staff recommends no change based on this comment.

Staff agrees with those commenters requesting clarifying language if there is a local ordinance that has smaller distances than what is noted in this section and recommends the following modification but notes that even if there is a local ordinance, disclosure of the undesirable site feature would still be required:

> "Where there is a local ordinance that regulates the proximity of such undesirable feature to a multifamily development that has smaller distances than ~~differs from~~ the minimum distances noted below, then such smaller distances may be used and documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application."

In response to commenter (33) a copy of the ordinance would only be required to the extent an applicant was pursuing a development site that is closer in proximity to any of the undesirable site

features noted. Absent such ordinance staff would expect the distance to the development site to adhere to those noted in this section. Staff recommends no change based on this comment.

9. §10.101(a)(3) – Subchapter B – Undesirable Neighborhood Characteristics (13), (17), (19), (22), (24), (25), (28), (33), (34), (39), (40), (42), (43), (44), (50), (52), (54), (58), (59), (60), (63), (64), (69), (72), (73), (78)

COMMENT SUMMARY: Commenters (17), (44), (59) indicated that making a development site ineligible if located in a census tract with greater than 30% poverty will significantly impact the production of affordable housing in the inner city neighborhoods that are gentrifying and undergoing active revitalization. Commenters (17), (59) suggested the language from 2016 be reinstated, allowing for a 40% poverty rate (55% for Regions 11 and 13) and further suggested the performance of the schools be stricken from consideration of ineligibility since the applicant has no control over the decision making process regarding school performance. Commenter (23) similarly recommended the higher limits for the poverty rate for Regions 11 and 13 be added back to this section. Commenters (13), (19), (22), (39), (33), (42), (43), (44), (54), (58), (60), (64), (72), (73) also requested the poverty rate increase to 40% with commenters (13), (22), (39), (42), (43), (54), (58), (60), (64), (69), (73) requesting the following language be added:

> "(i) Evidence that the poverty rate within the census tract has decreased over the five-year period preceding the date of Application, or that the census tract is contiguous to a census tract with a poverty rate below 40%~~20%~~ and there are no physical barriers between them such as highways or rivers which would be reasonably considered as separating or dividing the neighborhood containing the proposed Development from the low poverty area must be submitted. Other mitigation may include, but is not limited to, evidence of the availability of adult education and job training that will lead to full-time permanent employment for tenants, a description of additional tenant services to be provided at the development that address root causes of poverty, evidence of gentrification in the area (which may include contiguous census tracts) and a clear and compelling reason that the Development should be located at the Site. ~~Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility~~."

Commenters (25), (52), (59), (63), (69) requested the undesirable neighborhood characteristics be removed in their entirety, or should they remain, commenters (25), (59), (63) recommended the most restrictive proposed language be changed back to 2016 standards. Specifically, commenters (25), (63) requested the poverty rate be increased back to 40% on the basis that at 30% poverty there are approximately 20% of the census tracts that would be excluded from receiving or preserving affordable housing. This would, according to commenters (25), (63), exclude areas of gentrification and areas of mixed-income and is in direct conflict with federal statute that encourages developments in QCTs which often have poverty rates greater than 30%. Commenters (33), (52) similarly expressed that increasing the poverty rate back to 40% would allow for inclusion of revitalization areas worthy of redevelopment and reinvestment. If the poverty rate remains at 30%, commenter (52) requested 4% applications be exempt from the requirement since the lower threshold would eliminate most qualified census tracts and destroy the 4% program.

Blight

Commenters (17), (59) stated that blighted structures and school performance are not within the control of an applicant to solve and; therefore, an applicant would not be able to demonstrate

"satisfactory mitigation" or the "strong likelihood of a reasonable rapid transformation of the area to a more economically vibrant area" as required under the proposed rule.

Commenters (13), (22), (23), (39), (42), (43), (54), (58), (60), (64), (73) recommended the blight provision be modified to require disclosure if the proposed site is located within at least 5 vacant structures, rather than use of the current word "multiple" while commenter (52) requested specification and suggested it be modified to state at least 20 vacant structures and commenter ((69) suggested it be modified to reflect at least 15 vacant structures. Commenters (13), (22), (39), (42), (43), (54), (58), (60), (64), (69), (73) further recommended the following revision to this section:

> "(iii) Evidence of mitigation efforts to address blight or abandonment may include new construction in the area already underway that evidences public and/or private investment. ~~Acceptable mitigation to address extensive blight should go beyond the acquisition or demolition of the blighted property and identify the efforts and timeline associated with the completion of a desirable permanent use of the site(s) such as new or rehabilitated housing, new business, development and completion of dedicated municipal or county-owned park space.~~ In instances where blight exists but may only include a few properties, mitigation efforts could include partnerships with local agencies to engage in community-wide clean-up efforts, or other efforts to address the overall condition of the neighborhood."

Commenter (33) indicated that blight should be expected in revitalization areas. Commenter (78) expressed that in major cities the appearance of a vacant, derelict, or overgrown building may not be indicative of a vacant property, high crime area or undesirable location for urban redevelopment. Commenter (78) stated that dwellings in such condition may in fact be occupied by a living tenant, possibly elderly persons, living without assistance that may be unable to care for their yard. Commenter (78) asserted that ambiguity in the definition of urban blight has the potential to lead to irregular application of the criteria leaving many neighborhoods characterized as undesirable for development purposes when they should not be.

Commenter (52) indicated the 1,000 foot distance requirement for proximity to a blighted structure is too far and recommended the distance be shortened to 300 feet on the basis that it is too easy for a challenger to find a house in some surrounding neighborhood owned by someone who doesn't take care of their property in a radius that large that wasn't disclosed by the applicant. Commenter (52) further indicated that most cities are reluctant to require a private property owner to make repairs, paint or cut their grass unless there is a health risk.

Crime

Commenters (13), (22), (39), (42), (43), (52), (54), (58), (60), (64), (69), (73) recommended the violent crime provision be removed from consideration in the rule with commenter (13) stating that use of Neighborhoodscout requires a paid subscription, the data is not transparent and the fact that some of the most successful public housing redevelopment efforts have involved high-crime areas. Commenter (58) indicated that because crime can fluctuate significantly from year to year it doesn't seem reasonable to use such criteria in evaluating a site. Commenter (13) asserted that the Department should be part of the solution, rather redline neighborhoods that have some of the greatest housing need. Commenters (13), (22), (39), (42), (43), (54), (58), (60), (64) requested the following modification:

"(ii) Evidence that crime rates are ~~substantially~~ decreasing, based on violent crime data from the city's police department or county sheriff's department, for the police beat or patrol area within which the Development Site is located, based on the population of the police beat or patrol area that would yield a crime rate below the threshold indicated in this section."

Schools

Commenters (19), (25), (63), (69) recommended that the three consecutive year Met Standard requirement for schools be deleted from this section, asserting that TEA ratings do not provide sufficient reason for directing affordable housing away from large numbers of neighborhoods and communities. Commenters (19), (25), (63) expressed the belief that safe, affordable housing options are increasingly viewed by educators as an important element in reducing school transfers and absenteeism and improving grades among low income students.

Commenters (13), (22), (39), (42), (43), (54), (58), (60), (64), (73) suggested that only elementary schools that do not have the Met Standard rating be required to disclose and that the performance of middle and high schools be removed from this section, with commenter (13) citing the reality that many kids attend charter schools and elementary schools are often neighborhood schools that include a majority of children living in affordable housing. Commenters (13), (22), (39), (42), (43), (54), (58), (60), (64), (69), (73) further suggested the following modifications to this item:

"(iv) Evidence of mitigation for all of the schools in the attendance zone that have not achieved Met Standard will include documentation from a school official with oversight of the school in question that indicates current progress towards meeting the goals and performance objectives identified in the Campus Improvement Plan. For schools that have not achieved Met Standard for two consecutive years, a letter from the superintendent, member of the school board or a member of the transformation team that has direct experience, knowledge and oversight of the specific school must also be submitted. The letter should, at a minimum and to the extent applicable, identify the efforts that have been undertaken to increase student performance, decrease mobility rate, benchmarks for re-evaluation, increased parental involvement, plans for school expansion, and long-term trends that would point toward their achieving Met Standard by the time the Development is placed in service. ~~The letter from such education professional should also speak to why they believe the staff tasked with carrying out the plan will be successful at making progress towards acceptable student performance considering that prior Campus Improvement Plans were unable to do so.~~ Such assessment could include whether the team involved has employed similar strategies at prior schools and were successful. In addition to the aforementioned letter from the school official, information should also be provided that addresses the types of services and activities offered at the Development or external partnerships that will facilitate and augment classroom performance."

Commenter (52) recommended schools that do not achieve Met Standard be removed as an undesirable neighborhood characteristic.

Mitigation and Board Consideration

Commenters (17), (59) requested that the language be modified such that if an undesirable neighborhood characteristic exists, then in order for the development site to be considered eligible the applicant should only be required to provide evidence that such area is covered by a concerted plan of revitalization to demonstrate satisfactory mitigation for each characteristic disclosed. Commenter (69) recommended the requirement for a concerted plan of revitalization if a site involves three or more undesirable characteristics be removed from the rule.

As it relates to mitigation, commenter (13) indicated the proposed language is much stricter and severely constrains the Board in exercising discretion. Commenter (13) requested the language be modified to restore the discretion that was in the rule before the court dismissed the Dallas lawsuit. Moreover, commenters (13), (50) recommended that because the undesirable neighborhood characteristics are interwoven with fair housing, a letter from HUD stating that a site is consistent with site and neighborhood standards should be allowed as mitigating evidence. Along those lines, commenters (13), (22), (39), (42), (43), (50), (54), (58), (60), (64), (73) recommended the following modifications to this section:

> "(E) In order for the Development Site to be found eligible by the Board, despite the existence of undesirable neighborhood characteristics, the Board must find that the use of Department funds at the Development Site must be consistent with achieving at least one of the goals in clauses (i) ~~and~~ - (iii) of this subparagraph.
>
> (i) Preservation of existing occupied affordable housing units ~~to ensure they are safe and suitable or development of new high quality affordable housing units that are~~ subject to federal rent or income restrictions and mitigating evidence supports a conclusion that the characteristic will be remedied in an appropriate time period, which may be after placement in service; or; ~~and~~
>
> (ii) Factual determination that the undesirable characteristic(s) that has been disclosed are not of such a nature or severity that should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph. Such information sufficiently supports a conclusion that the characteristic(s) will be remedied by the time the Development places into service; or~~.~~"
>
> (iii) The Development satisfied HUD Site and Neighborhood Standards or is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order."

Commenter (44) requested clarification regarding the instances by which the Board can find a development site eligible despite the existence of such characteristics, specifically as it relates to the language "subject to federal rent or income restrictions." Commenter (44) indicated this section appears to indicate a project must be preservation or federally sources in order for the Board to have the ability to consider it eligible. Commenter (44) asserted that while staff did an amazing job of adding scoring items to the QAP that allow Urban core projects to compete, this decision regarding

eligibility directly impedes those projects that might score competitively under the new scoring priorities and; therefore, commenter (44) recommended the following modification to this section:

> "(i) Preservation of existing occupied affordable housing units to ensure they are safe and suitable or development of new high quality affordable housing units that are subject to federal rent or income restrictions; or~~and~~
>
> (ii) Factual determination that the undesirable characteristic(s) that has been disclosed are not of such a nature or severity that should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph. Such information sufficiently supports a conclusion that the characteristic(s) will be remedied by the time the Development places into service.

Commenters (13), (19), (22), (39), (42), (43), (44), (54), (58), (60), (64), (69), (73) requested that Single Room Occupancy developments be exempt from having to disclose the presence of low-performing schools, with commenters (19), (44), (64) stating that such developments have similar, if not more restrictive, occupancy standards as elderly limitation projects which are exempt from the school requirement. Commenters (25), (63) asserted that all elderly properties (preference and limitation) along with supportive housing developments targeting only adults should be exempt, indicating that it is rare that a single child would live at such properties. Commenter (25) stated that development and housing decisions should not be based on rare exceptions, but rather to serve the intended target population that the building will specifically serve.

Commenters (19), (44) suggested that only in instances where any 3 or more undesirable neighborhood characteristics exist should an applicant be required to provide the detailed report as required in this section. Similarly, commenters (25), (44), (63) requested that instead of all of the items being required as part of the report, only those that relate to the undesirable characteristic at hand. Requiring all of the items, according to commenters (25), (44), (63) is an excessive amount of information for the applicant to compile and staff to review. Commenter (34) indicated that the newly added requirement of an applicant submitting a report that outlines the disclosures and in-depth research of the area for staff review is labor intensive for both the applicant and staff further contending that these requirements can interfere with transactional timelines that may jeopardize a housing development unnecessarily. Commenter (33) expressed that the mitigation of such undesirable characteristics is highly subjective and creates an undue burden on the development community and the Department for review and further added that such subjectivity increases the likelihood of inconsistency of opinions on applications.

Commenter (24) indicated that no changes should be made to the undesirable neighborhood characteristics noted in this section and asserted that without a QAP, these are the only controls staff has on what the locational priorities are in awarding multifamily funding outside of the competitive housing tax credit applications. Commenter (24) stated that any decision to remove these in their entirety disregard the well-documented effects that such characteristics have on the levels of opportunity afforded to neighborhood residents, as well as their general quality of life. Commenter (24) expressed support for use of Neighborhoodscout in assessing the level of crime, since it is the best data that currently exists. Commenter (42), (54) indicated that this section is largely irrelevant for 9% applications due to the competitive nature of the program and incentives for high opportunity areas but believe this section is still necessary as threshold to ensure 4% developments are not placed in undesirable locations.

Commenters (22), (39), (42), (43), (50), (54), (58), (60), (64), (69), (73), (78) along with similar sentiments from commenter (34), recommended that the entire undesirable neighborhood characteristics section be deleted in its entirety on the basis that it is a remnant of the remediation plan and the dismissal of the ICP litigation warrants its removal. Moreover, commenters (22), (39), (42), (43), (54), (58), (60), (73), (78) indicated that such neighborhood characteristics work to eliminate large swaths of urban areas and the inherently faulty and inconsistent results found through the use of Neighborhoodscout and TEA school performance, such measures are of questionable value in determining the worth of certain neighborhoods. Similarly, commenters (64), (78) contended that the undesirable neighborhood characteristics are largely biased against urban core development and inhibits redevelopment in the most rapidly gentrifying parts of major metro areas with commenter (78) further indicating that should this section remain, the language should be altered such that re-development should be allowed to occur in the urban core of the State's largest cities.

Commenter (78) stated that based on the criteria relative to crime, nearly the entirety of the inner loop of Houston would be classified as an undesirable neighborhood which arguably indicates other large cities in Texas would be classified in the same way. Similar to that of crime, commenter (78) indicated that there is a high probability of being in proximity to a school that does not have the Met Standard rating based on a representation in the Houston Chronicle that nearly 40% of campuses in the Houston ISD were characterized as poor performers, with Dallas ISD reflecting the same percentage, the two of which comprise the two largest school districts in Texas.

Commenter (28) stated that the requirement that the undesirable characteristic be cured or mitigated by the time of placement in service is too rigid and further stated that communities undergoing revitalization take time to change and concurred with the recommendation by commenter (22) that this section be modified to indicate such undesirable neighborhood characteristics may be remedied after placement in service. Commenter (28) further expressed that the construction or rehabilitation of a development can promote other positive changes. Similarly, commenter (69) requested this be modified to reflect the undesirable characteristic be sufficiently mitigated 5 years after placement in service.

Commenter (40) recommended that these characteristics should not apply to HUD assisted Project Based Section 8 and existing Section 42 developments and requested language be added that would exempt such developments. Commenter (40) also recommended the following modification to the beginning paragraph of this section, stating that 4% applications utilizing a local issuer should be provided with the same opportunity for a determination regarding eligibility.

> "(A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. An Applicant may choose to disclose the presence of such characteristics at the time the pre-application (if applicable) is submitted to the Department. Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments ~~where the Department is the Issuer~~, the Applicant may submit the documentation described under subparagraphs (C) and (D) of this paragraph at pre-application and staff may perform an assessment of the Development Site to determine Site eligibility. The Applicant understands that any determination made by staff or the Board at the time of bond inducement regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information

related to any of the undesirable neighborhood characteristics become available while the full Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board."

Commenter (40) expressed concern over the added language that "preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility" because it seems to indicate preservation of existing affordable housing is not a priority for the Department. Commenter (69) recommended such language be removed from the rule.

Commenter (50) requested all mitigation requirements for undesirable neighborhood characteristics should be removed from the rule for existing occupied affordable housing that are subject to state or federal income restrictions further contending that if such characteristics are not able to be mitigated the residents will still reside at the property but without the benefit of rehabilitation of their residence.

STAFF RESPONSE: The presence of undesirable neighborhood characteristics does not automatically indicate a development site is ineligible. There are benchmarks and/or thresholds that simply indicate a more detailed assessment of the site and neighborhood needs to occur. Staff believes it is important for applicants to perform an initial evaluation of their sites with respect to all of the undesirable neighborhood characteristics and this rule encourages that evaluation. While a number of commenters requested this section be removed from the rule entirely, staff believes the safety, well-being of tenants and the decency of affordable housing should be of utmost importance and; therefore, recommends the section not be removed.

As it relates to comments received on the poverty rate; specifically that such rate revert to 40% with a consideration of 55% for Regions 11 and 13, staff agrees and has modified the proposed language accordingly. This section has also been modified to incorporate a number of comments to allow for gentrification as a way to address poverty rate. Staff recommends the following:

"(i) The Development Site is located within a census tract that has a poverty rate above 40~~30~~ percent for individuals (or 55 percent for Developments in regions 11 and 13)....

(i) Evidence that the poverty rate within the census tract has decreased over the five-year period preceding the date of Application, or that the census tract is contiguous to a census tract with a poverty rate below 20% and there are no physical barriers between them such as highways or rivers which would be reasonably considered as separating or dividing the neighborhood containing the proposed Development from the low poverty area must be submitted. Other mitigation may include, but is not limited to, evidence of the availability of adult education and job training that will lead to full-time permanent employment for tenants, ~~a description of additional tenant services to be provided at the development that address root causes of poverty,~~ evidence of gentrification in the area which may include contiguous census tracts that could conceivably be considered part of the neighborhood containing the proposed Development, and a clear and compelling reason that the Development should be located at the Site. ~~Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility~~."

In response to the suggestion by commenter (40) that allows for a pre-determination where the Department is not the issuer, staff agrees and has modified the language to reflect the following:

> "(A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. An Applicant may choose to disclose the presence of such characteristics at the time the pre-application (if applicable) is submitted to the Department. Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit the documentation described under subparagraphs (C) and (D) of this paragraph at pre-application or for Tax-Exempt Bond Developments utilizing a local issuer such documentation may be submitted with the request for a pre-determination and staff may perform an assessment of the Development Site to determine Site eligibility. The Applicant understands that any determination made by staff or the Board at ~~the time of bond inducement~~that point in time regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the undesirable neighborhood characteristics become available while the full Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board."

As it relates to blight, several commenters provided suggestions for quantifying a specific number of blighted structures that would necessitate disclosure and there were also comments recommending the distance to such blighted structure be reduced. Staff could not identify a sound basis for incorporating one number over another and recommends no change to this section based on these comments. Moreover, while it may be true that blight is present in revitalization areas, staff also believes that there should conceivably be a plan to address the blight. In response to commenters who stated that blight in the neighborhood is not within the control of the applicant, staff recommends a modification to the manner in which it could be mitigated as reflected in the following:

> "...Acceptable mitigation to address extensive blight should include a plan whereby it is contemplated that a responsible party will use the property in a manner that complies with local ordinances. ~~go beyond the acquisition or demolition of the blighted property and identify the efforts and timeline associated with the completion of a desirable permanent use of the site(s) such as new or rehabilitated housing, new business, development and completion of dedicated municipal or county-owned park space.~~..."

As it relates to crime, several commenters requested this undesirable characteristic be removed from the rule entirely mostly based on the assessment tool used (i.e. NeighborhoodScout) to trigger the need for disclosure. Recognizing that how local police departments report crime differs from city to city, NeighborhoodScout is the only universal benchmark by which such evaluation can be performed. Staff believes the rule provides additional flexibility in the data source or other information that can be used as mitigation. In response to several commenters who suggested removal of the word "substantially" as it relates to the trend of crime rates, staff agrees that the inclusion of such word could make it difficult to assess and proposes the word be removed.

As it relates to schools, a school that has failed to achieve Met Standard for consecutive years may be indicative of a systemic issue that requires more time and resources to turn the school around. The Texas Education Agency ratings and corresponding data can be a good initial assessment into performance trends. In response to comments that only the performance of the elementary school should be considered, staff believes that children residing in affordable housing should have the opportunity to receive a quality education from all three schools in the attendance zone and; therefore, all three schools should be included in the disclosure. Staff has not been provided with information that presents a sound, policy reason for excluding middle and high school performance and recommends no change based on these comments. Regarding the proposed modification from several commenters to remove the letter from an education professional that speaks to the degree to which the staff tasked with carrying out the goals and objectives will be successful as mitigation for school performance, staff believes that such letter is appropriate considering that prior staff and/or administration had been unsuccessful. It is worth understanding what makes the plan they have in place now is what it will take to turn the school around. Staff recommends no change based on this comment.

As it relates to comments received regarding criteria by which the Board would need to evaluate in order to find a site eligible, staff believes it is important to evaluate rehabilitation developments in a similar fashion as new construction developments in terms of severity of the undesirable neighborhood characteristics disclosed. This is important considering staff has seen rehabilitation developments where there are no undesirable characteristics present. Staff recommends no change based on these comments.

In response to commenter (44) requesting clarification on the phrase "subject to rent or income restrictions", an application that is awarded would be subject to rent and income restrictions. This was not intended to indicate preservation would have to already have these restrictions in place before being considered eligible.

Several commenters recommended a third criterion by which the Board could find a site eligible be added that includes documentation that the site satisfied HUD Site and Neighborhood Standards. The Department has been informed that HUD is no longer doing such reviews for HOME and that it is now the responsibility of the participating jurisdiction. Moreover, the standards by which HUD evaluates a site and neighborhood may not necessarily align with the policies and objectives of the Department. Staff agrees with those commenters that recommended prior language be added back that speaks to the development fulfilling an obligation to affirmatively further fair housing, a HUD Conciliation Agreement, etc. and has incorporated such language in the form of a waiver that is requested. Specifically, staff recommends the following modification to this section:

> "(E) In order for the Development Site to be found eligible by the Board, despite the existence of undesirable neighborhood characteristics, the Board must find that the use of Department funds at the Development Site must be consistent with achieving the goals in clauses (i) ~~and~~ (iii~~ii~~) of this subparagraph.
>
> (i) Preservation of existing occupied affordable housing units to ensure they are safe and suitable or the new construction of ~~development of new~~ high quality affordable housing units that are subject to federal rent or income restrictions; and
>
> (ii) Factual determination that the undesirable characteristic(s) that has been disclosed are not of such a nature or severity that should render the

Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph. ~~Such information sufficiently supports a conclusion that the characteristic(s) will be remedied by the time the Development places into service~~; or

(iii) The Applicant has requested a waiver of the presence of undesirable neighborhood characteristics on the basis that the Development is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order and such documentation is submitted with the disclosure.~~"~~

In response to commenters who requested that Single Room Occupancy and Elderly Preference developments be exempt from the school performance characteristic, staff maintains that a development characterized as Elderly Preference includes the possibility of residents of school age and; therefore, maintains that such target population not be exempt from this undesirable characteristic. Moreover, staff has concerns regarding exempting Single Room Occupancy developments because generally staff does not believe an adult with a child could lawfully be refused occupancy at a Single Room Occupancy development, unless a federal funding source has a specific exemption.

In response to comments relating to the content of the Undesirable Neighborhood Characteristic Report, staff believes that regardless of the number of characteristics applicable to a particular site, the Report should still be submitted. Staff agrees with the comments made that only information that pertains to the characteristic would need to be addressed in the report and has modified this section to reflect the following:

"(B) The undesirable neighborhood characteristics include those noted in clauses (i) – (iv) of this subparagraph and additional information as applicable to the undesirable neighborhood characteristic(s) disclosed as provided in subparagraphs (C) and (D) of this paragraph must be submitted in the Application….

(C) Should any of the undesirable neighborhood characteristics described in subparagraph (B) of this paragraph exist, the Applicant must submit the Undesirable Neighborhood Characteristics Report that contains the information described in clauses (i) - (viii) of this subparagraph and subparagraph (D) of this paragraph as such information might be considered to pertain to the undesirable neighborhood characteristic(s) disclosed so that staff may conduct a further Development Site and neighborhood review."

Staff appreciates the support expressed by commenter (24).

In response to comments that the undesirable neighborhood characteristics would preclude inner city preservation or new construction developments, staff notes that no such categorical exclusion resulted in 2016 after review of approximately 52 4% HTC applications with undesirable neighborhood characteristics.

Several comments were received that requested the timeframe by which the undesirable characteristic should be mitigated should be allowed to extend beyond placement in service. Staff believes that such flexibility is contemplated in the current language and has further modified this

section of the rule for clarity as reflected below, along with removing what might be considered an inconsistency regarding the evaluation of such timeline in another part of this section.

> "(B)….In order to be considered as an eligible Site despite the presence of such undesirable neighborhood characteristic, an Applicant must demonstrate actions being taken that would lead a reader to conclude that there is a high probability and reasonable expectation the undesirable characteristic will be sufficiently mitigated or significantly improved within a reasonable time, typically prior to placement in service, and that the undesirable characteristic ~~will~~ demonstrates a positive trend and continued improvement. ~~either no longer be present or will have been sufficiently mitigated such that it would not have required disclosure.~~ Conclusions for such reasonable expectation may need to be affirmed by an industry professional, as appropriate, and may be dependent upon the severity of the undesirable neighborhood characteristic disclosed.
>
> (D) Information regarding mitigation of undesirable neighborhood characteristics should be relevant to the undesirable characteristics that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application and may include, but is not limited to, the measures described in clauses (i) - (iv) of this subparagraph. In addition to those measures described herein, documentation from the local municipality may also be submitted stating the Development is consistent with their obligation to affirmatively further fair housing. ~~The mitigation must be accompanied by a report summarizing the data and to support the conclusion of a reasonable expectation by staff and the Board that the issues will be resolved or significantly improved by the time the Development is placed into service. Conclusions for such reasonable expectation must be affirmed by an industry professional, as appropriate.~~"

10. §10.101(b)(1) – Subchapter B – General Ineligibility Criteria (22), (23), (66), (80)
COMMENT SUMMARY: Commenters (23), (66) indicated that the addition of adaptive reuse as it relates to one-for-one replacement units is not appropriate since adaptive reuse by definition includes no units because it was not being used for residential. Commenter (23), (66) recommended the following modification:

> "(vi) A Development utilizing a Direct Loan that is subject to the Housing and Community Development Act, §104(d) requirements and proposing Rehabilitation, Reconstruction ~~or Adaptive Reuse~~, if the Applicant is not proposing at least the one-for-one replacement of the existing unit mix. Adding additional units would not violate this provision."

Commenters (22), (80) recommended the following modification to the limitation on development size and stated that the QAP in prior years allowed for developments in rural areas that exceeded 80 units, specifically noting that similar language to what commenters (22), (80) proposed was included in the 2004 QAP. Commenters (22), (80) indicated that rural areas exist in major MSAs such as Dallas, Austin, Houston, San Antonio, El Paso and McAllen that have significant demand and the market study is the most reasonable method to determine the number of units demand in the market. Commenter (80) further indicated that there have been 33 developments that have placed in service in rural areas that exceed 80 units.

"**(2) Development Size Limitations**. The minimum Development size is 16 Units. New Construction or Adaptive Reuse Developments in Rural Areas are limited to a maximum of 80 Units. New Construction Tax-Exempt Bond Developments may exceed 80 units if the Market Analysis clearly documents that there is significant demand for additional Units. Other Developments do not have a limitation as to the maximum number of Units."

STAFF RESPONSE: In response to removing adaptive reuse as a one-for-one replacement staff agrees and has made the change as requested.

In response to the proposed changes by commenters (22), (80) relating to the development size limitations, staff believes that the ability to exceed 80 units is already contemplated in the rule via the waiver process and that such requests are better addressed on a case-by-case basis and based on more information that may be available other than solely a Market Study.

11. §10.101(b)(3) – Subchapter B – Rehabilitation Costs (27), (40), (50)
COMMENT SUMMARY: Commenter (40) recommended the minimum thresholds for rehabilitation costs be reduced to $15,000 per unit regardless of age. According to commenter (40) the increased levels will effectively encourage long-term owners of affordable housing to not maintain their property at high levels, it will encourage a waste of scarce resources (9% HTC and tax-exempt bonds) for developments that don't need more than $15,000 to $20,000 per unit of rehab. Commenters (27), (40) expressed the belief that lenders and investors should determine the level of rehab needed and are incentivized to ensure that any rehabilitation adequately addresses the short-and long-term needs of a property, with commenter (40) further stating that the increased thresholds would likely encourage existing Section 42 properties that have completed their initial 15-year compliance period to go to market versus preservation through re-syndcation.

Commenter (27) stated the proposed increases for 4% developments will exclude many large multifamily projects from utilizing the tax credit program for substantial renovations and further explained that the availability of soft financing has decreased and the criteria for even obtaining such are skewed heavily towards developments that are more likely to receive a 9% allocation. Commenter (27) contended that in order to fund such rehabilitation costs, what doesn't get funded from equity will need to be funded from additional debt or deferred developer fee. Commenter (27) suggested that if the Department is concerned that credits would be allocated to projects that were not including enough in renovation expenditures to adequately preserve the property through the Compliance Period, perhaps it would be more precise to incorporate threshold criteria which require that systems of a certain age be replaced or that certain scope items be addressed absent some evidence of recent improvements addressing those items. Commenter (27) further stated that while the per unit minimum establishes a dollar amount to be spent, it does not necessarily direct that those dollars be spent on items that will preserve and enhance the property.

Commenter (50) requested the rehab costs per unit not be increased because it is an arbitrary cost considering the great diversity of developments throughout the State. Commenter (50) further recommended including exception language allowing the Department to approve a lesser amount of rehab per unit if a third party PCA, which meets Department requirements, supports the lower per unit rehab amount, and a letter from the investor/syndicator stating they have reviewed the PCA and support its conclusions that the rehab budget and scope of work is sufficient to extend the useful life of the development throughout the initial compliance period is submitted with the Application.

STAFF RESPONSE: In response to those commenters who recommended the minimum threshold costs be reduced, staff does not believe a reduction to $15,000/unit regardless of the age of the property is consistent with the needs of the property. Moreover, staff disagrees with the sentiment expressed by commenter (40) that the higher levels required would prevent the preservation of the affordability and would lead the property to go to market. Staff believes that the rehabilitation should be at a level that would allow the property to compete with market and that absent improvements to the property it would not be in a position to compete in the market. Staff does; however, believe the proposed increase by $10,000/unit for those properties less than 20 years old might be too much of an increase and that it would be more appropriate that for these properties the level is reduced to $20,000/unit. Since presumably such costs are funded with the tax credit proceeds and credit pricing remains at relatively high levels staff believes an increase nonetheless is appropriate. Staff believes the suggestion by commenter (27) is reasonable in that depending on the age of the property and absent recent improvements, it could make sense to require certain systems be replaced as part of the scope of work or that a certain level of improvements address the interior and exterior of the development; however, this would be a more substantive change that would necessitate additional public comment and could be considered in subsequent year rule-making.

In response to commenter (50) staff does not believe adding language to the rule that would allow for a lesser amount is appropriate. While the PCA is intended to document the scope of work needed for the development, staff believes that to the extent this scope of work does not meet the minimum threshold requirement for rehab costs as reflected in this section that the applicant is allowed to further add items to the scope of work beyond just those that the PCA provider identified. In such instances, staff would require the PCA provider review those additional items and sign off on those being appropriate needs for the development.

12. §10.101(b)(4) – Subchapter B – Mandatory Development Amenities (22), (23), (31), (33), (39), (40), (42), (43), (54), (58), (60), (62), (66), (67), (73)

COMMENT SUMMARY: Commenters (22), (23), (33), (39), (40), (42), (43), (54), (58), (60), (62), (73) disagreed with the addition of solar screens as a mandatory amenity for all developments and commenter (23) stated that in addition to the enormous cost associated with the screens, there could be potential conflicts and/or violations with local design ordinances. Commenter (23) provided comments from green building consultants who purportedly indicated that solar screens will reduce the effectiveness during winter to help heat the units, solar screens reduce the amount of natural daylight coming into the room, and that other green building features can be used to show equivalent or better energy savings instead of mandating solar screens for all units. Commenters (22), (23), (33), (39), (42), (43), (54), (58), (60), (62), (73) recommended that solar screens be added as a Green Building amenity at the option of the applicant, and not mandated. Commenter (40) requested the solar screen requirement be defined with more detail and further added that they shouldn't be required on existing affordable housing, especially where the windows are in good condition and are not being replaced.

Similarly, commenter (31), (58), (66) indicated that rather than requiring solar screens, a better solution to address the problem of energy use and heat infiltration is to install better quality windows which would have a more effective, longer-lasting solution and further stated that if solar screens are attached to window frames it may void the manufacturer's warranty. Commenter (31), (66) suggested that an alternative to solar screens could include mandating a specific window value (SHGC) minimum, appropriate per climate zone, or exempting those who achieve a Green certification since such certifications already include minimum standards for windows and shading.

Commenters (22), (39) stated that modern PTAC units are energy and cost efficient and older existing buildings typically don't have the plate height to allow for both central air and a reasonable ceiling height. While the current rule allows for PTAC units in historic preservation properties, this is an undefined term and commenters (22), (39) recommended historic preservation be replaced with Rehabilitation which is a defined term, as reflected in the following:

> "(L) All Units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units only or ~~historic preservation~~ Rehabilitation where central would be cost prohibitive); and"

Commenter (67) requested clarification regarding the parking requirement in this section and stated that many urban developments include market rate units and with those units, covered parking as a way to add additional income to help make the development feasible. Commenter (67) indicated the current language is too limiting and does not allow for flexibility and; therefore, recommended the following modification:

> "(M) Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be one and a half (1.5) spaces per Unit for non- Elderly Developments and one (1) space per Unit for Elderly Developments. The minimum number of required spaces must be available to the ~~tenants~~affordable units at no cost."

Commenter (40) recommended that ceiling fans not be required on existing affordable housing where ceiling fans never existed.

Commenter (58) requested clarification regarding the RG-6/U COAX or better option under this section, specifically what the "U" is supposed to be an indicator of since there does not seem to be an industry standard definition.

STAFF RESPONSE: In response to commenters (22), (23), (33), (39), (40), (42), (43), (54), (58), (60), (62), (73) staff has removed the requirement that solar screens be mandatory and has instead, in response to commenters (22), (23), (33), (39), (42), (43), (54), (58), (60), (62), (73) moved the item to the Limited Green Amenities section such that it would be a matter of choice on the owner whether or not to provide. This option is separate and apart from the permanent shading device already listed under the Limited Green Amenities. Moreover, staff modified language in this section to require screens on all operable windows.

In response to commenter (40) regarding ceiling fans, staff believes this amenity is one that would be of beneficial use to tenants and should be provided, regardless of whether a ceiling fan currently exists on proposed rehabilitation developments.

In response to commenter (58) regarding the RG-6/U COAX, staff believes this to be the most recent technology and believes the "U" to represent "universal."

In response to commenters (22), (39) regarding the suggested modification on PTAC units, while staff agrees that historic preservation is not a defined term, replacing the term with rehabilitation effectively eliminates the requirement for all rehabilitation developments. Staff believes that the general high caliber of rehabilitation expected by the Department requires that central air conditioning remain a requirement for rehabilitation developments; however, should the Board

choose to offer some relief to Applicant's proposing rehabilitation, specifically where there is a demonstrated structural need, the Board may still approve a waiver on a case-by-case basis.

In response to commenter (67) requesting a modification to the parking requirement, staff believes that free parking should be provided for affordable and market rate residents alike to prevent market rate residents who do not want to pay for parking from parking on neighborhood streets.

13. §10.101(b)(5) – Subchapter B – Common Amenities (40), (42), (43), (44), (54), (58), (60), (73), (79)

COMMENT SUMMARY: Commenter (79) indicated that there is not a EPA WaterSense specification for kitchen faucets as is currently reflected in the Green Building Features in this section.

Commenter (40) suggested there is no differentiation for rehabilitation of existing affordable housing and recommended they be treated differently with lower required amenities or provide more points for rehabilitation developments using 4% housing tax credits. Specifically, commenter (40) along with commenters (42), (43), (54), (60), (73) suggested the furnished community room should be worth two points or more because as written a community theater room is worth 3 points but yet a community room is only one point which will dissuade developments from having a furnished community room (and such amenity receives the same points as a horseshoe pit or bicycle parking). Commenter (40) suggested community dining room be defined because it is not clear if this is a separate room or could be included in the community room and asked whether it was a simple as a few tables where people could eat dinner. Moreover, according to commenter (40), the radiant barrier option should be modified to allow rehabilitation developments to be eligible for the points because such barrier can effectively be added to the underside of roof sheathing in renovation developments or where roofs are being replaced.

Commenter (44) stated that full perimeter fencing alone is not an amenity and that if the goal of this point item is security then it should be combined with controlled gate access for a maximum of two points.

Commenter (44) explained that in their experience one printer for every three computers is excessive and unnecessary and suggested requiring one printer per computer lab.

Commenter (44) suggested shade from trees be included as a shade option and further stated that it would be counterproductive to install an awning when a playground is adequately shaded by trees.

Commenter (44) requested clarification concerning the amount of bicycle parking and recommended "one bicycle per five units" be added to this amenity option.

Regarding the Green Building amenities, commenter (44) contended that green building features benefit both the residents and the owners and believed the point category should allow for more than four points and suggested it be modified to reflect six points with the Limited Green Amenities option increasing to four points. Commenter (44) also suggested Solar Arrays be added as its own Green category for two points.

Commenter (44) identified several options under Limited Green Amenities that are difficult to verify as constructed without a Third Party consultant such as those used for Enterprise Green Communities and LEED and further explained that it is beyond the means of Department staff and

suggested limiting these options to those items that are high impact and verifiable. Commenter (44) recommended the following items be removed on the basis that they are difficult to verify:

> "(-a-) a rain water harvesting/collection system and/or locally approved greywater collection system;
>
> (-b-) newly installed native trees and plants that minimize irrigation requirements and are appropriate to the Development Site's soil and microclimate to allow for shading in the summer and heat gain in the winter. For Rehabilitation Developments this would be applicable to new landscaping planned as part of the scope of work;
>
> (-d-) all of the HVAC condenser units located so they are fully shaded 75 percent of the time during summer months (i.e. May through August) as certified by the design team at cost certification;
>
> (-m-) locate water fixtures within 20 feet of water heater;"

Commenter (44) recommended the installation of individual or sub-metered utility meters for electric and water be removed because it is already Texas code and indicated the healthy finish materials option is too vague as to how much finish materials should be used. Commenter (44) recommended that because this item is difficult to verify, it should be removed. Commenter (40) recommended allowing rehabilitation developments to be eligible for points for individually metered water and electric because if the development was built with individual meters or is changing to individual meters they should be allowed the same points as new construction.

Commenter (44) recommended the provision for the construction waste management system that meets LEEDs minimum standards be removed on the basis that per LEED Version 4 it is extremely difficult to achieve now.

Commenter (44) suggested that the option for developments with 41 units or less, whereby at least 25% by cost FSC certified salvaged wood products be used, be removed because it is very expensive and there is no real benefit to the tenant or building.

Commenter (44) recommended the following options be combined into one in order to truly achieve water savings.

> "(-n-) drip irrigate at non-turf areas and sprinkler system with rain sensors;
> ~~(-u-) sprinkler system with rain sensors;~~"

Commenter (44) recommended TPO roofs be added to the amenity option below since they are considered "cool" roofing.

> "(-o-) radiant barrier decking for New Construction Developments or other "cool" roofing materials;"

Commenter (44) recommended black-out shades be removed from the option below because they are easy to remove and not as efficient as exterior shading devices.

"(-p-) permanent shading devices for windows with solar orientation (does not include solar screens, but may include permanent awnings~~, black-out shades~~, fixed overhangs, etc.);"

Commenter (44) recommended the option below be removed because Energy Star does not certify insulation products.

~~"(-q-) Energy-Star certified insulation products (For Rehabilitation Developments, this would require installation in all places where insulation could be installed, regardless of whether the area is part of the scope of work);"~~

Commenter (44) indicated that because Floor Score only certifies vinyl flooring, other options should be added to the amenity in order to count for points and recommended the following modification:

(-t-) FloorScore certified vinyl flooring, Green Label certified carpet, or resilient flooring;

Commenter (58) recommended modifications to the following amenities:

"(xxxii) Porte-cochere ~~(Elderly Developments Only)~~ (1 point);
(xv) Service provider office in addition to leasing offices or a desk for service provider in leasing office. (1 point);"

Commenter (58) recommended adding the following options to the Limited Green Amenities section under Green Building Features.

"(-w-) no carpet in main living area of all units;
(-x-) locate HVAC ducts within thermal envelope;
(-y-) label all storm drains and storm inlets on the development site to discourage dumping of pollutants."

STAFF RESPONSE: Staff agrees with the modification suggested by commenter (79) and has made the change.

In response to the multiple suggestions proposed by commenter (44) staff recommends the following: full perimeter fencing alone can be an amenity and can, absent controlled gate access provide an initial layer of protection of security that prevents individuals from passing through a property with, for example, immediate access to a first floor balcony; therefore, staff recommends no change; staff agrees with the comment regarding the one printer per computer lab and has made the change; staff believes that while trees could provide shade for a playground, this could be difficult to monitor and verify to ensure adequate shading is in fact being provided and recommends no change; staff does not believe that additional clarification is needed at this time related to the amount of bicycle parking and believes that it should be adequate for the development size and has added such language. Staff agrees with commenter (44) regarding the difficulty with verifying that HVAC condenser units be located such that they are 75% shaded and has removed this item from the list. Staff does not believe the other items noted by commenter (44) are difficult to verify, has not encountered issues with them and believes there could still be value associated with them and; therefore, recommends no change. In response to the suggestion of adding Solar Arrays as its own category, staff believes there could be some merit in exploring this for possible inclusion in the 2018

Uniform Multifamily Rules when there has been more research and public comment surrounding it. Moreover, staff believes there could also be some merit in re-evaluating the points associated with the Limited Green option but believes this would be better served in re-evaluating in 2018 where there is an opportunity for additional public comment.

In response to commenters (40), (42), (43), (54), (60), (73) staff agrees and has increased the point value associated with a furnished community room to 2 points.

In response to commenter (40) requesting that the community dining room be defined, staff does not believe additional clarification is necessary beyond what is already stated in the item. The introductory paragraph in this section states "an Applicant can only count an amenity once; therefore combined functions (a library which is part of a community room) will only qualify for points under one category"; therefore, the community dining room could not be included in the community room and points received under both options.

In response to the sub-metering of electric and water staff believes any modification to this could benefit from additional public comment and therefore recommends that such change be contemplated for inclusion in the 2018 draft rules for public comment.

In response to commenter (44) that requested TPO roofs be added to the option for other "cool" roofing materials, staff believes such roofing materials could be used but doesn't believe TPO roofs specifically need to be incorporated into this item. Regardless of the roofing materials used under this option, an applicant would be required to provide documentation identifying the energy savings and something to document the materials are durable. Staff modified this item to provide this clarification as reflected in the following:

> "(-o-) radiant barrier decking for New Construction Developments or other "cool" roofing materials (documentation must be submitted that substantiates the "cool" roofing materials used are durable and that there are energy savings associated with them);"

Staff agrees with commenter (44) regarding removal of the black-out shades and has removed this from the option for permanent shading devices.

Staff believes that some of the suggestions proposed by commenter (44) such as combining the drip irrigate at non-turf areas and sprinkler system with rain sensors would be worth considering in the 2018 Rules when staff can better evaluate whether there are sufficient other items remaining on the list and there is an opportunity for additional public comment.

Staff does not agree with commenter (44) in removing the items relating to construction waste management and FSC certified salvaged wood products solely on the basis that they are difficult to achieve absent providing alternative options in their place to ensure there are still a sufficient number of items remaining by which applicants can choose from.

In response to the suggestion by commenter (44) to remove the Energy Star insulation products, based on staff's research such products are in fact certified and; therefore, absent any documentation to the contrary staff recommends this item remain.

Staff agrees with commenter (44) regarding the proposed changes to the FloorScore certified flooring and has made the modification as suggested.

In response to commenter (58) staff agrees with the suggestion to allow all developments the option to receive points for a Porte-cochere and has made the change accordingly. Regarding the suggestion to allow simply having a desk in the leasing office for the service provider, staff does not believe this equates to having a separate office for the provider in the leasing office and does not recommend this change.

In response to the additional options suggested by commenter (58) to be added to the list along with other suggestions by other commenters, staff believes more time and attention needs to be spent on the options listed under the Limited Green section as it relates to combining some items, removing and adding some based on whether they add value or not, such that there remains a sufficient number of options to choose from and that such revisions have had the opportunity to be open for public comment in order to receive more input. Staff recommends no changes other than the aforementioned modifications.

14. §10.101(b)(1)(6)(B) – Subchapter B – Unit Requirements (20), (40), (42), (43), (44), (53), (54), (73)

COMMENT SUMMARY: Commenters (20), (53) stated that the ability to use bond volume cap to revitalize multiple properties at one time could be a major solution to preservation efforts and in the interest of this cause recommended the following modifications to this section:

> "**(B) Unit and Development Construction Features.** Housing Tax Credit Applicants may select amenities for the score of an Application under this section, but must maintain the points associated with those amenities by maintaining the amenity selected or providing substitute amenities with equal or higher point values. Tax-Exempt Bond Developments must include enough amenities to meet a minimum of seven (7) points, unless the application is preserving multiple (3 or more) USDA rural properties under one bond transaction. Direct Loan Applications not layered with Housing Tax Credits must include enough amenities to meet a minimum of four (4) points. The amenity shall be for every Unit at no extra charge to the tenant.."

Commenter (40) indicated the seven point requirement for rehabilitation developments may be hard to achieve and suggested it be lowered for 4% applications. Moreover, commenter (40) requested clarification relating to high speed internet, specifically, whether a tenant can be charged for it or whether the owner just has to provide the ability for the resident to have high speed internet. Commenter (44) recommended the following clarification to the internet service option since the Department requires that such service be offered free of charge.

> "(xii) Free High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);"

Commenter (40) suggested built-up or 4-ply flat roof be added as an option for flat roof developments to make it even with shingles, and further stated that there is a point consideration for a quality flat roof.

Commenters (42), (43), (54), (73) recommended the point value assigned to in-unit laundry equipment be increased to at least 2 points, if not 3 points and further argued that a community laundry room is worth three points under common amenities but it is a far less desirable amenity to tenants than having laundry equipment provided to them in their units.

Commenters (42), (54) recommended the following modification as it relates to exterior finishes:

> "(xv) Greater than 30 percent stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious ~~and metal~~ siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points)."

Commenter (44) expressed that the list of features included in this section have been and still are too restrictive and should be expanded to allow for greater design options. Commenter (44) recommended the following amenities be added to the list because they provide value to the tenants and serve to improve the quality of developments.

> "Pantry (0.5 point);
> Breakfast bar (0.5 point);
> Walk-in closet in master bedroom (0.5 point);
> Low Flow Water Fixtures (0.5 point);
> Durable Flooring (1 point);
> Solar panels that directly offset the tenant's electricity bill (2 points)."

Commenter (44) indicated that because Energy Star dryers are cost prohibitive, the following modification should be made to the laundry equipment option.

> "(vii) Energy-Star qualified laundry equipment (washers ~~and dryers~~) for each individual Unit; must be front loading washer ~~and dryer~~ in required accessible Units (1.5 points);"

Commenter (44) indicated that because R-value slabs are important in north Texas, the following modification should be made to the R-value requirements.

> "(x) Meet current R-value requirements (rating of wall/ceiling/slab system) of current IECC for the Development's climate zone (1.5 points);"

In order to incentivize Energy Star appliances, commenter (44) recommended the following modification to the HVAC option.

> "(xi) ~~14 SEER HVAC~~ Energy Star Rated HVAC equipment (or greater) for New Construction, Adaptive Reuse, and Reconstruction or radiant barrier in the attic ~~or~~ for Rehabilitation (excluding Reconstruction) where such systems are not being replaced as part of the scope of work, a radiant barrier in the attic is provided (1.5 points);"

Commenter (44) indicated that because the following option creates an accessibility conflict with 2010 ADA that it be removed.

> "~~(xii) Floor to ceiling kitchen cabinetry (1 point);~~"

Commenter (44) indicated the following option can add complications to ceiling assemblies due to fire rating and in their opinion do not add value for the tenant. Moreover, commenter (44) indicated that track LED lighting is difficult to source and should be removed.

"~~(xiii) Recessed or track LED lighting in kitchen and living areas (1 point);~~"

Commenter (44) recommended a modification to the roofing option that includes TPO roofing material based on the following: many TPO roofing systems come with 30-year warranties and are arguably more durable and energy efficient than the commonly used 30-year shingle and TPO is a popular high-grade commercial roofing material with long term heat and UV resistance and a highly reflective, emissive white material that helps reduce energy costs and urban heat island effect. Moreover, commenter (44) explained the following practical benefits to a flat roof: it maximizes space for smaller urban sites or sites with strict impervious cover limits, allows projects to mount HVAC on the roof which frees up valuable space on the ground, provides more space and greater flexibility for placement of solar panels, allows for more strategic placement of downspouts and rainwater collection, allows projects to take full advantage of max height restrictions without using valuable vertical space for attics, and it's easier to provide significant continuous roofing insulation which is more effective than batts or loose fill typical in a pitched roof design.

"(xiv) Thirty (30) year shingle or metal roofing (~~excludes~~ including Thermoplastic Polyolefin (TPO) roofing material) (0.5 point); and"

As it relates to masonry, commenter (44) recommended that Hardi be included as an option and contended that stone and brick are cost prohibitive and do not provide enough of a benefit to the resident to justify the cost; whereas Hardi is durable, aesthetically pleasing and popular Texas façade. Commenter (44) requested the following modification:

"(xv) Greater than 30 percent stucco or masonry (includes stone, cultured stone, hardi and brick ~~but excludes cementitious and~~ metal siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points)."

STAFF RESPONSE: In response to commenters (20), (53) proposing developments that are pooled together under a portfolio bond issuance be held to a different minimum threshold, staff believes this would constitute a substantive change that would necessitate additional public comment and; therefore, recommends no change.

In response to commenter (40) relating to the difficulty some Rehabilitation Developments may have in meeting the seven point minimum threshold for unit and development features, staff notes that this section already provides for Rehabilitation Developments to start with a base score of three points and; therefore, does not believe additional changes to the minimum threshold or the point values are necessitated. Staff recommends no change based on this comment.

In response to commenters (40), (44) regarding the high speed internet, staff notes that the introductory paragraph to this section states "the amenity shall be for every Unit at no extra charge to the tenant" and that because the item specifically states "high speed internet service" that no additional clarification is necessary. The intent of this option is that the service be provided and that it be free to the tenant. Staff recommends no change based on these comments.

In response to commenters (42), (54) who recommended the exterior finishes option be revised to allow for metal siding, staff notes that an applicant is not necessarily precluded from using metal siding should they choose to do so, they just wouldn't be allowed to claim the points associated with this option. Staff does not recommend any changes based on this comment.

In response to commenter (44) to allow for Hardi to be included as an option for exterior finishes, staff believes that while such option might be a cheaper alternative to stone or masonry it isn't necessarily cost prohibitive since such costs would be covered with tax credit proceeds. An applicant is not necessarily precluded from using Hardi should they choose to do so, they just wouldn't be allowed to claim the points associated with this option. Staff does not recommend any changes based on this comment.

In response to commenters who suggested the point value assigned to in-unit laundry equipment be increased to at least 2 points, staff agrees and has modified the point value accordingly.

In response to the additional features suggested by commenter (44) that would allow for greater design options, staff recommends adding a Breakfast Bar worth 0.5 points a and Walk-in closet in Master Bedroom worth 0.5 points and has modified the list accordingly.

Staff believes having an energy-star dryer could provide cost savings to the tenant and considering such cost would be covered with tax credit proceeds staff does not understand the cost prohibitive nature of the comment. Staff recommends no change based on this comment.

In response to the suggestion by commenter (44) to revise the R-value requirements to include the slab system, staff believes that because such R-value requirements are already state law and regulation based on climate zone, it should be removed from consideration and has modified this section accordingly.

In response to commenter (44) who suggested the 14 SEER HVAC system be modified to require Energy-Star Rated HVAC equipment, staff believes that such change could benefit from additional public comment and recommends it be contemplated for inclusion in the 2018 draft rules.

In response to the suggestion by commenter (44) that the floor to ceiling kitchen cabinetry be removed on the basis that it creates an accessibility conflict with 2010 ADA staff believes that cabinetry is already required to conform to the construction standards in 10 TAC Subchapter B for the accessible units and that floor to ceiling kitchen cabinetry could be included in all other units. However, staff believes that this item could create additional confusion on what is intended and has removed the item until it can be clarified further.

In response to the suggestion by commenter (44) that the recessed or track LED lighting option be removed, staff believes that if such option adds complications based on the design of the building then it could simply not be an option for that owner to provide. Staff believes that it should remain an option nonetheless in the event there are owners who wish to include it. Staff recommends no change based on this comment.

15. §10.101(b)(7) – Subchapter B – Tenant Supportive Services (20), (22), (23), (33), (42), (43), (44), (53), (54), (58), (60), (64), (69), (73)

COMMENT SUMMARY: Commenters (20), (53) stated that the ability to use bond volume cap to revitalize multiple properties at one time could be a major solution to preservation efforts and in the interest of this cause recommended the following modifications to this section:

> "**(7) Tenant Supportive Services.** The supportive services include those listed in subparagraphs (A) - (Z) of this paragraph. Tax Exempt Bond Developments must select a minimum of eight (8) points, unless the application is preserving multiple (3 or more) USDA rural properties under one bond transaction; Direct Loan

Applications not layered with Housing Tax Credits must include enough services to meet a minimum of four (4) points."

Commenters (22), (23), (33), (42), (43), (54), (60), (73) objected to the fact that all tenant services should be provided by a third party/off-site entity and commenter (23) further noted that many of the tenant services (i.e. on-site food pantry, notary services and onsite social events) are most appropriately administered by on-site leasing or other property staff. Commenter (33) indicated this requirement will add undue cost to every development, escalating operating costs by $30,000 or more a year. Commenter (23), (58) recommended the following modifications to this section with commenter (58) indicating that on-site personnel can be and are qualified to provide many of the services listed and not allowing them to do so just increases operating costs unnecessarily:

"**(7) Tenant Supportive Services.** The supportive services include those listed in subparagraphs (A) - (Z) of this paragraph. Tax Exempt Bond Developments must select a minimum of eight (8) points; Direct Loan Applications not layered with Housing Tax Credits must include enough services to meet a minimum of four (4) points….Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. These services are intended to be provided by a qualified and reputable provider ~~in the specified industry~~ such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. ~~In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider.~~ Where applicable, the services must be documented by a written agreement with the provider."

Similarly, commenters (22), (42), (43), (54), (60), (69), (73) recommended the following modification to this section considering many smaller rural properties cannot financially support a separate staff person or a third party provider and in many rural communities such third party providers are not even available:

"**(7) Tenant Supportive Services.** The supportive services include those listed in subparagraphs (A) - (Z) of this paragraph. Tax Exempt Bond Developments must select a minimum of eight (8) points; Direct Loan Applications not layered with Housing Tax Credits must include enough services to meet a minimum of four (4) points….Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. ~~These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider. Where applicable, the services must be documented by a written agreement with the provider~~."

Commenter (44) expressed similar concerns as it relates to smaller developments and indicated where a dedicated service coordinator is not feasible, property management staff should be allowed to provide the services noted below (*included herein for ease of reference but no changes to specific services were proposed by commenter*), as reflected in their proposed modification to the introductory paragraph.

"These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider

demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider, with the exception of services specified in subparagraphs C, D, L, P, Q, and Y in developments of less than 40 units. Where applicable, the services must be documented by a written agreement with the provider….

(C) daily transportation such as bus passes, cab vouchers, specialized van on-site (4 points);
(D) Food pantry consisting of an assortment of non-perishable food items and common household items (i.e. laundry detergent, toiletries, etc.) accessible to residents at least on a monthly basis or upon request by a tenant (1 point);
(L) Notary Services during regular business hours (§2306.6710(b)(3)) (1 point);
(P) monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point);
(Q) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, etc.) (1 point);
(Y) a resident-run community garden with annual soil preparation and mulch provided by the Owner and access to water (1 point); and"

Commenters (44), (64) expressed support for the new language that tenant services are intended to be provided by a qualified and reputable provider citing that this significantly enhances the quality of services to residents and it is an appropriate expectation that qualified personnel administer any supportive programs selected.

Commenter (44) requested clarification of use of the term "regular" in the following tenant service and further suggested the frequency be quarterly.

"(A) partnership with local law enforcement to provide regular on-site social and interactive activities intended to foster relationships with residents (such activities could include playing sports, having a cook-out, swimming, card games, etc.) (3 points);"

Commenter (44) recommended the following modification to the food pantry service, stating that household items are not commonly available through nonprofit food banks and further suggested such item be replaced with fruits/vegetables.

"(D) Food pantry consisting of an assortment of non-perishable food items and ~~common household items (i.e. laundry detergent, toiletries, etc.)~~ accessible to residents at least on a monthly basis or upon request by a tenant (1 point);"

Commenter (44) recommended the following modification to the income tax preparation tenant service.

"(O) annual income tax preparation or IRS-certified VITA program (offered by an income tax prep service) (1 point);"

Commenter (44) requested the following tenant services be increased to 3 points because they are of utmost importance, are time consuming and expensive.

"(R) specific case management services offered by a qualified Owner or Developer or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (3 points~~1 point~~);

(X) a full-time resident services coordinator with a dedicated office space at the Development (3 points~~2 points~~);

Commenters (42), (43), (54), (73) recommended the point value associated with scholastic tutoring be increased to at least 5 or 6 points because the requirements have increased, along with the cost to the Development to provide such a service and the enormous benefit gained by the tenants.

STAFF RESPONSE: In response to the suggestion by commenter (44) regarding the frequency of the partnership with local law enforcement, staff agrees that this tenant service needs clarification and further agrees that it should be provided quarterly and has made this change.

Staff believes, based on the proposed modification by commenter (44) regarding the food pantry, that this tenant service might need some clarification. The intent of providing a food pantry is that it be provided on-site and stocked with the non-perishable food items and common household items as indicated in the item. While it is possible that an owner can provide transportation (free of charge to a resident) to a nearby food bank to satisfy the requirement of this tenant service, and staff recognizes that such food banks may not provide common household items, the tenant must not be required to pay for items they receive at the food bank. Staff has clarified this item accordingly.

Staff agrees with the proposed modification by commenter (44) including the IRS-certified VITA program. It is staff's understanding that such service is a volunteer income tax assistance service whereby an individual is certified and qualified to provide such service. As such, staff has modified the item accordingly.

In response to the suggestions by commenter (44) relating to the increased point values relating to specific case management services and a full-time resident services coordinator, staff partially agrees with the suggestions. Specifically, as it relates to the specific case management services, staff agrees that it should be worth more than 1 point and recommends a modification to 2 points. Staff believes it is worth clarifying that, while a specific owner or developer may be qualified to provide this service, it could also be provided by a specific qualified provider and has modified the item accordingly. Regarding the suggested revision to the resident services coordinator item, staff does not agree with the proposed point value from 2 points to 3 points. Staff believes that this particular item is mutually beneficial considering the benefits received through the services. While the owner must market the property in this manner, in turn it helps make the property more appealing to prospective tenants and helps resident retention. Staff does not recommend any changes to the point value associated with resident services.

In response to commenters (42), (43), (54), (73) regarding the recommended increase in point value for scholastic tutoring, staff does not believe that, considering the minimum thresholds for applications to provide tenant services, such a high point value is appropriate because it could result in only a couple of services being provided to the tenants. Staff believes the provision of tenant services is important and of immense value to residents and that there should be multiple services available to the residents. Staff has proposed a slight modification to the frequency requirements of the scholastic tutoring indicating that instead of providing the tutoring Monday – Friday, that Monday – Thursday might be more indicative of the realistic use of the service.

In response to all other commenters regarding the language that requires the services be provided by a qualified and reputable provider in the specified industry, staff agrees that there are some services on the list that could possibly be provided by on-site property leasing staff (i.e. notary services and on-site social events) and others could possibly be provided by on-site maintenance staff (i.e. resident-run community garden, and transportation) rather than being out-sourced to a third party provider. Staff believes that some services do require greater levels of specialized skill or experience, such as providing case management or counseling and; therefore, staff would expect to see and require such services to be provided in a competent manner by someone with the certification or credentials otherwise necessary to provide the service. Staff believes that this intent and the flexibility that some of the services can be administered by on-site property staff is already captured in the language provided in this section and recommends no changes based on these comments.

In response to commenters (20), (53) proposing developments that are pooled together under a portfolio bond issuance be held to a different minimum threshold, staff believes this would constitute a substantive change that would necessitate additional public comment and therefore recommends no change.

STATUTORY AUTHORITY. The new section is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new section is adopted pursuant to §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

Preamble, Reasoned Response, and New Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC, Chapter 10 Uniform Multifamily Rules, Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications. Sections 10.201 – 10.204 are adopted with changes to the text as published in the September 23, 2016, issue of the *Texas Register* (41 TexReg 7318). Sections 10.205 – 10.207 are adopted without changes and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the rule will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition. The comments and responses include both administrative clarifications and corrections to the Uniform Multifamily Rule based on the comments received. After each comment title, numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the Draft Uniform Multifamily Rule as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Public comments were accepted through October 14, 2016, with comments received from (17) Fifth Ward Community Redevelopment Corporation, (19) Texas Association of Community Development Corporations, (20) Rural Rental Housing Association of Texas, Inc., (22) Texas Affiliation of Affordable Housing Providers, (23) Texas Coalition of Affordable Developers, (25) Center for Supportive Housing, (27) Atlantic Housing Foundation, (28) Locke Lord Attorneys and Counselors, (33) Anderson Development and Construction, LLC, (34) BETCO Consulting, LLC, (38) Dharma Development, LLC, (40) Dominium, (42) Evolie Housing Partners, (43) Flores Residential, LLC, (44) Foundation Communities, (48) Hamilton Valley Management, Inc., (50) Hoke Development Services, LLC, (54) Leslie Holleman and Associates, Inc., (58) Mark-Dana Corporation, (59) Marque Real Estate Consultants, (60) Mears Development, (62) Miller Valentine Group, (63) National Church Residences, (66) O-SDA Industries, (69) Purple Martin Real Estate, (72) Structure Development, (73) The Brownstone Group.

16. Subchapter C – General Comment (28)

COMMENT SUMMARY: Commenter (28) noted that throughout the Rules, the Department has various ways of referring to Persons involved with an Application – i.e. Applicant, Affiliate, Principal and Development Team and further stated that sometimes their usage creates unintended burdens or infeasibility for Applicants where the goal should be uniformity and consistency. Commenter (28) asserted that the organizational charts need to be the hub of the wheel hosting the various spokes (ineligibility, previous participation, etc.). Commenter (28) further explained the certain kinds of organizations such as non-profit organizations, governmental bodies and public corporations require different treatment because control and governance of these entities is so different than private, closely-held organizations. Non-profits, governmental bodies and public corporations are not generally run by those who own the entity or serve on the board but rather they are operated on a day-to-day basis by a few officers and/or employees. According to commenter (28), there have been instances where board members of non-profits, governmental bodies and public companies are uncomfortable with signing certifications required in the application, with some even resigning their role on the board, because they go beyond an individual's personal knowledge. Commenter (28) believed more improvement is needed with respect to these certifications and with the usage of various Persons involved with an Application.

STAFF RESPONSE: In response to the concerns raised by commenter (28) staff believes the most appropriate place to address the concern is within the definition of control. Staff has proposed a modification to that definition as previously mentioned herein.

Staff recommends no change to Subchapter C in response to this general comment.

17. §10.201 – Subchapter C – Procedural Requirements for Application Submission (33), (42), (54)

COMMENT SUMMARY: Commenter (33) stated the new language in this section that restricts only one application for assistance relating to a specific development site across all programs does not allow for maximizing the likelihood of successful development on proposed sites. Commenter (33) expressed that such language appears to be directly targeting the successful application for a Direct Loan while a non-competitive 9% application was pending. Commenter (33) requested there be no restriction on applying for different types of funding.

Commenter (42), (54) stated the added language requiring that only one applicant may have an application or applications for assistance related to a specific development site at any given time should revert to its previous construct which read that only one application may be submitted for a development site in an application round. Commenters (42), (54) contended that because site control is a threshold item, it would not be possible for multiple applicants to submit applications for the same development site.

Commenter (42), (54) indicated the language added to this section that allows errors in the calculation of applicable fees to be cured via the administrative deficiency process is a slippery slope considering the highly competitive environment and requested the language be removed. According to commenter (42), (54) the application fee due is not a difficult calculation to perform and allowing such corrections goes against prior years of precedent where the Department terminated applications for unfortunate mistakes. Commenters (42), (54) asserted that miscalculation of a fee is no different from submitting the wrong electronic application file or third party report or exceeding the $3 million cap when, in such instances, applications were terminated. Commenters (42), (54) maintained that considering the highly competitive environment the added language should be removed in order to maintain the integrity of the rule.

Commenter (58) requested the added language that does not allow the cure period for correcting an error in the calculation of the application fee to be extended be removed and indicated it is better to address fees on a case-by-case basis rather than provide a complete prohibition.

STAFF RESPONSE: In response to comments regarding the added language that restricts only one application for assistance relating to a specific development site across all programs, staff recommends the sentence be removed and has reverted to the previous language indicating that only one application may be submitted for a development site in an application round.

In response to comments relating to the ability to cure an error in the calculation of fees staff believes that circumstances surrounding such error are somewhat different from those situations explained by the commenter. In this instance, an application fee was submitted with the application and staff in its review of the application may determine the fee was calculated incorrectly and staff believes the more appropriate way to address such error is through an administrative deficiency.

18. §10.201(3)(A) – Subchapter C – Certification of Tax Exempt Bond Applications with New Docket Numbers. (40)

COMMENT SUMMARY: In an effort to avoid an administrative burden to staff and the developer for something that is truly not material, commenter (40) suggested the following modification to this section:

> "(A) The Application must remain unchanged, which means that at a minimum, the following cannot have changed: Site Control, total number of Units, unit mix (bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and Housing Tax Credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, Target Population, scoring criteria (if TDHCA is bond issuer) or TBRB priority status including the effect on the inclusive capture rate. The entities involved in the Applicant entity and Developer cannot change; however, the certification can be submitted even if the lender, syndicator or issuer changes, as long as the financing structure and terms remain unchanged or such changes are not material."

STAFF RESPONSE:

Staff has not found this process to be administratively burdensome and believes that the proposed language by the commenter could present additional issues as it relates to defining what constitutes material changes.

Staff recommends no change based on this comment.

19. §10.201(5) – Subchapter C – Evaluation Process (23), (28), (33)

COMMENT SUMMARY: Commenters (23), (33) asserted the posting of an online scoring log should not be what triggers timeframes as important as appeal rights and further asserted that formal scoring notices from the Department should not be considered a "courtesy." Commenter (23) stated that considering the problems associated with posting the log in the 2015 application round; it is not sound administrative policy to have such an important item be left to such a passive and problematic process. Commenter (23) suggested the following modification to this section on the basis that scoring notices are an important part of the administrative process and should be mandatory and not something that staff may provide.

> "**(5) Evaluation Process.** Priority Applications, which shall include those Applications believed likely to be competitive, will undergo a program review for compliance with submission requirements and selection criteria, as applicable. In general, Application reviews by the Department shall be prioritized based upon the likelihood that an Application will be competitive for an award based upon the set-aside, self score, received date, or other ranking factors. Thus, non-competitive or lower scoring Applications may never be reviewed. The Director of Multifamily Finance will identify those Applications that will receive a full program review based upon a reasonable assessment of each Application's priority, but no Application with a competitive ranking shall be skipped or otherwise overlooked. This initial assessment may be a high level assessment, not a full assessment. Applications deemed to be priority Applications may change from time to time….~~The Department will, from time to time during the review process, publish an application log which shall include the self-score and any scoring adjustments made by staff. The posting of such scores on the application log may trigger appeal rights and corresponding deadlines pursuant to Tex. Gov't. Code §2306.6715 and §10.902 of~~

~~this chapter (relating to Appeals Process). The Department may also provide a courtesy scoring notice reflecting such score to the Applicant.~~"

Commenter (28) similarly expressed concern regarding the proposed change for staff to not issue scoring notices and cited the fact that in 2016 only 6 scoring logs were posted compared to 15 from the prior year. Commenter (28) requested that if scoring notices will not be issued and applicants are expected to assess their score based on a scoring log, then updated scoring logs need to be posted more frequently throughout the application cycle.

STAFF RESPONSE:
In response to these comments, staff notes that an applicant's appeal rights pursuant to statute are triggered by the publication of the application log. A failure by the Department to provide a scoring notice cannot overcome this statutory requirement. Staff will endeavor to post more frequent application logs throughout the application cycle.

Staff recommends no change based on these comments.

20. §10.201(6)(B) – Subchapter C – General Review Priority (33)
COMMENT SUMMARY: Commenter (33) asserted that disallowing approval of 4% HTC applications during May, June or July is not good practice and shuts down many opportunities for development and economic growth and further contends that the Department should maintain an open application calendar since the funding source associated with these applications is under-subscribed.

STAFF RESPONSE:
It was not staff's intent that the added language in this section would prohibit processing of 4% applications during the months of May, June or July. The language in this section states that in general these applications will not be prioritized over 9% applications and also states that staff will prioritize applications that have statutory or other more restrictive deadlines. Staff has always factored in the needs and timelines associated with 4% applications and has worked those applications into the review process. However, considering staff constraints in finalizing the review and underwriting analysis associated with the volume of housing tax credit applications, staff must prioritize applications in a manner that fulfills its obligations under Chapter 2306 of the Texas Government Code.

Staff recommends no changes based on this comment.

21. §10.201(7)(B) – Subchapter C – Administrative Deficiencies for Competitive Applications (19), (22), (23), (25), (28), (33), (34), (42), (43), (44), (54), (58), (60), (62), (63), (69), (72), (73)
COMMENT SUMMARY: Commenters (19), (22), (23), (25), (28), (33), (34), (42), (43), (44), (54), (58), (60), (62), (63), (69), (72), (73) recommended returning to a 5-day deficiency timeframe. Commenters (25), (63) recommended that point deductions not be imposed for late responses since some items that need to come from a third party could require additional time, especially if the third party is out of the office.

Commenter (28) indicated an inconsistency in the rules regarding the timeframe to respond to a deficiency. Specifically, this section indicates that such deficiencies must be satisfied within 3 buisiness days; however, §10.4(4) states the deadline is five business days.

STAFF RESPONSE:
In response to the commenters, staff has modified this section to reflect the 2016 language that requires a 5-day deficiency timeframe without incurring point deductions. Staff does not agree with commenters (25), (63) regarding removal of the point deductions and believes that such deductions are necessary in order to ensure the timeliness of responses and staff's ability to complete its review. Should information contained in a deficiency notice be required from a third party, there is language in the rule that allows for an extension of such item, should it be necessary.

22. §10.202 – Subchapter C – Ineligible Applicants (28)
COMMENT SUMMARY: Commenter (28) expressed concern regarding the new language in this section that permits a third party to question an applicant's eligibility. Specifically, commenter (28) requested staff reinstitute the language that allows the applicant to address the matter. While commenter (28) indicated such process may be inherent in the language "staff will make enquiry as it deems appropriate", the removal of the language giving the applicant the ability to "explain how they believe they or their application is eligible" is concerning.

STAFF RESPONSE:
To address the concerns raised by commenter (28) staff proposes the following modification for clarification:

> **"**The purpose of this section is to identify those situations in which an Application or Applicant may be considered ineligible for Department funding and subsequently terminated. Such matters may be brought to the attention of staff by anyone, including members of the general public. If such ineligibility is raised by non-staff members it must be made in writing to the Executive Director and the Applicant and must cite the specific ineligible criteria under paragraph (1) of this section and provide factual evidence to support the claim. Any unsupported claim or claim determined to be untrue may be subject to all remedies available to the Department or Applicant. Staff will make enquiry as it deems appropriate and may send a notice to the Applicant and provide them the opportunity to explain how they believe they or their Application is eligible.~~and~~ Staff will present the matter to the Board, accompanied by staff's recommendation."

23. §10.202 – Subchapter C – Ineligible Applicants (40)
COMMENT SUMMARY: As it relates to claims that may be made by others regarding the eligibility of an application or applicant, commenter (40) recommended there be a fee required by such challenger to help dissuade bogus or disingenuous challenges. Commenter (40) suggested a fee of $500 stating that it would help offset the time staff spends on the challenge and would also dissuade challenges without merit.

STAFF RESPONSE:
Staff believes the inclusion of such a fee is a sufficiently substantive change from what was proposed that it could not be accomplished without re-publication for public comment.

Staff recommends no changes based on this comment.

24. §10.202(1) – Subchapter C – Ineligible Applicants (28)

COMMENT SUMMARY: Commenter (28) stated the opening paragraph of this section applies the standard therein to any party on the Development Team, which is defined broadly to include any

Person with any role in the Development, which would include not only the developer and guarantor, but also minor players like lawyers, architects, or even construction subcontractor. All of these parties would be held to this standard, and according to commenter (28) it is unconscionable to ask an applicant, developer, or guarantor to make representations and certifications as to every single member of the development team. Commenter (28) recommended the Department only apply these ineligibility standards to those persons reflected on the organizational chart for the applicant, developer and guarantor.

STAFF RESPONSE: Staff does not object to the changes proposed by commenter (28) and recommends this section be modified to reflect the following:

> "**(1) Applicants.** An Applicant shall be considered ineligible if any of the criteria in subparagraphs (A) - (M) of this paragraph apply to those identified on the organizational chart for the Applicant, Developer and Guarantor. ~~If any of the criteria apply to any other member of the Development Team, the Applicant will also be deemed ineligible unless a substitution of that Development Team member is specifically allowable under the Department's rules and sought by the Applicant or appropriate corrective action has been accepted and approved by the Department.~~ An Applicant is ineligible if the Applicant, Developer, or Guarantor:.."

25. §10.202(1)(K) – Subchapter C – Ineligible Applicants (33)
COMMENT SUMMARY: Commenter (33) indicated that removal of the term "knowingly" in this section does not allow for due process for the burden placed on an applicant for information submitted, as the developer does not fabricate the majority of the documentation required in the application. Commenter (33) requested "knowingly" be added back to this section.

STAFF RESPONSE: Staff disagrees with commenter (33) in that there could be documentation contained in the application that could be falsified by the applicant. Staff notes that the mere existence of falsified documentation, whether knowingly or not can disqualify an application; however, this section allows for the applicant to have an opportunity to respond if such a claim is made.

Staff recommends no changes based on this comment.

26. §10.202(1)(M) – Subchapter C – Ineligible Applicants (28)
COMMENT SUMMARY: Commenter (28) requested an explanation regarding why the considerations for eligibility that were previously listed in clauses (i) through (v) were removed because it leaves room for question as to what the staff will consider when deciding whether an applicant is eligible to proceed. Commenter (28) stated that with the increase in ownership changes for LIHTC properties, applicants may like to know up front whether past activities will cause them to be ineligible. Commenter (28) suggested that such disclosure be made during the pre-application process for 9% applications, to be addressed before final application so that an applicant can decide whether it wants to proceed; and similarly for 4% Applications that a pre-determination be allowed to be submitted prior to the submission of a full application.

STAFF RESPONSE: Staff agrees with commenter (28) that the considerations listed in this section should be reinstated to the proposed rule; however, believes that such determination should be up to the Board and not the Executive Director. Staff recommends the following modifications to this section:

"(M) fails to disclose, in the Application, any Principal or any entity or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction, that has terminated voluntarily or involuntarily within the past ten (10) years or plans to or is negotiating to terminate their relationship with any other affordable housing development. Failure to disclose is grounds for termination. The disclosure must identify the person or persons and development involved, the identity of each other development, and contact information for the other Principals of each such development, a narrative description of the facts and circumstances of the termination or proposed termination, and any appropriate supporting documents. An Application may be referred to the Board for termination based upon factors in the disclosure. Staff shall present a determination to the Board as to a person's fitness to be involved as a principal with respect to an Application using the factors described in clauses (i) – (v) of this subparagraph as considerations:

(i) The amount of resources in a development and the amount of the benefit received from the development;

(ii) the legal and practical ability to address issues that may have precipitated the termination or proposed termination of the relationship;

(iii) the role of the person in causing or materially contributing to any problems with the success of the development;

(iv) the person's compliance history, including compliance history on other developments; and

(v) any other facts or circumstances that have a material bearing on the question of the person's ability to be a compliant and effective participant in their proposed role as described in the Application."

27. §10.202(1)(N) – Subchapter C – Ineligible Applicants (28), (58), (62)

COMMENT SUMMARY: Commenter (28) expressed an objection to the deletion of this provision on the basis that while the remedies available in this provision may not have been utilized by the Department in recent years, it is still an important statement to have in the rules because it promotes a fair and professional culture of competition. Commenters (58), (62) expressed similar concerns stating the 2016 language be reinstated on the basis that applicants that actively work to create opposition to competing applications or disseminate misinformation should be considered ineligible.

STAFF RESPONSE:

Staff believes the language contained in this section was problematic in that the Department would have been in the position of having to evaluate whether the opposition being created was based in substantive and legitimate concerns, and ultimately, whether such action was a violation of fair housing laws. While staff agrees on the premise that applicants should not work to create opposition on competing applications, absent any other method by which such opposition could be evaluated staff believed it was more appropriate to remove the item from the rule.

Staff recommends no change based on these comments.

28. §10.203 – Subchapter C – Public Notifications (22), (33), (38), (42), (43), (54), (58), (60), (66), (69), (73)

COMMENT SUMMARY: Commenters (22), (33), (38), (42), (43), (54), (58), (60), (66), (69), (73) requested the new 14-day requirement by when newly elected or appointed officials would need to be notified be removed on the basis that it is very difficult to keep track of such changes, especially with respect to school districts and school superintendents. Commenters (22), (38), (42), (43), (54), (58), (60), (66), (69), (73) indicated that under prior rules applicants have until the date of full application to notify newly elected/appointed officials and requested the language be modified to reflect such requirement. Commenter (33) requested notice be required within 30 days of when the applicant becomes aware of the newly elected (or appointed) official.

Commenter (66) indicated that townhomes were removed as a development type; however, because this development type is an acceptable community in the application, removing it as a type seems inconsistent and recommended townhomes be re-instated.

STAFF RESPONSE:

In response to the commenter (33), staff believes it would be difficult to verify, if ever questioned, when the applicant actually became aware of a change in an elected/appointed official. Staff agrees with the recommendation by the other commenters that would require the newly elected/appointed official be notified no later than the date the full application is submitted to the Department and has made the change accordingly.

In response to commenter (66), townhome-style developments are still allowed as a development type. Staff did not believe it was necessary to specify this development type over others and; therefore, removed any reference to development type.

29. §10.204(7) – Subchapter C – Financing Requirements (20), (42), (48), (54)

COMMENT SUMMARY: Commenters (20), (48) recommended the following modification to this financing requirement, stating the language as proposed places an unnecessary burden on both the applicant and USDA staff, and further stated that Rural Development will not likely process the application until it's known the project will receive an award.

> "(iii) For Developments proposing to refinance an existing USDA Section 515 loan, a letter from the USDA confirming that it has been provided with a complete loan transfer application within 60 days of tax credit award."

Commenters (42), (54) questioned why language has been added that requires the financing narrative to include dates and deadlines for application, approvals and closings, etc. associated with the commitments for all funding sources. Commenters (42), (54) stated that such information is merely an educated guess since it is often dependent upon other factors, including whether an allocation is even made, changes in market conditions, changes to proposed debt and equity providers, etc. and further requested the language be removed.

STAFF RESPONSE: In response to commenters (20), (48) regarding confirmation of the complete loan transfer application, staff recognizes that such application would only be completed after an award of housing tax credits. Staff proposes to modify this item as reflected below based on the comment and discussions with USDA as far as what would be more a more appropriate indicator of progress with the USDA process.

"(iii) For Developments proposing to refinance an existing USDA Section 515 loan, a letter from the USDA confirming that it has been provided with the Preliminary Assessment Tool.~~a complete loan transfer application.~~"

In response to commenters (42), (54) staff recognizes that financing components associated with 9% applications are somewhat fluid and that dates and deadlines associated with approvals, closings, etc are subject to change as the financing terms solidify; however, it is still an important piece of information that better helps staff understand the transaction. Moreover, because staff expects the financing components associated with 4% applications and Direct Loan applications to be more firm, including such information on the financing narrative is justified. Staff recommends no change based on these comments.

30. §10.204(9) – Subchapter C – Architectural Drawings (66)
COMMENT SUMMARY: Commenter (66) stated the requirement to describe flood mitigation that was added to be included on the site plan is typically handled by the civil engineer and; therefore, recommended that such information be moved to the feasibility report rather than on the face of a site plan.

Commenter (66) expressed concern over the new requirement that the site plan identify accessible routes. Specifically, commenter (66) stated that accessible routes are subject to very nominal slopes and grades, 5%, 8% with handrails and 2% cross slopes and those generally cannot be determined until full topography is known and grading plans are complete. Commenter (66) indicated that at the time of application not enough information or work has been determined to make informed decisions regarding accessible routes and further recommended that a statement by the architect or engineer that the site will comply with the requirement to have an accessible route would be more appropriate than requesting that they be identified on the site plan.

STAFF RESPONSE: In response to commenter (66) regarding the flood mitigation, such requirement is applicable to rehabilitation developments only and; therefore, moving it to the Site Design and Development Feasibility Report is not appropriate because such report is not required for Rehabilitation developments. Moreover, the requirement for accessible routes to be identified on the site plan is also specific to rehabilitation developments and staff believes that such information should be available and able to identify what the accessible routes are.

Staff recommends no change based on these comments.

31. §10.204(11) – Subchapter C – Zoning (33)
COMMENT SUMMARY: Commenter (33) stated that requiring an applicant to provide a release to hold a jurisdiction harmless for zoning change requests is not the burden of a developer if the political subdivision is in violation of the Fair Housing Act. Commenter (33) contends that individuals cannot exempt anyone from accountability to the Department of Justice and that such language should be removed and revert to that of the prior year.

STAFF RESPONSE:
In response to commenter (33), the requirement for an applicant to provide a release to hold a jurisdiction harmless for zoning change requests is a statutory requirement pursuant to Tex. Gov't Code, §2306.6705(5)(B). While the language contained in this section may have been tweaked over the prior year, the requirement to provide such release has been present in previous versions of the rule.

Staff recommends no change based on this comment.

32. §10.204(13) – Subchapter C – Previous Participation (22), (58)
COMMENT SUMMARY: Commenters (22), (58) indicated that the new language in this section seems to require all Affiliates of a Development Owner complete the previous participation documentation and recommended this section be modified to state that only affiliates that have an ownership interest in the Development be required to submit such documentation.

STAFF RESPONSE:
Staff agrees and has modified this requirement as suggested by the commenters.

33. §10.204(6) – Subchapter C – Experience Requirement (42), (43), (54), (73)
COMMENT SUMMARY: Commenters (42), (43), (54), (73) stated that because the experience criteria in 2014 is the same as it was in 2016, experience certificates issued in 2014 should be acceptable to meet the requirement. Commenters (42), (54) additionally suggested the term "natural Person" used in subparagraph (A) should be changed to "natural person" as the capitalized term Person includes entities.

STAFF RESPONSE:
Staff agrees that the experience requirement proposed for 2017 is the same as it was in 2014 and has modified this section to reflect that experience certificates received in 2014 would be accepted.

34. §10.204(16) – Subchapter C – Section 811 Project Rental Assistance Program (17), (22), (23), (27), (33), (34), (40), (42), (43), (44), (50), (54), (58), (59), (60), (62), (66), (69), (73)
COMMENT SUMMARY: Commenters (17), (22), (23), (27), (33), (34), (40), (42), (43), (44), (50), (54), (58), (59), (60), (62), (69), (73) expressed that the Section 811 program should not be a threshold item, but should remain a scoring item where an applicant has the choice of participation with commenter (27) adding that in such instance the decision as to whether to accept the additional costs and administrative burden created by the federally assisted designation is up to the applicant. Commenter (44) further stated that having leased the first Section 811 unit, it was a very time intensive and multi-detailed program that should be awarded with points for undertaking. Commenters (23), (59) similarly expressed that until the program has been fully implemented and has some history of performance it is premature to make participation in the 811 program a threshold item. Commenters (22), (42), (43), (50), (54), (60), (69), (73) indicated that making it a threshold item will burden 4% developments by adding operating expenses to deals that often need tax exemptions or soft money to make them feasible and the inclusion of such units limits the ability to position these developments as workforce housing and gives neighbors another reason to voice opposition. Commenters (22), (27), (40), (42), (43), (50), (54), (60), (69) suggested that if participation in the 811 program remain as a threshold item that 4% tax credit applications be exempt from the requirement with commenter (27) suggesting that the threshold requirement should be limited to Direct Loan applications or others already choosing to receive funds that would designate the project as federally assisted.

Moreover, commenters (22), (42), (43), (54), (60), (66), (69), (73) indicated that whether it remains as threshold or reverts to a scoring item, there should be an option for an applicant to place the 811 units in an existing development or in the development for which an application is submitted. Commenters (22), (42), (43), (54), (60), (66), (69), (73) believed this flexibility is important, especially when committing to existing developments because of the lender and investor approvals that are required. Commenters (22), (42), (43), (54), (60), (66), (69), (73) further requested that language be added that could exempt an applicant from providing 811 units in an existing development if the

applicant provides evidence that it cannot receive approval from either its lender or investor and that for developments with 100 or fewer units, the unit requirement be 10% of the total units, not 10 units. Similarly, commenter (34) recommended 10% of the units be set aside for 811 rather than 10 units in order to achieve economies of scale associated with smaller developments. Commenter (40) recommended that project based Section 8 developments be exempt from participation in the 811 program.

Commenter (58) recommended that while participation in the 811 program should return to being a point item under the QAP, if it remains as threshold, the following modifications be made on the basis that applicants should have the option to add 811 units into their existing developments or in the new development because of the different investors involved that own the developments and may not permit adding 811 units to existing properties.

"**(16) Section 811 Project Rental Assistance Program.** All Applications must participate in the 811 Project Rental Assistance Program in accordance with ~~meet~~ the requirements of subparagraphs (A) or (B) of this paragraph unless an Applicant is unable to meet the requirements of either subparagraphs (A) or (B). Applications that are unable to meet the requirements of subparagraphs (A) or (B) must certify to that effect in the Application.

(A) Applicants that opt to participate under this subparagraph (A) must apply for and obtain a determination by the Department that an Existing Development is approved to participate in the Department's Section 811 Project Rental Assistance Program ("Section 811 PRA Program"). The approved Existing Development must commit at least 10 units to the Section 811 PRA Program unless limited by the Integrated Housing Rule. An approved Existing Development may be used to satisfy the requirements of this paragraph in more than one Housing Tax Credit or other Multifamily Housing program Application, as long as at the time of Carryover, Award Letter or Determination Notice, as applicable, a minimum of 10 Units, unless limited by the Integrated Housing Rule, are provided for each Development awarded housing tax credits or Direct Loan funds. Once an Applicant submits their Application, Applicants may not withdraw their commitment to satisfy the threshold criteria of this subparagraph, although an Applicant may request to utilize a different approved Existing Development than the one submitted in association with the awarded Application to satisfy this criteria. Existing Developments that are included in an Application that does not receive an award are not obligated to participate in the Section 811 PRA Program.

(B) Applicants that opt to participate under this subparagraph (B) ~~cannot meet the requirements of subparagraph (A) of this paragraph must submit evidence of such through a self-certification that the Applicant and any Affiliate do not have an ownership interest in or control of any Existing Development that would meet the criteria outlined in the Section 811 PRA Program Request for Applications, and if applicable, by submitting a copy of any rejection letter(s) that have been provided in response to the Request for Applications. In such cases, the Applicant is able to satisfy the threshold requirement of this paragraph through this subparagraph (B). Applications~~ must meet all of the requirements in clauses (i) – (v) of this subparagraph. Applicants must commit at least 10 Units in the Development for which the Application(s) has been

submitted for participation in the Section 811 PRA Program unless the Integrated Housing Rule (10 TAC §1.15) or Section 811 PRA Program guidelines or other requirements limit the proposed Development to fewer than 10 Units…"

Commenter (27) asserted that requiring participation in the 811 program removes the choice from the applicant to accept the federally assisted housing designation and the requirements that accompany such designation, including Davis Bacon Wages, Uniform Relocation Act (URA), etc. Commenter (27) expressed that the application of URA substantially increases the administrative cost of an in-place rehabilitation relocation due to the federal regulations with which the owner would be required to comply and also suggested that there are significant additional cost burdens implemented by the URA (such as 42 months of rental assistance payment) for any permanently displaced tenants, which would occur for any in-place rehab proposing to increase the percentage of affordable units from its existing configuration. Commenter (27) stated that in the absence of the URA, the owner could determine what, in addition to moving expenses and any incentives offered to relocate, would be needed.

STAFF RESPONSE:
Although there were numerous commenters suggesting this item revert to scoring for 2017, staff believes such change is prohibitive considering it was not included in the 2017 draft Qualified Allocation Plan that was published for public comment. However, in response to those commenters who suggested 4% HTC applications be exempt from having to place 811 units on their developments, staff agrees and has modified the language as reflected below. Staff does believe, however, that Direct Loan only applications or those 4% applications layered with Direct Loans should be required to participate in the 811 program. Moreover, in response to some comments, staff recommends adding language that would allow an applicant to place 811 units on the subject application should the lender or investor not approve of the 811 units being placed on an existing development in the applicant's portfolio. Staff also recommends the number of 811 units required should be the lower of 10 units or 10% of the total units, unless a lower number is required by a state or federal regulation. The recommended changes by staff to this item are reflected below:

"**(16) Section 811 Project Rental Assistance Program.** All Competitive HTC Applications, Direct Loan only Applications and Tax-Exempt Bond Development Applications that are layered with Direct Loan funds must meet the requirements of subparagraphs (A) or (B) of this paragraph. Applications that are unable meet the requirements of subparagraphs (A) or (B) must certify to that effect in the Application.

(A) Applicants must apply for and obtain a determination by the Department that an Existing Development is approved to participate in the Department's Section 811 Project Rental Assistance Program ("Section 811 PRA Program"). The approved Existing Development must commit at least the lower of 10 units or 10% of the total number of Units in the Development to the Section 811 PRA Program unless the Integrated Housing Rule (10 TAC §1.15) or Section 811 PRA Program guidelines (§PRA.305) or other requirements limit the proposed Development to fewer than 10 Units. ~~-~~An approved Existing Development may be used to satisfy the requirements of this paragraph in more than one Housing Tax Credit or other Multifamily Housing program Application, as long as at the time of Carryover, Award Letter or Determination Notice, as applicable, the ~~a~~ minimum number of Units as stated above ~~of 10 Units~~ are provided for each Development awarded housing tax credits

or Direct Loan funds. Once an Applicant submits their Application, Applicants may not withdraw their commitment to satisfy the threshold criteria of this subparagraph, although an Applicant may request to utilize a different approved Existing Development than the one submitted in association with the awarded Application to satisfy this criteria. Existing Developments that are included in an Application that does not receive an award are not obligated to participate in the Section 811 PRA Program. An Applicant may be exempt from having to provide 811 units in an Existing Development if approval from either their lender or investor cannot be obtained and documentation to that effect is submitted in the Application, but they would be required to provide such Units through subparagraph (B) of this paragraph.

(B) Applicants that cannot meet the requirements of subparagraph (A) of this paragraph must submit evidence of such through a self-certification that the Applicant and any Affiliate do not have an ownership interest in or control of any Existing Development that would meet the criteria outlined in the Section 811 PRA Program Request for Applications, and if applicable, by submitting a copy of any rejection letter(s) that have been provided in response to the Request for Applications. In such cases, the Applicant is able to satisfy the threshold requirement of this paragraph through this subparagraph (B). Applications must meet all of the requirements in clauses (i) – (v) of this subparagraph. Applicants must commit at least the lower of 10 Units or 10% of the total number of Units in the Development for which the Application(s) has been submitted for participation in the Section 811 PRA Program unless the Integrated Housing Rule (10 TAC §1.15) or Section 811 PRA Program guidelines or other requirements limit the proposed Development to fewer than 10 Units. Once elected in the Application(s), Applicants may not withdraw their commitment to have the proposed Development participate in the Section 811 PRA Program unless the Department determines that the Development cannot meet all of the Section 811 PRA Program criteria or the Applicant chooses to request an amendment by Carryover, Award Letter, or subsequent to the issuance of the Determination Notice but prior to closing (for Tax-Exempt Bond Developments), or to place the Units on an Approved Existing Development. If the Applicant or an Affiliate obtain an ownership interest in an Approved Existing Development, the Applicant can submit an Amendment request authorizing that the Application satisfies this criteria under subparagraph (A), not subparagraph (B). Such an Amendment request will be considered a non-material change that has not been implemented, and Applicants will not be subject to the amendment fee required under §10.901(13) (relating to Fee Schedule, Appeals and other Provisions)…."

35. §10.205(2) – Subchapter C – Market Study (40)

COMMENT SUMMARY: Commenter (40) recommended that submission of a market study not be required on project based Section 8 developments or existing Section 42 developments that are 95% or greater occupied at the time of application and contended that it is an inefficient use of time and money to provide when it has no meaningful value and would relieve some of the administrative burden on staff. While commenter (40) recognized that such change might be too substantive to modify now, the Department should consider this change in future rule-making and further stated that while a market study is required by statue, a full market study is too much and a less intense version could suffice.

STAFF RESPONSE:
Staff believes this suggestion is a sufficiently substantive change from what was proposed that it could not be accomplished without re-publication for public comment. A market study is required by statute and any proposal to deviate from the requirement must be fully evaluated to ensure compliance with statutory requirements.

Staff recommends no changes based on this comment.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are adopted pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

Preamble, Reasoned Response, and New Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC, Chapter 10 Uniform Multifamily Rules, Subchapter G, §§10.901 – 10.904 concerning Fee Schedule, Appeals and Other Provisions. Section 10.901 is adopted with change and Section 10.902 - 10.904 are adopted without changes to text as published in the September 23, 2016, issue of the *Texas Register* (41 TexReg 7351) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the sections will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition. The comments and responses include both administrative clarifications and corrections to the Uniform Multifamily Rule based on the comments received. After each comment title numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the proposed Uniform Multifamily Rule as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Public comments were accepted through October 14, 2016, with comments received from (28) Locke Lord Attorneys and Counselors, (42) Evolie Housing Partners, (43) Flores Residential, LLC, (54) Leslie Holleman and Associates, Inc. (58) Mark-Dana Corporation, (60) Mears Development, (73) The Brownstone Group.

36. §10.901(3) – Subchapter G – Application Fee (28)

COMMENT SUMMARY: Commenter (28) requested the following modification to clarify any confusion as it relates to the change in units from pre-application to final application.

> "(A) Housing Tax Credit Applications. ~~The fee will be $30 per Unit based on the total number of Units.~~ For Applicants having submitted a competitive housing tax credit pre-application which met the pre-application threshold requirements, and for which a pre-application fee was paid, the Application fee will be $20 per Unit based on the total number of Units in the full Application. Otherwise, the Application fee will be $30 per Unit based on the total number of Units in the full Application. …"

STAFF RESPONSE:
Staff agrees with the modifications proposed and has made the changes accordingly.

37. §10.901(5) – Subchapter G – Third Party Underwriting Fee (42), (43), (54), (73)

COMMENT SUMMARY: Commenters (42), (43), (73) recommended this fee be removed from this section since the third party underwriter language was removed from §10.201(5) of the Uniform Multifamily Rules.

STAFF RESPONSE:
Staff recognizes the inconsistency between these two sections and recommends the language be reinserted under §10.201(5) to correct the inconsistency. The language under §10.201(5) has been modified to reflect the following:

"…The Real Estate Analysis division shall underwrite Applications that received a full program review and remain competitive to determine financial feasibility and an appropriate funding amount. In making this determination, the Department will use §10.302 of this chapter (relating to Underwriting Rules and Guidelines) and §10.307 of this chapter (relating to Direct Loan Requirements). The Department may have an external party perform all or part of the underwriting evaluation and components thereof to the extent it determines appropriate. The expense of any external underwriting shall be paid by the Applicant prior to the commencement of the aforementioned evaluation pursuant to §10.901(5) of this chapter (relating to Fee Schedule, Appeals and other Provisions)…"

38. §10.901(12) and (13) – Subchapter G – Extension and Amendment Fees (28), (42), (43), (44), (54), (58), (60), (73)

COMMENT SUMMARY: Commenter (28) requested clarification regarding the intention of the proposed new language "increase by $500" and how these fees are to be calculated. Specifically, commenter (28) noted whether the first request will be $2500, second request is $3000 and third request is $3500, or whether the first request will be $2500, second request is $500 and third request is $500. Commenter (58) expressed similar concerns and requested clarification noting that the assumption is that multiple amendments in one request will only incur one fee. Commenter (58) requested this new language be removed.

Commenters (42), (43), (44), (54), (58), (60), (73) stated that construction status reports should not need to be extended and recommended removing this reference from this section. Commenter (42), (54) further contended that such report is simply updating the Department on the status of construction progress and fails to see a reason why an owner would need an extension on a simple type of reporting. Commenter (42), (54) indicated that the additional language in this section may be used to collect $2,500 for submitting a late Construction Status Report and stated that if the intention of the Department is to find a penalty for late reporting, imposing a fee is not the appropriate place or method. Commenter (44) stated that such status reports are a relatively new requirement, are not followed up on or enforced by Department staff and are by no means as important or time critical as the Carryover, 10% Test or Cost Certification and should not be treated as such.

STAFF RESPONSE:

In response to commenters (28), (58) requesting clarification on the calculation of the amendment fee if subsequent requests are made, the first request for an amendment will be $2,500. If a second request for an amendment related to the same application is submitted, a subsequent fee for $3,000 must accompany the revised request, and if a third request is made related to the same application, a fee in the amount of $3,500 must be submitted before the amendment will be processed by the Department. Amendment requests are typically very time intensive for Owners, several Department Divisions, and (where applicable) the Board. Amendment requests are currently often submitted on multiple occasions for the same Developments, requiring staff to re-evaluate the same Developments, re-work previous amendments, and bring the same Developments back to the Board for consideration multiple times. In response to Commenter 58, multiple amendments in *one* request will only incur one fee; the intent of this rule change is to encourage Owners to be as thorough as possible and to include any and all items requiring amendment in *one* request rather than submitting multiple requests for changes to the same Development. Staff believes that encouraging Owners to review any and all changes from application prior to submitting an amendment request will make amendment requests more thorough and clear, will assist staff and the Board in considering the full

and correct scope of changes affecting an application, and will make the amendment process more efficient for all parties. Staff has modified the section for clarity as reflected below.

> "**(13) Amendment Fees.** An amendment request for a non-material change that has not been implemented will not be required to pay an amendment fee. Material amendment requests (whether implemented or not), or non-material amendment requests that have already been implemented will be required to submit an amendment fee of $2,500. ~~Amendment fees will increase by $500 for each~~ A subsequent request, related to the same application, regardless of whether the first request was non-material and did not require a fee, must include a fee of $3,000 and if a third request for such amendment is made, it must include a fee of $3,500. Amendment fees and fee increases are not required for the Direct Loan programs."

Similarly, staff has modified the section relating to Extension fees to reflect the same as noted below.

> "**(12) Extension Fees.** All extension requests for deadlines relating to the Carryover, 10 Percent Test (submission and expenditure), Construction Status Reports, or Cost Certification requirements submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee. Any extension request submitted fewer than thirty (30) days in advance or after the original deadline must be accompanied by an extension fee of $2,500. ~~Extension fees will increase by $500 for each~~A subsequent request on the same activity, regardless of whether the first request was submitted thirty (30) calendar days in advance of the applicable deadline, must include a fee of $3,000 and if a third request for such amendment is made, it must include a fee of $3,500. An extension fee will not be required for extensions requested on Developments that involve Rehabilitation when the Department or U.S. Department of Agriculture (USDA) is the primary lender if USDA or the Department is the cause for the Applicant not meeting the deadline."

While the Department recognizes that extension requests for construction status reports would be a new process, the Department disagrees with Commenters 42, 43, 44, 54, 58, 60, and 73 that construction status reports should not need to be extended. The construction status report requirement has been included in Subchapter E of the Uniform Multifamily Rules since 2013, appears in the Post Award Activities Manual, and is relied on by the Department as an essential tool to assist in documenting and discussing issues later brought to light with amendment and other extension requests, force majeure requests, placed in service extension requests, requests from congressional offices, and cost certifications – not just for regular updates to the Department on the status of construction progress, as Commenters 42 and 54 stated. Though this requirement was also explicitly added to Determination Notices and Carryover Allocation Agreements in 2015 (the Department's further attempt at highlighting this critical requirement), the Department continues to struggle with receiving Construction Status Reports on time and sometimes at all from a large number of Owners, which has affected its ability to act timely and reasonably in taking action on different types of external requests and receive an adequate amount of information to form responses for the Board, Owners, and representatives of the public. Because of this continuing issue, the Department has proposed the extension process and $2,500 extension fee as a way to begin better enforcing this requirement, which has thus far been difficult given that there is no consequence for failing to submit the information, as noted by Commenter 44. While construction

status reports may not seem as time critical as Carryover, 10% Test, or Cost Certification, as stated by Commenter 44, the Department would argue that the need for responses to items can sometimes be unforeseen by both Owners and staff and that such requests can become even more time critical given the needs of Owners or external parties. Given the Department's reliance on these reports, if the choice is made not to implement the extension process and $2,500 fee because of agreement with Commenters 42 and 54 that imposing a fee is not the appropriate place or method for finding a penalty for late reporting, the Department will still need to seek other fair means of encouraging timely submissions and gaining compliance with the rule, which may result in looking to other available routes of correcting non-compliance, such as referring participants directly to the Administrative Penalties Committee, which the Department fears would become more onerous for Owners than adding construction status reports to the extension process. Staff recommends no change based on this comment.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are adopted pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan, and Texas Government Code, §2306.144, §2306.147, and §2306.6716.

(4) Senator José Menéndez
(9) City of Harlingen
(13) Fort Worth Housing Solutions (included list of supporting Housing Authorities that included the following:
Abilene, Arlington, Austin, Baytown, Beeville, Bowie County, Central Texas Council of Governments, Central Texas Housing Consortium, Dallas, Denton, Edinburg, El Paso, Fort Worth, Georgetown, Granbury, Gregory, Hidalgo County, Houston, Kenedy, Mount Pleasant, New Boston, Pecos, Plano, Port Arthur, San Antonio, Tarrant County, Taylor, Travis County)
(17) 5th Ward Community Redevelopment Corporation
(19) Texas Association of Community Development Corporations
(20) Rural Rental Housing Association of Texas, Inc.
(22) Texas Affiliation of Affordable Housing Providers
(23) Texas Coalition of Affordable Developers
(24) Low Income Housing Information Service
(25) Center for Supportive Housing
(27) Atlantic Housing Foundation, Inc.
(28) Locke Lord Attorneys and Counselors
(31) TexEnergy Solutions
(33) Anderson Development and Construction, LLC
(34) BETCO Consulting, LLC
(38) Dharma Development, LLC
(39) DMA Companies
(40) Dominium
(41) Endeavor Real Estate Group
(42) Evolie Housing Partners
(43) Flores Residential, LLC
(44) Foundation Communities
(47) GroundFloor
(48) Hamilton Valley Management, Inc.
(50) Hoke Development Services, LLC
(51) Investment Builders, Inc.
(52) ITEX Group
(53) Lakewood Property Management, LLC
(54) Leslie Holleman and Associates, Inc.
(58) Mark-Dana Corporation
(59) Marque Real Estate Consultants
(60) Mears Development
(62) Miller Valentine Group
(63) National Church Residences
(64) New Hope Housing
(65) OM Housing
(66) O-SDA Industries
(67) Palladium USA
(69) Purple Martin Real Estate
(72) Structure Development
(73) The Brownstone Group
(74) Alyssa Carpenter

(77) Texas Department of Transportation
(78) Coats Rose
(79) Matt Sigler
(80) Liberty Multifamily
(81) Jason Lain

Uniform Multifamily Rules

Subchapter A – General Information and Definitions

§10.1.Purpose. This chapter applies to an award of multifamily development funding or other assistance including the award of Housing Tax Credits by the Texas Department of Housing and Community Affairs (the "Department") and establishes the general requirements associated in making such awards. Applicants pursuing such assistance from the Department are required to certify, among other things, that they have familiarized themselves with the rules that govern that specific program including, but not limited to, Chapter 1 Subchapter C of this title (relating to Previous Participation), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules) and other Department rules. This chapter does not apply to any project-based rental assistance or operating assistance programs or funds unless incorporated by reference in whole or in part in a Notice of Funding Availability ("NOFA") or rules for such a program except to the extent that Developments receiving such assistance and otherwise subject to this chapter remain subject to this chapter.

§10.2.General.

(a) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, rent and income limits, and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the multifamily rules or may be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the multifamily rules to each specific situation as it is presented in the submitted Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to independently perform the necessary due diligence to research, confirm, and verify any data, opinions, interpretations or other information upon which Applicant bases an Application.

(b) Board Standards for Review. Some issues may require or benefit from board review. The Board is not constrained to a particular standard, and while its actions on one matter are not binding as to how it will address another matter, the Board does seek to promote consistency with its policies, including the policies set forth in this chapter.

(c) Census Data. Where this chapter requires the use of census or American Community Survey data, the Department shall use the most current data available as of October 1, 2016, unless specifically otherwise provided in federal or state law or in the rules. The availability of more current data shall generally be disregarded. For Rural Area and Urban Area designations, the Department shall use in establishing the designations, the U.S. Census Bureau's Topographically Integrated Geographic Encoding and Referencing

("TIGER") shape files applicable for the population dataset used in making such designations.

(d) Public Information Requests. Pursuant to Tex. Gov't Code, §2306.6717, any pre-application and any full Application, including all supporting documents and exhibits, must be made available to the public, in their entirety, on the Department's website. The filing of a pre-application or Application with the Department shall be deemed as consent to the release of any and all information contained therein, including supporting documents and exhibits, and as a waiver of any of the applicable provisions of Tex. Gov't Code, Chapter 552, with the exception of any such provisions that are considered by law as not subject to a waiver.

(e) Responsibilities of Municipalities and Counties. In providing resolutions regarding housing de-concentration issues, threshold requirements, or scoring criteria, municipalities and counties should consult their own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas ("FHAST") form on file, any current Analysis of Impediments to Fair Housing Choice, any Affirmatively Further Fair Housing analysis, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds.

(f) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be submitted on or before 5:00 p.m. Austin local time on the day of the deadline. If the deadline falls on a weekend or holiday, the deadline is 5:00 p.m. Austin local time on the next day which is not a weekend or holiday and on which the Department is open for general operation. Unless otherwise noted deadlines are based on calendar days.

§10.3.Definitions.

(a) Terms defined in this chapter apply to the Housing Tax Credit Program, Multifamily Housing Revenue Bond Program, Direct Loan Program and any other programs for the development of affordable rental property administered by the Department and as may be defined in this title. Any capitalized terms not specifically mentioned in this section or any section referenced in this document shall have the meaning as defined in Tex. Gov't Code Chapter 2306, Internal Revenue Code (the "Code") §42, the HOME Final Rule, and other Department rules, as applicable.

(1) Adaptive Reuse--The change-in-use of an existing building not, at the time of Application, being used, in whole or in part, for residential purposes (e.g., school, warehouse, office, hospital, hotel, etc.), into a building which will be used, in whole or in part, for residential purposes. Adaptive reuse requires that the exterior walls of the existing building remain in place. All units must be contained within the original exterior walls of the existing building. Porches and patios may protrude beyond the exterior walls. Ancillary non-residential buildings, such as a clubhouse, leasing office and/or amenity center may be

newly constructed outside the walls of the existing building or as detached buildings on the Development Site.

(2) Administrative Deficiencies--Information requested by Department staff that is required to clarify or correct one or more inconsistencies or to provide non-material missing information in the original Application or to assist staff in evaluating the Application that, in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application. Administrative Deficiencies may be issued at any time while the Application or Contract is under consideration by the Department, including at any time while reviewing performance under a Contract, processing documentation for a Commitment of Funds, closing of a loan, processing of a disbursement request, close-out of a Contract, or resolution of any issues related to compliance.

(3) Affiliate--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, has Control of, is Controlled by, or is under common Control with any other Person. All entities that share a Principal are Affiliates.

(4) Affordability Period--The Affordability Period commences as specified in the Land Use Restriction Agreement (LURA) or federal regulation, or commences on the first day of the Compliance Period as defined by the Code §42(i)(1), and continues through the appropriate program's affordability requirements or termination of the LURA, whichever is earlier. The term of the Affordability Period shall be imposed by the LURA or other deed restriction and may be terminated upon foreclosure or deed in lieu of foreclosure. The Department reserves the right to extend the Affordability Period for Direct Loan Developments that fail to meet program requirements. During the Affordability Period, the Department shall monitor to ensure compliance with programmatic rules as applicable, regulations, and Application representations.

(5) Applicable Percentage--The percentage used to determine the amount of the Housing Tax Credit for any Development, as defined more fully in the Code §42(b).

(A) for purposes of the Application, the Applicable Percentage will be projected at:

(i) nine percent for 70 percent present value credits, pursuant to the Code, §42(b); or

(ii) fifteen basis points over the current applicable percentage for 30 percent present value credits, unless fixed by Congress, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department.

(B) For purposes of making a credit recommendation at any other time, the Applicable Percentage will be based on:

(i) the percentage indicated in the Agreement and Election Statement, if executed; or

(ii) the percentage as calculated in subparagraph (A) of this paragraph if the Agreement and Election Statement has not been executed and no buildings have been placed in service.

(6) Applicant--Means any individual or a group of individuals and any Affiliates who file an Application for funding or tax credits subject to the requirements of this chapter or 10 TAC Chapters 11, 12, or 13 and who may contemplate the later formation of one or more business entities, such as a limited partnership, that is to be engaged in the ownership of a Development. In administering the application process the Department staff will assume that the applicant will be able to form any such entities and that all necessary rights, powers, and privileges including, but not limited to, site control will be transferable to that entity. The formation of the ownership entity, qualification to do business (if needed), and transfer of such rights, powers, and privileges must be accomplished as required in this Chapter and 10 TAC Chapters 11, 12 and 13, as applicable.

(7) Application Acceptance Period--That period of time during which Applications may be submitted to the Department. For Tax-Exempt Bond Developments it is the date the Application is submitted to the Department.

(8) Award Letter and Loan Term Sheet--A document that may be issued to an awardee of a Direct Loan before the issuance of a Commitment and/or Contract which preliminarily sets forth the terms and conditions under which the Direct Loan will be made available. An Award Letter and Loan Term Sheet will typically be contingent on the awardee satisfying certain requirements prior to executing a Commitment and/or Contract.

(9) Bank Trustee--A federally insured bank with the ability to exercise trust powers in the State of Texas.

(10) Bedroom--A portion of a Unit which is no less than 100 square feet; has no width or length less than 8 feet; is self contained with a door (or the Unit contains a second level sleeping area of 100 square feet or more); has at least one window that provides exterior access; and has at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to accommodate 5 feet of hanging space. A den, study or other similar space that could reasonably function as a bedroom and meets this definition is considered a bedroom.

(11) Breakeven Occupancy--The occupancy level at which rental income plus secondary income is equal to all operating expenses, including replacement reserves and taxes, and mandatory debt service requirements for a Development.

(12) Building Costs--Cost of the materials and labor for the vertical construction or rehabilitation of buildings and amenity structures.

(13) Carryover Allocation--An allocation of current year tax credit authority by the Department pursuant to the provisions of the Code, §42(h)(1)(C) and U.S. Treasury Regulations, §1.42-6.

(14) Carryover Allocation Agreement--A document issued by the Department, and executed by the Development Owner, pursuant to §10.402(f) of this chapter (relating to Housing Tax Credit and Tax Exempt Bond Developments).

(15) Cash Flow--The funds available from operations after all expenses and debt service required to be paid have been considered.

(16) Certificate of Reservation--The notice given by the Texas Bond Review Board ("TBRB") to an issuer reserving a specific amount of the state ceiling for a specific issue of bonds.

(17) Code--The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the U.S. Department of the Treasury or the Internal Revenue Service ("IRS").

(18) Code of Federal Regulations ("CFR")--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

(19) Commitment (also referred to as Contract)--A legally binding written contract, setting forth the terms and conditions under which housing tax credits, loans, grants or other sources of funds or financial assistance from the Department will be made available.

(20) Commitment of Funds--Occurs after the Development is approved by the Board and once a Commitment or Award Letter and Loan Term Sheet is executed between the Department and Development Owner. For Direct Loan Programs, this process is distinct from "Committing to a specific local project" as defined in 24 CFR Part 92, which may occur when the activity is set up in the disbursement and information system established by HUD; known as the Integrated Disbursement and Information System (IDIS). The Department's commitment of funds may not align with commitments made by other financing parties.

(21) Committee--See *Executive Award and Review Advisory Committee*.

(22) Comparable Unit--A Unit, when compared to the subject Unit, is similar in net rentable square footage, number of bedrooms, number of bathrooms, overall condition, location (with respect to the subject Property based on proximity to employment centers, amenities, services and travel patterns), age, unit amenities, utility structure, and common amenities.

(23) Competitive Housing Tax Credits ("HTC")--Tax credits available from the State Housing Credit Ceiling.

(24) Compliance Period--With respect to a building financed by Housing Tax Credits, the period of fifteen (15) taxable years, beginning with the first taxable year of the credit period pursuant to §42(i)(1) of the Code.

(25) Continuously Occupied--The same household has resided in the Unit for at least twelve (12) months.

(26) Contract--See *Commitment*.

(27) Contract Rent--Net rent based upon current and executed rental assistance contract(s), typically with a federal, state or local governmental agency.

(28) Contractor--See *General Contractor*.

(29) Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. As used herein "acting in concert" involves more than merely serving as a single member of a multi-member body. For example a single director on a five person board is not automatically deemed to be acting in concert with the other members of the board because they retain independence of judgment. However, if that director is one of three directors on a five person board who all represent a single shareholder, they clearly represent a single interest and are presumptively acting in concert. Similarly, a single shareholder owning only a five percent interest might not exercise control under ordinary circumstances, but if they were in a voting trust under which a majority block of shares were voted as a group, they would be acting in concert with others and in a control position. However, even if a member of a multi-member body is not acting in concert and therefore does not exercise control in that role, they may have other roles, such as executive officer positions, which involve actual or apparent authority to exercise control. Controlling entities of a partnership include the general partners, may include special limited partners when applicable, but not investor limited partners or special limited partners who do not possess other factors or attributes that give them Control. Controlling entities of a limited liability company include but are not limited to the managers, managing members, any members with 10 percent or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership, but not investor members who do not possess other factors or attributes that give them Control. Controlling individuals or entities of a corporation, including non-profit corporations, include voting members of the corporation's board, whether or not any one member did not participate in a particular decision due to recusal or absence. Multiple Persons may be deemed to have Control simultaneously.

(30) Credit Underwriting Analysis Report--Sometimes referred to as the "Report." A decision making tool used by the Department and Board containing a synopsis and reconciliation of the Application information submitted by the Applicant.

(31) Debt Coverage Ratio (“DCR”)--Sometimes referred to as the "Debt Coverage" or "Debt Service Coverage." Calculated as Net Operating Income for any period divided by scheduled debt service required to be paid during the same period.

(32) Deferred Developer Fee--The portion of the Developer Fee used as a source of funds to finance the development and construction of the Property.

(33) Deobligated Funds--The funds released by the Development Owner or recovered by the Department canceling a Contract or award involving some or all of a contractual financial obligation between the Department and a Development Owner or Applicant.

(34) Determination Notice--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which specifies the Department's determination as to the amount of tax credits that the Development may be eligible to claim pursuant to the Code, §42(m)(1)(D).

(35) Developer--Any Person entering into a contractual relationship with the Owner to provide Developer Services with respect to the Development and receiving a fee for such services and any other Person receiving any portion of a Developer Fee, whether by subcontract or otherwise, except if the Person is acting as a consultant with no Control and receiving less than 10 percent of the total Developer Fee. The Developer may or may not be a Related Party or Principal of the Owner.

(36) Developer Fee--Compensation in amounts defined in §10.302(e)(7) of this chapter (relating to Underwriting Rules and Guidelines) paid by the Owner to the Developer for Developer Services inclusive of compensation to a Development Consultant(s), Development Team member or any subcontractor that performs Developer Services or provides guaranties on behalf of the Owner will be characterized as Developer Fee.

(37) Developer Services--A scope of work relating to the duties, activities and responsibilities for pre-development, development, design coordination, and construction oversight of the Property generally including but not limited to:

(A) site selection and purchase or lease contract negotiation;
(B) identifying and negotiating sources of construction and permanent financing, including financing provided by the Department;
(C) coordination and administration of activities, including the filing of applications to secure such financing;
(D) coordination and administration of governmental permits, and approvals required for construction and operation;

(E) selection and coordination of development consultants including architect(s), engineer(s), third-party report providers, attorneys, and other design or feasibility consultants;
(F) selection and coordination of the General Contractor and construction contract(s);
(G) construction oversight;
(H) other consultative services to and for the Owner;
(I) guaranties, financial or credit support if a Related Party; and
(J) any other customary and similar activities determined by the Department to be Developer Services.

(38) Development--A residential rental housing project that consists of one or more buildings under common ownership and financed under a common plan which has applied for Department funds. This includes a project consisting of multiple buildings that are located on scattered sites and contain only rent restricted units. (§2306.6702)

(39) Development Consultant or Consultant--Any Person (with or without ownership interest in the Development) who provides professional or consulting services relating to the filing of an Application, or post award documents as required by the program.

(40) Development Owner (also referred to as "Owner")--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract or ground lease approved by the Department and is responsible for performing under the allocation and/or Commitment with the Department. (§2306.6702)

(41) Development Site--The area, or if scattered site, areas on which the Development is proposed and to be encumbered by a LURA.

(42) Development Team--All Persons and Affiliates thereof that play a role in the development, construction, rehabilitation, management and/or continuing operation of the subject Development, including any Development Consultant and Guarantor.

(43) Direct Loan--Funds provided through the HOME Program, Neighborhood Stabilization Program, National Housing Trust Fund, Tax Credit Assistance Program Repayment (“TCAP Repayment”) or State Housing Trust Fund or other program available through the Department for multifamily development. The terms and conditions for Direct Loans will be determined by the NOFA under which they are awarded, the Contract or the loan documents. The tax-exempt bond program is specifically excluded.

(44) Economically Distressed Area--An area that is in a census tract that has a median household income that is 75 percent or less of the statewide median household income and in a municipality or, if not within a municipality, in a county that has been awarded funds under the Economically Distressed Areas Program administered by the Texas Water Development Board within the five (5) years ending at the beginning of the Application

Acceptance Period. Notwithstanding all other requirements, for funds awarded to another type of political subdivision (*e.g.*, a water district), the Development Site must be within the jurisdiction of the political subdivision.

(45) Effective Gross Income ("EGI")--The sum total of all sources of anticipated or actual income for a rental Development, less vacancy and collection loss, leasing concessions, and rental income from employee-occupied units that is not anticipated to be charged or collected.

(46) Efficiency Unit--A Unit without a separately enclosed Bedroom designed principally for use by a single person.

(47) Elderly Development--A Development that is subject to an Elderly Limitation or a Development that is subject to an Elderly Preference.

(A) Elderly Limitation Development--A Development subject to an "elderly limitation" is a Development that meets the requirements of the Housing for Older Persons Act ("HOPA") under the Fair Housing Act and receives no funding that requires leasing to persons other than the elderly (unless the funding is from a federal program for which the Secretary of HUD has confirmed that it may operate as a Development that meets the requirements of HOPA); or

(B) Elderly Preference Development--A property receiving HUD funding and certain other types of federal assistance is a Development subject to an "elderly preference." A Development subject to an Elderly Preference must lease to other populations, including in many cases elderly households with children. A property that is deemed to be a Development subject to an Elderly Preference must be developed and operated in a manner which will enable it to serve reasonable foreseeable demand for households with children, including, but not limited to, making provision for such in developing its unit mix and amenities.

(48) Eligible Hard Costs--Hard Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation.

(49) Environmental Site Assessment ("ESA")--An environmental report that conforms to the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E 1527) and conducted in accordance with §10.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines) as it relates to a specific Development.

(50) Executive Award and Review Advisory Committee ("EARAC" also referred to as the "Committee")--The Department committee created under Tex. Gov't Code §2306.1112.

(51) Existing Residential Development--Any Development Site which contains existing residential units at any time after the beginning of the Application Acceptance Period.

(52) Extended Use Period--With respect to an HTC building, the period beginning on the first day of the Compliance Period and ending the later of:

(A) the date specified in the Land Use Restriction Agreement or
(B) the date which is fifteen (15) years after the close of the Compliance Period.

(53) First Lien Lender--A lender whose lien has first priority as a matter of law or by operation of a subordination agreement or other intercreditor agreement.

(54) General Contractor (including "Contractor")--One who contracts for the construction or rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. A prime subcontractor will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, in the scenarios described in subparagraphs (A) and (B) of this paragraph:

(A) any subcontractor, material supplier, or equipment lessor receiving more than 50 percent of the contract sum in the construction contract will be deemed a prime subcontractor; or

(B) if more than 75 percent of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed prime subcontractors.

(55) General Partner--Any person or entity identified as a general partner in a certificate of formation for the partnership that is the Development Owner and that Controls the partnership. Where a limited liability corporation is the legal structure employed rather than a limited partnership, the manager or managing member of that limited liability corporation is deemed, for the purposes of these rules, to be the functional equivalent of a general partner.

(56) Governing Body--The elected or appointed body of public or tribal officials, responsible for the enactment, implementation, and enforcement of local rules and the implementation and enforcement of applicable laws for its respective jurisdiction.

(57) Governmental Entity--Includes federal, state or local agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts, tribal governments and other similar entities.

(58) Gross Capture Rate--Calculated as the Relevant Supply divided by the Gross Demand.

(59) Gross Demand--The sum of Potential Demand from the Primary Market Area ("PMA"), demand from other sources, and Potential Demand from a Secondary Market Area ("SMA") to the extent that SMA demand does not exceed 25 percent of Gross Demand.

(60) Gross Program Rent--Maximum rent limits based upon the tables promulgated by the Department's division responsible for compliance, which are developed by program and by county or Metropolitan Statistical Area ("MSA") or Primary Metropolitan Statistical Area ("PMSA") or national non-metro area.

(61) Guarantor--Any Person that provides, or is anticipated to provide, a guaranty for all or a portion of the equity or debt financing for the Development.

(62) HTC Development (also referred to as "HTC Property")--A Development subject to an active LURA for Housing Tax Credits allocated by the Department.

(63) HTC Property--See *HTC Development.*

(64) Hard Costs--The sum total of Building Costs, Site Work costs, Off-Site Construction costs and contingency.

(65) Historically Underutilized Businesses ("HUB")--An entity that is certified as such under Tex. Gov't Code, Chapter 2161 by the State of Texas.

(66) Housing Contract System ("HCS")--The electronic information system established by the Department for tracking, funding, and reporting Department Contracts and Developments. The HCS is primarily used for Direct Loan Programs administered by the Department.

(67) Housing Credit Allocation--An allocation of Housing Tax Credits by the Department to a Development Owner for a specific Application in accordance with the provisions of this chapter and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan).

(68) Housing Credit Allocation Amount--With respect to a Development or a building within a Development, the amount of Housing Tax Credits the Department determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the Affordability Period and which the Board allocates to the Development.

(69) Housing Quality Standards ("HQS")--The property condition standards described in 24 CFR §982.401.

(70) Initial Affordability Period--The Compliance Period or such longer period as shall have been elected by the Owner as the minimum period for which Units in the Development shall be retained for low-income tenants and rent restricted, as set forth in the LURA.

(71) Integrated Disbursement and Information System ("IDIS")--The electronic grants management information system established by HUD to be used for tracking and reporting HOME funding and progress and which may be used for other sources of funds as established by HUD.

(72) Land Use Restriction Agreement ("LURA")--An agreement, regardless of its title, between the Department and the Development Owner which is a binding covenant upon the Development Owner and successors in interest, that, when recorded, encumbers the Development with respect to the requirements of the programs for which it receives funds. (§2306.6702)

(73) Low-Income Unit--A Unit that is intended to be restricted for occupancy by an income eligible household, as defined by the Department utilizing its published income limits.

(74) Managing General Partner--A general partner of a partnership (or, as provided for in paragraph (55) of this subsection, its functional equivalent) that is vested with the authority to take actions that are binding on behalf of the partnership and the other partners. The term Managing General Partner can also refer to a manager or managing member of a limited liability company where so designated to bind the limited liability company and its members under its Agreement or any other person that has such powers in fact, regardless of their organizational title.

(75) Market Analysis--Sometimes referred to as "Market Study." An evaluation of the economic conditions of supply, demand and rental rates conducted in accordance with §10.303 of this chapter (relating to Market Analysis Rules and Guidelines) as it relates to a specific Development.

(76) Market Analyst--A real estate appraiser or other professional familiar with the subject property's market area who prepares a Market Analysis.

(77) Market Rent--The achievable rent at the subject Property for a Unit without rent and income restrictions determined by the Market Analyst or Underwriter after adjustments are made to actual rents on Comparable Units to account for differences in net rentable square footage, functionality, overall condition, location (with respect to the subject Property based on proximity to primary employment centers, amenities, services and travel patterns), age, unit amenities, utility structure, and common area amenities. The achievable rent conclusion must also consider the proportion of market units to total units proposed in the subject Property.

(78) Market Study--See *Market Analysis*.

(79) Material Deficiency--Any deficiency in an Application or other documentation that exceeds the scope of an Administrative Deficiency. May include a group of Administrative Deficiencies that, taken together, create the need for a substantial re-assessment or reevaluation of the Application.

(80) Multifamily Programs Procedures Manual--The manual produced and amended from time to time by the Department which reiterates and implements the rules and provides guidance for the filing of multifamily related documents.

(81) Net Operating Income ("NOI")--The income remaining after all operating expenses, including replacement reserves and taxes that have been paid.

(82) Net Program Rent--Calculated as Gross Program Rent less Utility Allowance.

(83) Net Rentable Area ("NRA")--The unit space that is available exclusively to the tenant and is typically heated and cooled by a mechanical HVAC system. NRA is measured to the outside of the studs of a unit or to the middle of walls in common with other units. NRA does not include common hallways, stairwells, elevator shafts, janitor closets, electrical closets, balconies, porches, patios, or other areas not actually available to the tenants for their furnishings, nor does NRA include the enclosing walls of such areas.

(84) Non-HTC Development--Sometimes referred to as Non-HTC Property. Any Development not utilizing Housing Tax Credits or Exchange funds.

(85) Notice of Funding Availability ("NOFA")--A notice issued by the Department that announces funding availability, usually on a competitive basis, for multifamily rental programs requiring Application submission from potential Applicants.

(86) Off-Site Construction--Improvements up to the Development Site such as the cost of roads, water, sewer, and other utilities to provide access to and service the Site.

(87) Office of Rural Affairs--An office established within the Texas Department of Agriculture; formerly the Texas Department of Rural Affairs.

(88) One Year Period ("1YP")--The period commencing on the date on which the Department and the Owner agree to the Qualified Contract price in writing and continuing for twelve (12) calendar months.

(89) Owner--See *Development Owner*.

(90) Person--Without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality or other organization or entity of any nature whatsoever, and shall include any group of Persons acting in concert toward a common goal, including the individual members of the group.

(91) Persons with Disabilities--With respect to an individual, means that such person has:

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) is regarded as having such an impairment, to include persons with severe mental illness and persons with substance abuse disorders.

(92) Physical Needs Assessment--See *Property Condition Assessment.*

(93) Place--An area defined as such by the United States Census Bureau, which, in general, includes an incorporated city, town, or village, as well as unincorporated areas known as census designated places. Any part of a census designated place that, at the time of Application, is within the boundaries of an incorporated city, town or village will be considered as part of the incorporated area. The Department may provide a list of Places for reference.

(94) Post Carryover Activities Manual--The manual produced and amended from time to time by the Department which explains the requirements and provides guidance for the filing of post-carryover activities, or for Tax Exempt Bond Developments, the requirements and guidance for post Determination Notice activities.

(95) Potential Demand--The number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placement in service date.

(96) Primary Market--Sometimes referred to as "Primary Market Area." The area defined by the Market Analyst as described in §10.303 of this chapter from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(97) Primary Market Area ("PMA")--See *Primary Market*.

(98) Principal--Persons that will exercise Control (which includes voting board members pursuant to §10.3(a)(29) of this chapter) over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) partnerships, Principals include all General Partners, ~~special limited partners,~~ and Principals with ownership interest and special limited partners with ownership interest who also possess factors or attributes that give them Control;

(B) corporations, Principals include any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation, and any individual who has Control with respect to such stock holder; and

(C) limited liability companies, Principals include all managers, managing members, members having a 10 percent or more interest in the limited liability company, any

individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.

(99) Pro Forma Rent--For a restricted Unit, the lesser of the Net Program Rent or the Market Rent. For an unrestricted unit, the Market Rent. Contract Rents, if applicable, will be used as the Pro Forma Rent.

(100) Property--The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built thereon in connection with the Application.

(101) Property Condition Assessment ("PCA")--Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report." The PCA provides an evaluation of the physical condition of an existing Property to evaluate the immediate cost to rehabilitate and to determine costs of future capital improvements to maintain the Property. The PCA must be prepared in accordance with §10.306 of this chapter (relating to Property Condition Assessment Guidelines) as it relates to a specific Development.

(102) Qualified Contract ("QC")--A bona fide contract to acquire the non-low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the Applicable Fraction (specified in the LURA) of the calculation as defined within §42(h)(6)(F) of the Code.

(103) Qualified Contract Price ("QC Price")--Calculated purchase price of the Development as defined within §42(h)(6)(F) of the Code and as further delineated in §10.408 of this chapter (relating to Qualified Contract Requirements).

(104) Qualified Contract Request ("Request")--A request containing all information and items required by the Department relating to a Qualified Contract.

(105) Qualified Entity--Any entity permitted under §42(i)(7)(A) of the Code and any entity controlled by such qualified entity.

(106) Qualified Nonprofit Development--A Development which meets the requirements of §42(h)(5) of the Code, includes the required involvement of a Qualified Nonprofit Organization, and is seeking Competitive Housing Tax Credits.

(107) Qualified Nonprofit Organization--An organization that meets the requirements of §42(h)(5)(C) of the Code for all purposes, and for an allocation in the nonprofit set-aside or subsequent transfer of the property, when applicable, meets the requirements of Tex. Gov't Code §2306.6706, and §2306.6729, and §42(h)(5) of the Code.

(108) Qualified Purchaser--Proposed purchaser of the Development who meets all eligibility and qualification standards stated in this chapter of the year the Request is

received, including attending, or assigning another individual to attend, the Department's Property Compliance Training.

(109) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the construction of an equal number of units or less on the Development Site. At least one Unit must be reconstructed in order to qualify as Reconstruction.

(110) Rehabilitation--The improvement or modification of an Existing Residential Development through alteration, incidental addition or enhancement. The term includes the demolition of an Existing Residential Development and the Reconstruction of a Development on the Development Site, but does not include Adaptive Reuse. (§2306.004(26-a)) More specifically, Rehabilitation is the repair, refurbishment and/or replacement of existing mechanical and structural components, fixtures and finishes. Rehabilitation will correct deferred maintenance, reduce functional obsolescence to the extent possible and may include the addition of: energy efficient components and appliances, life and safety systems; site and resident amenities; and other quality of life improvements typical of new residential Developments.

(111) Related Party--As defined in Tex. Gov't Code, §2306.6702.

(112) Relevant Supply--The supply of Comparable Units in proposed and Unstabilized Developments targeting the same population including:

(A) the proposed subject Units;

(B) Comparable Units in another proposed development within the PMA with a priority Application over the subject, based on the Department's evaluation process described in §10.201(6) of this chapter (relating to Procedural Requirements for Application Submission) that may not yet have been presented to the Board for consideration of approval;

(C) Comparable Units in previously approved but Unstabilized Developments in the PMA; and

(D) Comparable Units in previously approved but Unstabilized Developments in the Secondary Market Area (SMA), in the same proportion as the proportion of Potential Demand from the SMA that is included in Gross Demand.

(113) Report--See *Credit Underwriting Analysis Report*.

(114) Request--See *Qualified Contract Request*.

(115) Reserve Account--An individual account:

(A) created to fund any necessary repairs for a multifamily rental housing Development; and

(B) maintained by a First Lien Lender or Bank Trustee.

(116) Right of First Refusal ("ROFR")--An Agreement to provide a right to purchase the Property to a Qualified Entity or a Qualified Nonprofit Organization, as applicable, with priority to that of any other buyer at a price established in accordance with an applicable LURA.

(117) Rural Area--

(A) a Place that is located:

(i) outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area;

(ii) within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an Urban Area; or

(iii) within the boundaries of a local political subdivision that is outside the boundaries of an Urban Area.

(B) for areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §10.204(5)(A) of this chapter (relating to Required Documentation for Application Submission) or as requested in accordance with §10.204(5)(B).

(118) Secondary Market--Sometimes referred to as "Secondary Market Area." The area defined by the Qualified Market Analyst as described in §10.303 of this chapter.

(119) Secondary Market Area ("SMA")--See *Secondary Market*.

(120) Single Room Occupancy ("SRO")--An Efficiency Unit that meets all the requirements of a Unit except that it may, but is not required, to be rented on a month to month basis to facilitate Transitional Housing. Buildings with SRO Units have extensive living areas in common and are required to be Supportive Housing and include the provision for substantial supports from the Development Owner or its agent on site.

(121) Site Control--Ownership or a current contract or series of contracts, that meets the requirements of §10.204(10) of this chapter, that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the owner, to develop a Property and subject it to a LURA reflecting the requirements of any awards of assistance it may receive from the Department.

(122) Site Work--Materials and labor for the horizontal construction generally including excavation, grading, paving, underground utilities, and site amenities.

(123) State Housing Credit Ceiling--The aggregate amount of Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with applicable federal law, including §42(h)(3)(C) of the Code, and Treasury Regulation §1.42-14.

(124) Sub-Market--An area defined by the Underwriter based on general overall market segmentation promulgated by market data tracking and reporting services from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(125) Supportive Housing--Residential rental developments intended for occupancy by individuals or households in need of specialized and specific non-medical services in order to maintain independent living. Supportive housing developments generally include established funding sources outside of project cash flow that require certain populations be served and/or certain services provided. The developments are expected to be debt free or have no permanent foreclosable or noncash flow debt. A Supportive Housing Development financed with tax-exempt bonds with a project based rental assistance contract for a majority of the Units may be treated as Supportive Housing under all subchapters of this chapter, except Subchapter D of this chapter (relating to Underwriting and Loan Policy). If the bonds are expected to be redeemed upon construction completion, placement in service or stabilization and no other permanent debt will remain, the Supportive Housing Development may be treated as Supportive Housing under Subchapter D of this chapter. The services offered generally include case management and address special attributes of such populations as Transitional Housing for homeless and at risk of homelessness, persons who have experienced domestic violence or single parents or guardians with minor children.

(126) TDHCA Operating Database--Sometimes referred to as "TDHCA Database." A consolidation of recent actual income and operating expense information collected through the Department's Annual Owner Financial Certification process, as required and described in Subchapter F of this chapter (relating to Compliance Monitoring), and published on the Department's web site (www.tdhca.state.tx.us).

(127) Target Population--The designation of types of housing populations shall include Elderly Developments, and those that are entirely Supportive Housing. All others will be considered to serve general populations without regard to any subpopulations. An existing Development that has been designated as a Development serving the general population may not change to become an Elderly Development, or vice versa, without Board approval.

(128) Tax-Exempt Bond Development--A Development requesting or having been awarded Housing Tax Credits and which receives a portion of its financing from the proceeds of tax-exempt bonds which are subject to the state volume cap as described in §42(h)(4) of the Code, such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.

(129) Tax-Exempt Bond Process Manual--The manual produced and amended from time to time by the Department which explains the process and provides guidance for the filing of a Housing Tax Credit Application utilizing Tax-Exempt Bonds.

(130) Third Party--A Person who is not:

(A) an Applicant, General Partner, Developer, or General Contractor; or

(B) an Affiliate to the Applicant, General Partner, Developer, or General Contractor; or

(C) anyone receiving any portion of the administration, contractor, or Developer fees from the Development; or

(D) any individual that is an executive officer or member of the governing board or has greater than 10 percent ownership interest in any of the entities are identified in subparagraphs (A) - (C) of this paragraph.

(131) Total Housing Development Cost--The sum total of the acquisition cost, Hard Costs, soft costs, Developer fee and General Contractor fee incurred or to be incurred through lease-up by the Development Owner in the acquisition, construction, rehabilitation, and financing of the Development.

(132) Transitional Housing--A Supportive Housing development that includes living Units with more limited individual kitchen facilities and is:

(A) used exclusively to facilitate the transition of homeless individuals and those at-risk of becoming homeless, to independent living within twenty-four (24) months; and

(B) is owned by a Development Owner that includes a governmental entity or a qualified non-profit which provides temporary housing and supportive services to assist such individuals in, among other things, locating and retaining permanent housing. The limited kitchen facilities in individual Units must be appropriately augmented by suitable, accessible shared or common kitchen facilities.

(133) U.S. Department of Agriculture ("USDA")--Texas Rural Development Office ("TRDO") serving the State of Texas.

(134) U.S. Department of Housing and Urban Development ("HUD")-regulated Building--A building for which the rents and utility allowances of the building are reviewed by HUD.

(135) Underwriter--The author(s) of the Credit Underwriting Analysis Report.

(136) Uniform Multifamily Application Templates--The collection of sample resolutions and form letters, produced by the Department, as may be required under this chapter,

Chapter 11 and Chapter 12 of this title that may be used, (but are not required to be used), to satisfy the requirements of the applicable rule.

(137) Uniform Physical Condition Standards ("UPCS")--As developed by the Real Estate Assessment Center of HUD.

(138) Unit--Any residential rental unit in a Development consisting of an accommodation, including a single room used as an accommodation on a non-transient basis, that contains complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation.

(139) Unit Type--Units will be considered different Unit Types if there is any variation in the number of bedroom, full bathrooms or a square footage difference equal to or more than 120 square feet. For example: A two Bedroom/one full bath Unit is considered a different Unit Type than a two Bedroom/two full bath Unit. A three Bedroom/two full bath Unit with 1,000 square feet is considered a different Unit Type than a three Bedroom/two full bath Unit with 1,200 square feet. A one Bedroom/one full bath Unit with 700 square feet will be considered an equivalent Unit Type to a one Bedroom/one full bath Unit with 800 square feet. A powder room is the equivalent of a half-bathroom but does not by itself constitute a change in Unit Type.

(140) Unstabilized Development--A development with Comparable Units that has been approved for funding by the Department's Board of Directors or is currently under construction or has not maintained a 90 percent occupancy level for at least twelve (12) consecutive months following construction completion. A development may be deemed stabilized by the Underwriter based on factors relating to a development's lease-up velocity, Sub-Market rents, Sub-Market occupancy trends and other information available to the Underwriter. The Market Analyst may not consider such development stabilized in the Market Study.

(141) Urban Area--A Place that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than a Place described by paragraph (117)(A) of this subsection. For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §10.204(5) of this chapter.

(142) Utility Allowance--The estimate of tenant-paid utilities made in accordance with Treasury Regulation, §1.42-10 and §10.614 of this chapter (relating to Utility Allowances).

(143) Work Out Development--A financially distressed Development for which the Owner and/or a primary financing participant is seeking a change in the terms of Department funding or program restrictions.

(b) Request for Staff Determinations. Where the definitions of Development, Development Site, New Construction, Rehabilitation, Reconstruction, Adaptive Reuse, and Target Population fail to account fully for the activities proposed in an Application, an Applicant may request and Department staff may provide a determination to an Applicant explaining how staff will review an Application in relation to these specific terms and their

usage within the applicable rules. Such request must be received by the Department prior to submission of the pre-application (if applicable to the program) or Application (if no pre-application was submitted). Staff's determination may take into account the purpose of or policies addressed by a particular rule or requirement, materiality of elements, substantive elements of the development plan that relate to the term or definition, the common usage of the particular term, or other issues relevant to the rule or requirement. All such determinations will be conveyed in writing. If the determination is finalized after submission of the pre-application or Application, the Department may allow corrections to the pre-application or the Application that are directly related to the issues in the determination. It is an Applicant's sole responsibility to request a determination and an Applicant may not rely on any determination for another Application regardless of similarities in a particular fact pattern. For any Application that does not request and subsequently receive a determination, the definitions and applicable rules will be applied as used and defined herein. Such a determination is intended to provide clarity with regard to Applications proposing activities such as: scattered site development or combinations of construction activities (e.g., Rehabilitation with some New Construction). An Applicant may appeal a determination for their Application if the determination provides for a treatment that relies on factors other than the explicit definition. A Board determination or a staff determination not timely appealed cannot be further appealed or challenged.

§10.4.Program Dates. This section reflects key dates for all multifamily development programs except for the Competitive Housing Tax Credit Program. A program calendar for the Competitive Housing Tax Credit Program is provided in Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan). Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Non-statutory deadlines specifically listed in this section may be extended by the Department for a period of not more than five (5) business days provided; however, that the Applicant requests an extension prior to the date of the original deadline and has established to the reasonable satisfaction of the Department that there is good cause for the extension. Except as provided for under 10 TAC §1.1 relating to Reasonable Accommodation Requests, extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party or the documentation involves signatures needed on certifications in the Application.

(1) Full Application Delivery Date. The deadline by which the Application must be submitted to the Department. For Direct Loan Applications, such deadline will generally be defined in the applicable NOFA and for Tax-Exempt Bond Developments, such deadlines are more fully explained in §10.201(2) of this chapter (relating to Procedural Requirements for Application Submission).

(2) Notice to Submit Lottery Application Delivery Date. No later than December 9, 2016, Applicants that receive an advance notice regarding a Certificate of Reservation must submit a notice to the Department, in the form prescribed by the Department.

(3) Applications Associated with Lottery Delivery Date. No later than December 16, 2016, Applicants that participated in the Texas Bond Review Board Lottery must submit the complete tax credit Application to the Department.

(4) Administrative Deficiency Response Deadline. Such deadline shall be five (5) business days after the date on the deficiency notice without incurring a penalty fee pursuant to §10.901 of this chapter (relating to Fee Schedule).

(5) Third Party Report Delivery Date (Environmental Site Assessment (ESA), Property Condition Assessment (PCA), Appraisal (if applicable), Market Analysis and the Site Design and Development Feasibility Report). For Direct Loan Applications, the Third Party reports meeting specific requirements described in §10.205 must be submitted with the Application in order for it to be considered a complete Application, unless the Application is made in conjunction with an Application for Housing Tax Credits or Tax Exempt Bond, in which case the Delivery Date for those programs will apply. For Tax-Exempt Bond Developments, the Third Party Reports must be submitted no later than seventy-five (75) calendar days prior to the Board meeting at which the tax credits will be considered. The seventy-five (75) calendar day deadlines are available on the Department's website.

(6) Resolutions Delivery Date. Resolutions required for Tax-Exempt Bond Developments ~~or Direct Loan Applications not layered with Housing Tax Credits~~ must be submitted no later than fourteen (14) calendar days before the Board meeting at which consideration of the award will occur. If the Direct Loan Application is made in conjunction with an Application for Housing Tax Credits, or Tax-Exempt Bond Developments, the Resolution Delivery Date for those programs will apply to the Direct Loan Application.

(7) Challenges to Neighborhood Organization Opposition Delivery Date. No later than forty-five (45) calendar days prior to the Board meeting at which consideration of the award will occur.

Subchapter B – Site and Development Requirements and Restrictions

§10.101.Site and Development Requirements and Restrictions.

(a) Site Requirements and Restrictions. The purpose of this section is to identify specific requirements and restrictions related to a Development Site seeking multifamily funding or assistance from the Department.

(1) Floodplain. New Construction or Reconstruction Developments located within a one-hundred (100) year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site in full compliance with the National Flood Protection Act and all applicable federal and state statutory and regulatory requirements. The Applicant will have to use floodplain maps and comply with regulation as they exist at the time of commencement of construction. Even if not required by such provisions, the Site must be developed so that all finished ground floor elevations are at least one foot above the floodplain and parking and drive areas are no lower than six inches below the floodplain. If there are more stringent local requirements they must also be met. If no FEMA Flood Insurance Rate Maps are available for the proposed Development Site, flood zone documentation must be provided from the local government with jurisdiction identifying the one-hundred (100) year floodplain. Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from the U.S. Department of Housing and Urban Development (HUD) or U.S. Department of Agriculture (USDA) are exempt from this requirement. However, where existing and ongoing federal assistance is not applicable such Rehabilitation (excluding Reconstruction) Developments will be allowed in the one-hundred (100) year floodplain provided the local government has undertaken and can substantiate sufficient mitigation efforts and such documentation is submitted in the Application or the existing structures meet the requirements that are applicable for New Construction or Reconstruction Developments, as certified to by a Third Party engineer.

(2) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph may be considered ineligible as determined by the Board, unless the Applicant provides information regarding mitigation of the applicable undesirable site feature(s). Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs ("VA") may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application. Historic Developments that would otherwise qualify under §11.9(e)(6) of this title (relating to the Qualified Allocation Plan) may be granted an exemption by the Board, and such exemption must be requested at the time of or prior to the filing of an Application. ~~and must include a letter stating the Rehabilitation of the existing units is consistent with achieving at least one or more of the stated goals as outlined in the State of Texas Analysis of Impediments to Fair Housing Choice or, if within the boundaries of a participating jurisdiction or entitlement community, as outlined in the local analysis of impediments to fair housing choice and identified in the participating jurisdiction's Action Plan.~~ The distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or

easement containing the undesirable feature, unless otherwise noted below. ~~The minimum distances noted assume that the land between the proposed Development Site and the particular undesirable feature has no significant intervening barriers or obstacles such as waterways or bodies of water, major high speed roads, park land, or walls, such as noise suppression walls adjacent to railways or highways.~~ Where there is a local ordinance that regulates the proximity of such undesirable feature to a multifamily development that has smaller distances than ~~differs from~~ the minimum distances noted below, then such smaller distances may be used and documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application. ~~The distances identified in subparagraphs (A) – (J) of this paragraph are intended primarily to address sensory concerns such as noise or smell, social factors making it inappropriate to locate residential housing in proximity to certain businesses.~~ In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (K) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

(A) Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Transportation Code, §396.001;

(B) Development Sites located within 300 feet of a solid waste or sanitary landfills;

(C) Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local Government Code, §243.002, or as zoned, licensed and regulated as such by the local municipality;

(D) Development Sites in which the buildings are located within 100 feet of the nearest line or structural element~~easement~~ of any overhead high voltage transmission line, support structures for high voltage transmission lines, or other similar structures. This does not apply to local service electric lines and poles;

(E) Development Sites located within 500 feet of active railroad tracks, measured from the closest rail to the boundary of the Development Site, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail;

(F) Development Sites located within 500 feet of heavy industrial (i.e. facilities that require extensive capital investment in land and machinery, are not easily

relocated and produce high levels of external noise such as manufacturing plants, fuel storage facilities (excluding gas stations) etc.);

(G) Development Sites located within 10 miles of a nuclear plant;

(H) Development Sites in which the buildings are located within ~~one-quarter mile of~~ the accident zones or clear zones of any airport;

(I) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids. Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance ("PIPA");

(J) Development Sites located within 2 miles of refineries capable of refining more than 100,000 barrels of oil daily; or

(K) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated.

(3) Undesirable Neighborhood Characteristics.

(A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. An Applicant may choose to disclose the presence of such characteristics at the time the pre-application (if applicable) is submitted to the Department. Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit the documentation described under subparagraphs (C) and (D) of this paragraph at pre-application or for Tax-Exempt Bond Developments utilizing a local issuer such documentation may be submitted with the request for a pre-determination and staff may perform an assessment of the Development Site to determine Site eligibility. The Applicant understands that any determination made by staff or the Board at ~~the time of bond inducement~~that point in time regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the undesirable neighborhood characteristics become available while the full Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board. Should staff determine that the Development Site has any of the characteristics described in subparagraph (B) of this paragraph and such characteristics were not disclosed, the Application may be subject to termination. Termination due to non-disclosure may be appealed pursuant to §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)). The presence of any characteristics listed in subparagraph (B) of this paragraph will prompt staff to perform an assessment of

the Development Site and neighborhood, which may include a site visit, and include, where applicable, a review as described in subparagraph (C) of this paragraph. The assessment of the Development Site and neighborhood will be presented to the Board with a recommendation with respect to the eligibility of the Development Site. Factors to be considered by the Board, despite the existence of the undesirable neighborhood characteristics are identified in subparagraph (E) of this paragraph. Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility. Should the Board make a determination that a Development Site is ineligible, the termination of the Application resulting from such Board action is not subject to appeal.

(B) The undesirable neighborhood characteristics include those noted in clauses (i) – (iv) of this subparagraph and additional information as applicable to the undesirable neighborhood characteristic(s) disclosed as provided in subparagraphs (C) and (D) of this paragraph must be submitted in the Application. If an Application for a Development Site involves three or more undesirable neighborhood characteristics, in order to be found eligible it will be expected that, in addition to demonstrating satisfactory mitigation for each characteristic disclosed, the Development Site must be located within an area in which there is a concerted plan of revitalization already in place or that private sector economic forces, such as those referred to as gentrification are already underway and indicate a strong likelihood of a reasonably rapid transformation of the area to a more economically vibrant area. In order to be considered as an eligible Site despite the presence of such undesirable neighborhood characteristic, an Applicant must demonstrate actions being taken that would lead a reader to conclude that there is a high probability and reasonable expectation the undesirable characteristic will be sufficiently mitigated or significantly improved within a reasonable time, typically prior to placement in service, and that the undesirable characteristic ~~will~~ demonstrates a positive trend and continued improvement. ~~either no longer be present or will have been sufficiently mitigated such that it would not have required disclosure.~~ Conclusions for such reasonable expectation may need to be affirmed by an industry professional, as appropriate, and may be dependent upon the severity of the undesirable neighborhood characteristic disclosed.

(i) The Development Site is located within a census tract that has a poverty rate above 40~~30~~ percent for individuals (or 55 percent for Developments in regions 11 and 13).

(ii) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(iii) The Development Site is located within 1,000 feet (measured from nearest boundary of the Site to the nearest boundary of blighted structure) of multiple vacant structures that have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.

(iv) The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met Standard rating by the Texas Education Agency. Any school in the attendance zone that has not achieved Met Standard for three consecutive years and has failed by at least one point in the most recent year, unless there is a clear trend indicating imminent compliance, shall be unable to mitigate due to the potential for school closure as an administrative remedy pursuant to Chapter 39 of the Texas Education Code. In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required. The applicable school rating will be the 2016 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating. Development Sites subject to an Elderly Limitation is considered exempt and does not have to disclose the presence of this characteristic.

(C) Should any of the undesirable neighborhood characteristics described in subparagraph (B) of this paragraph exist, the Applicant must submit the Undesirable Neighborhood Characteristics Report that contains the information described in clauses (i) - (viii) of this subparagraph and subparagraph (D) of this paragraph as such information might be considered to pertain to the undesirable neighborhood characteristic(s) disclosed so that staff may conduct a further Development Site and neighborhood review.

(i) A determination regarding neighborhood boundaries, which will be based on the review of a combination of natural and manmade physical features (rivers, highways, etc.), apparent changes in land use, the Primary Market Area as defined in the Market Analysis, census tract or municipal boundaries, and information obtained from any Site visits;

(ii) An assessment of general land use in the neighborhood, including comment on the prevalence of residential uses;

(iii) An assessment concerning any of the features reflected in paragraph (2~~3~~) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (2~~3~~) of this subsection;
(iv) An assessment of the number of existing affordable rental units (generally includes rental properties subject to TDHCA, HUD, or USDA restrictions) in the Primary Market Area, including comment on concentration based on the size of the Primary Market Area;
(v) An assessment of the percentage of households residing in the census tract that have household incomes equal to or greater than the median household income for the MSA or county where the Development Site is located;
(vi) An assessment of the number of market rate multifamily units in the neighborhood and their current rents and levels of occupancy;
(vii) An assessment of school performance for each of the schools in the attendance zone containing the Development that did not achieve the Met Standard rating, for the previous two academic years (regardless of whether the school Met Standard in those years), that includes the TEA Accountability Rating Report, a discussion of performance indicators and what progress has been made over the prior year, and progress relating to the goals and objectives identified in the campus improvement plan in effect; and
(viii) Any additional information necessary to complete an assessment of the Development Site, as requested by staff.

(D) Information regarding mitigation of undesirable neighborhood characteristics should be relevant to the undesirable characteristics that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application and may include, but is not limited to, the measures described in clauses (i) - (iv) of this subparagraph. In addition to those measures described herein, documentation from the local municipality may also be submitted stating the Development is consistent with their obligation to affirmatively further fair housing. ~~The mitigation must be accompanied by a report summarizing the data and to support the conclusion of a reasonable expectation by staff and the Board that the issues will be resolved or significantly improved by the time the Development is placed into service. Conclusions for such reasonable expectation must be affirmed by an industry professional, as appropriate.~~

(i) Evidence that the poverty rate within the census tract has decreased over the five-year period preceding the date of Application, or that the census tract is contiguous to a census tract with a poverty rate below 20% and there are no physical barriers between them such as highways or rivers which would be

reasonably considered as separating or dividing the neighborhood containing the proposed Development from the low poverty area must be submitted. Other mitigation may include, but is not limited to, evidence of the availability of adult education and job training that will lead to full-time permanent employment for tenants, ~~a description of additional tenant services to be provided at the development that address root causes of poverty~~, evidence of gentrification in the area which may include contiguous census tracts that could conceivably be considered part of the neighborhood containing the proposed Development, and a clear and compelling reason that the Development should be located at the Site. ~~Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility.~~

(ii) Evidence that crime rates are ~~substantially~~ decreasing, based on violent crime data from the city's police department or county sheriff's department, for the police beat or patrol area within which the Development Site is located, based on the population of the police beat or patrol area that would yield a crime rate below the threshold indicated in this section. The instances of violent crimes within the police beat or patrol area that encompass the census tract, calculated based on the population of the census tract, may also be used. A map plotting all instances of violent crimes within a one-half mile radius of the Development Site may also be provided that it reflects that the crimes identified are not at a level that would warrant an ongoing concern. The data must include incidents reported during the entire 2015 and 2016 calendar year. Violent crimes reported through the date of Application submission may be requested by staff as part of the assessment performed under subparagraph (C) of this paragraph. A written statement from the local police department or local law enforcement agency, including a description of efforts by such enforcement agency addressing issues of crime and the results of their efforts may be provided, and depending on the data provided by the Applicant, such written statement may be required, as determined by staff. For Rehabilitation or Reconstruction Developments, to the extent that the high level of criminal activity is concentrated at the Development Site, documentation may be submitted to indicate such issue(s) could be remedied by the proposed Development. Evidence of such remediation should go beyond what would be considered a typical scope of work and should include a security plan, partnerships with external agencies, or other efforts to be implemented that would deter criminal activity. Information on whether such security features have been successful at any of the Applicant's existing properties should also be submitted, if applicable.

(iii) Evidence of mitigation efforts to address blight or abandonment may include new construction in the area already underway that evidences public and/or private investment. Acceptable mitigation to address extensive blight should include a plan whereby it is contemplated that a responsible party will use the property in a manner that complies with local ordinances. ~~go beyond the acquisition or demolition of the blighted property and identify the efforts and timeline associated with the completion of a desirable permanent use of the site(s) such as new or rehabilitated housing, new business, development and completion of dedicated municipal or county-owned park space.~~ In instances where blight exists but may only include a few properties, mitigation efforts could include partnerships with local agencies to engage in community-wide clean-up efforts, or other efforts to address the overall condition of the neighborhood.

(iv) Evidence of mitigation for all of the schools in the attendance zone that have not achieved Met Standard will include documentation from a school official with oversight of the school in question that indicates current progress towards meeting the goals and performance objectives identified in the Campus Improvement Plan. For schools that have not achieved Met Standard for two consecutive years, a letter from the superintendent, member of the school board or a member of the transformation team that has direct experience, knowledge and oversight of the specific school must also be submitted. The letter should, at a minimum and to the extent applicable, identify the efforts that have been undertaken to increase student performance, decrease mobility rate, benchmarks for re-evaluation, increased parental involvement, plans for school expansion, and long-term trends that would point toward their achieving Met Standard by the time the Development is placed in service. The letter from such education professional should also speak to why they believe the staff tasked with carrying out the plan will be successful at making progress towards acceptable student performance considering that prior Campus Improvement Plans were unable to do so. Such assessment could include whether the team involved has employed similar strategies at prior schools and were successful. In addition to the aforementioned letter from the school official, information should also be provided that addresses the types of services and activities offered at the Development or external partnerships that will facilitate and augment classroom performance.

(E) In order for the Development Site to be found eligible by the Board, despite the existence of undesirable neighborhood characteristics, the Board must find that the use of Department funds at the Development Site must be consistent with achieving the goals in clauses (i) -~~and~~ (iii~~ii~~) of this subparagraph.

(i) Preservation of existing occupied affordable housing units to ensure they are safe and suitable or the new construction of ~~development of new~~ high quality affordable housing units that are subject to federal rent or income restrictions; and

(ii) Factual determination that the undesirable characteristic(s) that has been disclosed are not of such a nature or severity that should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph. ~~Such information sufficiently supports a conclusion that the characteristic(s) will be remedied by the time the Development places into service~~; or

(iii) The Applicant has requested a waiver of the presence of undesirable neighborhood characteristics on the basis that the Development is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order and such documentation is submitted with the disclosure.~~.~~

(b) Development Requirements and Restrictions. The purpose of this section is to identify specific restrictions on a proposed Development submitted for multifamily funding by the Department.

(1) Ineligible Developments. A Development shall be ineligible if any of the criteria in subparagraphs (A) or (B) of this paragraph are deemed to apply.

(A) General Ineligibility Criteria.

(i) Developments such as hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities that are usually classified as transient housing (as provided in the §42(i)(3)(B)(iii) and (iv) of the Code);

(ii) Any Development with any building(s) with four or more stories that does not include an elevator;

(iii) A Housing Tax Credit Development that provides on-site continual or frequent nursing, medical, or psychiatric services. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living;

(iv) A Development that violates §1.15 of this title (relating to Integrated Housing Rule);

(v) A Development seeking Housing Tax Credits that will not meet the general public use requirement under Treasury Regulation, §1.42-9 or a documented exception thereto; or

(vi) A Development utilizing a Direct Loan that is subject to the Housing and Community Development Act, §104(d) requirements and proposing Rehabilitation~~,~~ or Reconstruction ~~or Adaptive Reuse~~, if the Applicant is not

proposing at least the one-for-one replacement of the existing unit mix. Adding additional units would not violate this provision.

(B) Ineligibility of Elderly Developments.

(i) Any Elderly Development of two stories or more that does not include elevator service for any Units or living space above the first floor;

(ii) Any Elderly Development with any Units having more than two bedrooms with the exception of up to three employee Units reserved for the use of the manager, maintenance, and/or security officer. These employee Units must be specifically designated as such; or

(iii) Any Elderly Development (including Elderly in a Rural Area) proposing more than 70 percent two-bedroom Units.

(2) Development Size Limitations. The minimum Development size is 16 Units. New Construction or Adaptive Reuse Developments in Rural Areas are limited to a maximum of 80 Units. Other Developments do not have a limitation as to the maximum number of Units.

(3) Rehabilitation Costs. Developments involving Rehabilitation must establish a scope of work that will substantially improve the interiors of all units and exterior deferred maintenance. The minimum Rehabilitation amounts identified in subparagraphs (A) – (C) of this paragraph must be maintained through the issuance of IRS Forms 8609.

(A) For Housing Tax Credit Developments under the USDA Set-Aside the minimum Rehabilitation will involve at least $25,000 per Unit in Building Costs and Site Work;

(B) For Tax-Exempt Bond Developments, less than twenty (20) years old, based on the placed in service date, the minimum Rehabilitation will involve at least $20,000~~25,000~~ per Unit in Building Costs and Site Work. If such Developments are greater than twenty (20) years old, based on the placed in service date, the minimum Rehabilitation will involve at least $30,000 per Unit in Building Costs and Site Work; or

(C) For all other Developments, the minimum Rehabilitation will involve at least $30,000 per Unit in Building Costs and Site Work.

(4) Mandatory Development Amenities. (§2306.187) New Construction, Reconstruction or Adaptive Reuse Units must include all of the amenities in

subparagraphs (A) - (M) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs (D) - (M) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), (I), or (M) of this paragraph; however, access must be provided to a comparable amenity in a common area. All amenities listed below must be at no charge to the tenants. Tenants must be provided written notice of the applicable required amenities for the Development.

(A) All Units must be wired with RG-6/U COAX or better and CAT3 phone cable or better, wired to each bedroom, dining room and living room;
(B) Laundry connections;
(C) Exhaust/vent fans (vented to the outside) in the bathrooms;
(D) ~~Solar s~~Screens on all operable windows~~; (north-facing windows may exclude solar screens if north-facing operable windows provide insect screens);~~
(E) Disposal and Energy-Star rated dishwasher (not required for USDA; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit);
(F) Energy-Star rated refrigerator;
(G) Oven/Range;
(H) Blinds or window coverings for all windows;
(I) At least one Energy-Star rated ceiling fan per Unit;
(J) Energy-Star rated lighting in all Units which may include compact fluorescent or LED light bulbs;
(K) Plumbing fixtures must meet performance standards of Texas Health and Safety Code, Chapter 372;
(L) All Units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units only or historic preservation where central would be cost prohibitive); and
(M) Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be one and a half (1.5) spaces per Unit for non- Elderly Developments and one (1) space per Unit for Elderly Developments. The minimum number of required spaces must be available to the tenants at no cost.

(5) Common Amenities.

(A) All Developments must include sufficient common amenities as described in subparagraph (C) of this paragraph to qualify for at least the minimum number of points required in accordance with clauses (i) - (vi) of this subparagraph. For Developments with 41 Units or more, at least two (2) of the required threshold points must come from subparagraph (C)(xxxi) of this paragraph.

(i) Developments with 16 to 40 Units must qualify for four (4) points;
(ii) Developments with 41 to 76 Units must qualify for seven (7) points;

(iii) Developments with 77 to 99 Units must qualify for ten (10) points;
(iv) Developments with 100 to 149 Units must qualify for fourteen (14) points;
(v) Developments with 150 to 199 Units must qualify for eighteen (18) points; or
(vi) Developments with 200 or more Units must qualify for twenty-two (22) points.

(B) These points are not associated with any selection criteria points. The amenities must be for the benefit of all tenants and made available throughout normal business hours and maintained throughout the Affordability Period. Tenants must be provided written notice of the elections made by the Development Owner. If fees in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy the requirement. All amenities must meet accessibility standards and spaces for activities must be sized appropriately to serve the proposed Target Population. Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the test applied based on the number of Units per individual site, which includes those amenities required under subparagraph (C)(xxxiii) of this paragraph. If scattered site with fewer than 41 Units per site, at a minimum at least some of the amenities required under subparagraph (C)(xxxiii) of this paragraph must be distributed proportionately across all sites. In the case of additional phases of a Development any amenities that are anticipated to be shared with the first phase development cannot be claimed for purposes of meeting this requirement for the second phase. The second phase must include enough points to meet this requirement that are provided on the Development Site. For example, if a swimming pool exists on the phase one property and it is anticipated that the second phase tenants will be allowed it use it, the swimming pool cannot be claimed for points for purposes of this requirement for the second phase Development. All amenities must be accessible and must be available to all units via an accessible route.

(C) The common amenities and respective point values are set out in clauses (i) - (xxxii) of this subparagraph. Some amenities may be restricted for Applicants proposing a specific Target Population. An Applicant can only count an amenity once; therefore combined functions (a library which is part of a community room) will only qualify for points under one category:

(i) Full perimeter fencing that includes parking areas and all amenities (excludes guest or general public parking areas); (2 points);
(ii) Controlled gate access (2 points);
(iii) Gazebo or covered pavilion w/sitting area (1 point);
(iv) Accessible walking/jogging path separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point);
(v) Community laundry room with at least one washer and dryer for every 40 Units (3 points);
(vi) Barbecue grill and picnic table with at least one of each for every 50 Units (1 point);

(vii) Swimming pool (3 points);
(viii) Splash pad/water feature play area (1 point);
(ix) Furnished fitness center. Equipped with fitness equipment options with at least one option per every 40 Units or partial increment of 40 Units: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, sauna, stair-climber, or other similar equipment. Equipment shall be commercial use grade or quality. All Developments must have at least two equipment options but are not required to have more than five equipment options regardless of number of Units (2 points);
(x) Equipped and functioning business center or equipped computer learning center. Must be equipped with 1 computer for every 40 Units loaded with basic programs (maximum of 5 computers needed), 1 laser printer per computer labfor every 3 computers (minimum of one printer) and at least one scanner which may be integrated with printer (2 points);
(xi) Furnished Community room (2 points1 point);
(xii) Library with an accessible sitting area (separate from the community room) (1 point);
(xiii) Enclosed community sun porch or covered community porch/patio (1 point);
(xiv) Service provider office in addition to leasing offices. (1 point);
(xv) Regularly staffed service provider office in addition to leasing offices (3 points);
(xvi) Activity Room stocked with supplies (Arts and Crafts, etc.) (2 points);
(xvii) Health Screening Room (1 point);
(xviii) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point);
(xix) Horseshoe pit; putting green; shuffleboard court; pool table; or video game console(s) with a variety of games and a dedicated location accessible to all tenants to play such games (1 point);
(xx) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points);
(xxi) One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot (2 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, provide shade and ultraviolet protection. Can only select this item if clause (xxii) of this subparagraph is not selected; or
(xxii) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each (4 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, provide shade and ultraviolet protection. Can only select this item if clause (xxi) of this subparagraph is not selected;
(xxiii) Sport Court (Tennis, Basketball or Volleyball) (2 points);

(xxiv) Furnished and staffed Children's Activity Center that must have age appropriate furnishings and equipment. Appropriate levels of staffing must be provided during after-school hours and during school vacations (3 points);
(xxv) Community Theater Room equipped with a 52 inch or larger screen or projection with surround sound equipment; DVD player; and theater seating (3 points);
(xxvi) Dog Park area that is fully enclosed and intended for tenant owned dogs to run off leash or a dog wash station with plumbing for hot and cold water connections and tub drainage (requires that the Development allow dogs) (1 point);
(xxvii) Common area Wi-Fi (1 point);
(xxviii) Twenty-four hour, seven days a week monitored camera/security system in each building (3 points);
(xxix) Bicycle parking within reasonable proximity to each residential building that allows for bicycles to be secured with lock (lock not required to be provided to tenant) and allows sufficient parking relative to the development size (1 point);
(xxx) Shaded rooftop or structural viewing deck of at least 500 square feet (2 points);
(xxxi) Porte-cochere ~~(Elderly Developments Only)~~ (1 point); or

(xxxii) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Points may be selected from only one of four categories: Limited Green Amenities, Enterprise Green Communities, Leadership in Energy and Environmental Design (LEED), and ICC 700 National Green Building Standard. A Development may qualify for no more than four (4) points total under this clause.

(I) Limited Green Amenities (2 points). The items listed in subclauses (I) - (IV) of this clause constitute the minimum requirements for demonstrating green building of multifamily Developments. Six (6) of the twenty-two (22) items listed under items (-a-) - (-v-) of this subclause must be met in order to qualify for the maximum number of two (2) points under this subclause;

(-a-) a rain water harvesting/collection system and/or locally approved greywater collection system;

(-b-) newly installed native trees and plants that minimize irrigation requirements and are appropriate to the Development Site's soil and microclimate to allow for shading in the summer and heat gain in the winter. For Rehabilitation Developments this would be applicable to new landscaping planned as part of the scope of work;

(-c-) water-conserving fixtures that meet the EPA's WaterSense Label. Such fixtures must include low-flow or high efficiency toilets, bathroom

lavatory faucets, and showerheads~~, and kitchen faucets~~. Rehabilitation Developments may install WaterSense faucet aerators (minimum of 30% more efficient) instead of replacing the entire faucets;

~~(-d-) all of the HVAC condenser units located so they are fully shaded 75 percent of the time during summer months (i.e. May through August) as certified by the design team at cost certification;~~

(-d~~e~~-) Energy-Star qualified water heaters or install those that are part of an overall Energy-Star efficient system;

(-e~~f~~-) install individual or sub-metered utility meters for electric and water. Rehabilitation Developments may claim sub-meter only if not already sub-metered at the time of Application;

(-f~~g~~-) healthy finish materials including the use of paints, stains, and sealants consistent with the Green Seal 11 standard or other applicable Green Seal standard;

(-g~~h~~-) install daylight sensor, motion sensors or timers on all exterior lighting and install fixtures that include automatic switching on timers or photocell controls for all lighting not intended for 24-hour operation or required for security;

(-h~~i~~-) recycling service (includes providing a storage location and service for pick-up) provided throughout the Compliance Period;

(-i~~j~~-) construction waste management system provided by contractor that meets LEEDs minimum standards;

(-j~~k~~-) for Rehabilitation Developments
clothes dryers vented to the outside;

(-k~~l~~-) for Developments with 41 units or less, at least 25% by cost FSC certified salvaged wood products;

(-l~~m~~-) locate water fixtures within 20 feet of water heater;

(-m~~n~~-) drip irrigate at non-turf areas;

(-n~~o~~-) radiant barrier decking for New Construction Developments or other "cool" roofing materials (documentation must be submitted that substantiates the "cool" roofing materials used are durable and that there are energy savings associated with them);

(-o~~p~~-) permanent shading devices for windows with solar orientation (does not include solar screens, but may include permanent awnings~~, black-out shades~~, fixed overhangs, etc.);

(-p~~q~~-) Energy-Star certified insulation products (For Rehabilitation Developments, this would require installation in all places where insulation could be installed, regardless of whether the area is part of the scope of work);

(-q~~r~~-) full cavity spray foam insulation in walls;

(-r~~s~~-) Energy-Star rated windows;

(-s~~t~~-) FloorScore certified vinyl flooring, Green Label certified carpet, or resilient flooring;
(-t~~u~~-) sprinkler system with rain sensors;
(-u~~v~~-) NAUF (No Added Urea Formaldehyde) cabinets;
(-v -) Solar screens on all windows (north-facing windows may exclude solar screens if north-facing operable windows provide insect screens).

(II) Enterprise Green Communities (4 points). The Development must incorporate all mandatory and optional items applicable to the construction type (i.e. New Construction, Rehabilitation, etc.) as provided in the most recent version of the Enterprise Green Communities Criteria found at http://www.greencommunitiesonline.org.

(III) LEED (4 points). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a LEED Certification, regardless of the rating level achieved (i.e., Certified, Silver, Gold or Platinum).

(IV) ICC 700 National Green Building Standard (4 points). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NAHB Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(6) Unit Requirements.

(A) Unit Sizes. Developments proposing New Construction or Reconstruction will be required to meet the minimum sizes of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with any selection criteria. Developments proposing Rehabilitation (excluding Reconstruction) or Supportive Housing Developments will not be subject to the requirements of this subparagraph.

(i) five hundred (500) square feet for an Efficiency Unit;
(ii) six hundred (600) square feet for a one Bedroom Unit;
(iii) eight hundred (800) square feet for a two Bedroom Unit;
(iv) one thousand (1,000) square feet for a three Bedroom Unit; and
(v) one thousand, two-hundred (1,200) square feet for a four Bedroom Unit.

(B) Unit and Development Construction Features. Housing Tax Credit Applicants may select amenities for the score of an Application under this section, but must maintain the points associated with those amenities by maintaining the amenity selected or providing substitute amenities with equal or higher point values. Tax-Exempt Bond Developments must include enough amenities to meet a minimum of seven (7) points. Direct Loan Applications not layered with Housing Tax Credits must include enough amenities to meet a minimum of four (4) points. The amenity shall be for every Unit at no extra charge to the tenant. The points selected at Application and

corresponding list of amenities will be required to be identified in the LURA, and the points selected at Application must be maintained throughout the Affordability Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

(i) Covered entries (0.5 point);
(ii) Nine foot ceilings in living room and all bedrooms (at minimum) (0.5 point);
(iii) Microwave ovens (0.5 point);
(iv) Self-cleaning or continuous cleaning ovens (0.5 point);
(v) Refrigerator with icemaker (0.5 point);
(vi) Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the property site (0.5 point);
(vii) Energy-Star qualified laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (~~1.5~~2 points);
(viii) Covered patios or covered balconies (0.5 point);
(ix) Covered parking (including garages) of at least one covered space per Unit (1.5 points);
~~(x) Meet current R-value requirements (rating of wall/ceiling system) of IECC for the Development's climate zone (1.5 points);~~
(x~~i~~) 14 SEER HVAC (or greater) or for Rehabilitation (excluding Reconstruction) where such systems are not being replaced as part of the scope of work, a radiant barrier in the attic is provided (1.5 points);
(xi~~i~~) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);
(xii~~i~~) Built-in (recessed into the wall) computer nook (0.5 point);
(xiii~~iv~~) Built-in (recessed into the wall) shelving unit (0.5 point);
~~(xv) Floor to ceiling kitchen cabinetry (1 point);~~
(xiv~~i~~) Recessed or track LED lighting in kitchen and living areas (1 point);
(xvi~~i~~) Thirty (30) year shingle or metal roofing (excludes Thermoplastic Polyolefin (TPO) roofing material) (0.5 point);~~ and~~
(xvii~~i~~) Greater than 30 percent stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious and metal siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points);
(xvii) Breakfast Bar (a space, generally between the kitchen and dining area, that includes seating) (0.5 points); and
(xviii) Walk-in closet in master bedroom (0.5 points).~~.~~

(7) Tenant Supportive Services. The supportive services include those listed in subparagraphs (A) - (Z) of this paragraph. Tax Exempt Bond Developments must select a minimum of eight (8) points; Direct Loan Applications not layered with Housing Tax Credits must include enough services to meet a minimum of four (4) points. The points selected and complete list of supportive services will be included in the LURA and the timeframe by which services are offered must be in accordance with §10.619 of this chapter (relating to Monitoring for Social Services) and maintained throughout the Affordability Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. The services provided should be those that will directly benefit the Target Population of the Development. Tenants must be provided written notice of the elections made by the Development Owner. No fees may be charged to the tenants for any of the services, there must be adequate space for the intended services and services offered should be accessible to all (*e.g*. exercises classes must be offered in a manner that would enable a person with a disability to participate). Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider. Where applicable, the services must be documented by a written agreement with the provider.

(A) partnership with local law enforcement to provide quarterly~~regular~~ on-site social and interactive activities intended to foster relationships with residents (such activities could include playing sports, having a cook-out, swimming, card games, etc.) (3 points);

(B) weekday character building program (shall include at least on a monthly basis a curriculum based character building presentation on relevant topics, for example teen dating violence, drug prevention, bullying, teambuilding, internet/social media dangers, stranger danger, etc.) (2 points);

(C) daily transportation such as bus passes, cab vouchers, specialized van on-site (4 points);

(D) Food pantry consisting of an assortment of non-perishable food items and common household items (i.e. laundry detergent, toiletries, etc.) accessible to residents at least on a monthly basis or upon request by a tenant. While it is possible that transportation may be provided to a local food bank to meet the requirement of this tenant service, the tenant must not be required to pay for the items they receive at the food bank (1 point);

(E) GED preparation classes (shall include an instructor providing on-site coursework and exam) (2 points);

(F) English as a second language classes (shall include an instructor providing on-site coursework and exam) (1 point);

(G) quarterly financial planning courses (i.e. homebuyer education, credit counseling, investing advice, retirement plans, etc.). Courses must be offered through an on-site instructor; a CD or online course is not acceptable (1 point);
(H) annual health fair provided by a health care professional(1 point);
(I) quarterly health and nutritional courses (1 point);
(J) organized youth programs or other recreational activities such as games, movies or crafts offered by the Development (1 point);
(K) scholastic tutoring (shall include daily (Monday – Thursday~~Friday~~) homework help or other focus on academics) (3 points);
(L) Notary Services during regular business hours (§2306.6710(b)(3)) (1 point);
(M) weekly exercise classes (offered at times when most residents would be likely to attend) (2 points);
(N) twice monthly arts, crafts, and other recreational activities (*e.g.* Book Clubs and creative writing classes) (2 points);
(O) annual income tax preparation (offered by an income tax prep service) or IRS-certified VITA (Volunteer Income Tax Assistance) program (offered by a qualified individual) (1 point);
(P) monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point);
(Q) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, etc.) (1 point);
(R) specific case management services offered by a qualified Owner or Developer, qualified provider or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (2 points~~1 point~~);
(S) weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc., and quarterly preventative maintenance including light bulb replacement) for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);
(T) any of the programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601, et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of unplanned pregnancies; and encourages the formation and maintenance of two-parent families (1 point);
(U) contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services; also resident training programs that train and hire residents for job opportunities inside the development in areas like leasing, tenant services, maintenance, landscaping, or food and beverage operation (2 points);

(V) external partnerships for provision of weekly substance abuse meetings at the Development Site (2 points);

(W) contracted onsite occupational or physical therapy services for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);

(X) a full-time resident services coordinator with a dedicated office space at the Development (2 points);

(Y) a resident-run community garden with annual soil preparation and mulch provided by the Owner and access to water (1 point); and

(Z) Development Sites located within a one mile radius of one of the following can also qualify for one (1) point provided they also have a referral process in place and provide transportation to and from the facility:

(i) Facility for treatment of alcohol and/or drug dependency;

(ii) Facility for treatment of PTSD and other significant psychiatric or psychological conditions;

(iii) Facility providing therapeutic and/or rehabilitative services relating to mobility, sight, speech, cognitive, or hearing impairments; or

(iv) Facility providing medical and/or psychological and/or psychiatric assistance for persons of limited financial means.

(8) Development Accessibility Requirements. All Developments must meet all specifications and accessibility requirements as identified in subparagraphs (A) - (C) of this paragraph and any other applicable state or federal rules and requirements. The accessibility requirements are further identified in the Certification of Development Owner as provided in the Application.

(A) The Development shall comply with the accessibility requirements under Federal law and as further defined in Chapter 1, Subchapter B of this title (relating to Accessibility Requirements). (§§2306.6722; 2306.6730)

(B) New Construction (excluding New Construction of non-residential buildings) Developments where some Units are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit Type (*i.e.*, one bedroom one bath, two bedroom one bath, two bedroom two bath, three bedroom two bath) of otherwise exempt units (i.e. single family residence, duplexes, triplexes, and townhomes) ~~(*i.e.*, one bedroom one bath, two bedroom one bath, two bedroom two bath, three bedroom two bath)~~ must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level.

(C) The Development Owner is and will remain in compliance with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. §§2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §§701 et seq.); Fair Housing Accessibility; the Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, and the Texas Accessibility Standards. (§2306.257; §2306.6705(7))

(D) All Applications proposing Rehabilitation (including Reconstruction) will be treated as Substantial Alteration, in accordance with Chapter 1, Subchapter B of this title.

Subchapter C

Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications

§10.201.Procedural Requirements for Application Submission. This subchapter establishes the procedural requirements for Application submission. Only one Application may be submitted for a Development Site in an Application Round. ~~Applicant may have an Application or Applications for assistance relating to a specific Development Site at any given time.~~ While the Application Acceptance Period is open or prior to the Application deadline, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original pre-application fee (as applicable) that was paid as long as no substantive evaluation was performed by the Department and the re-submitted Application relates to the same Development Site, consistent with §11.9(e)(3) regarding pre-application Site changes. Applicants are subject to the schedule of fees as set forth in §10.901 of this chapter (relating to Fee Schedule). When providing a pre-application, Application or other materials to a state representative, local governmental body, Neighborhood Organization, or anyone else to secure support or approval that may affect the Applicant's competitive posture, an Applicant must disclose that in accordance with the Department's rules aspects of the Development may not yet have been determined or selected or may be subject to change, such as changes in the amenities ultimately selected and provided.

(1) General Requirements.

(A) An Applicant requesting funding from the Department must submit an Application in order to be considered for an award. An Application must be complete (including all required exhibits and supporting materials) and submitted by the required program deadline. If an Application, including the corresponding Application fee as described in §10.901 of this chapter, is not submitted to the Department on or before the applicable deadline, the Applicant will be deemed not to have made an Application; provided, however, that errors in the calculation of applicable fees may be cured via an Administrative Deficiency. The deficiency period for curing fee errors will be three business days and may not be extended. Failure to cure such an error timely will be grounds for termination.

(B) Applying for multifamily funds from the Department is a technical process that must be followed completely. As a result of the competitive nature of some funding sources, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that makes timely adherence impossible. If an Applicant chooses to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Applicants must ensure that all documents are legible, properly organized and tabbed,

and that materials provided in digital media are fully readable by the Department. Department staff receiving an application may perform a cursory review to see if there are any glaring problems. This is a cursory review and may not be relied upon as confirmation that the Application was complete or in proper form.

(C) The Applicant must upload a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server. Each copy must be in a single file and individually bookmarked as further described in the Multifamily Programs Procedures Manual. Additional files required for Application submission (e.g., Third Party Reports) outside the Uniform Application must also be uploaded to the secure web transfer server. It is the responsibility of the Applicant to confirm the upload to the Department's secure web transfer server was successful and to do so in advance of the deadline. Where there are instances of computer problems, mystery glitches, etc. that prevents the Application from being received by the Department prior to the deadline the Application may be terminated.

(D) Applications must include materials addressing each and all of the items enumerated in this chapter and other chapters as applicable. If an Applicant does not believe that a specific item should be applied, the Applicant must include, in its place, a statement identifying the required item, stating that it is not being supplied, and a statement as to why the Applicant does not believe it should be required.

(2) Filing of Application for Tax-Exempt Bond Developments. Applications may be submitted to the Department as described in subparagraphs (A) and (B) of this paragraph. Multiple site applications by the same Applicant for Tax-Exempt Bond Developments will be considered to be one Application as identified in Tex. Gov't Code, Chapter 1372. Applications will be required to satisfy the requirements of the Qualified Allocation Plan (QAP) and Uniform Multifamily Rules in place at the time the Application is received by the Department. Applications that receive a Traditional Carryforward designation after November 15 will not be accepted until after January 2 and will be subject to the QAP and Uniform Multifamily Rules in place at the time the Application is received by the Department.

(A) Lottery Applications. For Applicants participating in the TBRB lottery for private activity bond volume cap and whereby advance notice is given regarding a Certificate of Reservation, the Applicant must submit a Notice to Submit Lottery Application form to the Department no later than the Notice to Submit Lottery Application Delivery Date described in §10.4 of this chapter (relating to Program Dates). The complete Application, accompanied by the Application Fee described in §10.901 of this chapter must be submitted no later than the Applications Associated with Lottery Delivery Date described in §10.4 of this chapter.

(B) Waiting List Applications. Applications designated as Priority 1 or 2 by the TBRB and receiving advance notice of a Certificate of Reservation for private activity bond volume cap must submit Parts 1 - 4 of the Application and the Application Fee described in §10.901 of this chapter prior to the issuance of the Certificate of

Reservation by the TBRB. The remaining parts of the Application must be submitted at least seventy-five (75) days prior to the Board meeting at which the decision to issue a Determination Notice would be made. An Application designated as Priority 3 will not be accepted until after the issuer has induced the bonds, with such documentation included in the Application, and is subject to the following additional timeframes:

(i) The Applicant must submit to the Department confirmation that a Certificate of Reservation from the TBRB has been issued not more than thirty (30) days after the Application is received by the Department. The Department may, for good cause, administratively approve an extension for up to an additional thirty (30) days to submit confirmation the Certificate of Reservation has been issued. The Application will be terminated if the Certificate of Reservation is not received within the required timeframe;

(ii) The Department will require at least seventy-five (75) days to review an Application, unless Department staff can complete its evaluation in sufficient time for Board consideration. Applicants should be aware that unusual financing structures, portfolio transactions, and the need to resolve Administrative Deficiencies may require additional time to review and the prioritization of Applications will be subject to the review priority established in paragraph (6) of this subsection;

(iii) Department staff may choose to delay presentation to the Board in instances in which an Applicant is not reasonably expected to close within sixty (60) days of the issuance of a Determination Notice. Applications that receive Traditional Carryforward will be subject to closing within the same timeframe as would be typical of the Certificate of Reservation. This will be a condition of the award and reflected in the Determination Notice.

(3) Certification of Tax Exempt Bond Applications with New Docket Numbers. Applications that receive an affirmative Board Determination, but for which closing on the bonds does not occur prior to the Certificate of Reservation expiration date, and which subsequently have that docket number withdrawn from the TBRB, may have their Determination Notice reinstated. In the event that the Department's Board has not yet approved the Application, the Application will continue to be processed and ultimately provided to the Board for consideration The Applicant would need to receive a new docket number from the TBRB and meet the requirements described in subparagraphs (A) - (C) of this paragraph:

(A) The Application must remain unchanged, which means that at a minimum, the following cannot have changed: Site Control, total number of Units, unit mix (bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and Housing Tax Credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, Target Population, scoring criteria (if TDHCA is bond issuer) or TBRB priority status including the effect on the inclusive capture rate. The entities involved in the Applicant entity and

Developer cannot change; however, the certification can be submitted even if the lender, syndicator or issuer changes, as long as the financing structure and terms remain unchanged. Notifications under §10.203 of this chapter (relating to Public Notifications (§2306.6705(9)) are not required to be reissued. A revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable. This certification must be submitted no later than thirty (30) calendar days after the date the TBRB issues the new docket number; or

(B) the new docket number may not be issued more than four (4) months from the date the original application was withdrawn from the TBRB. The new docket number must be from the same program year as the original docket number or, for Applications that receive a new docket number from the program year that is immediately succeeding the program year of the original docket number, the requirements in clauses (i) and (ii) of this subparagraph must be met:

(i) The Applicant must certify that the Development will meet all rules and requirements in effect at the time the new docket number is issued; and

(ii) The Department must determine that the changes in the rules applicable to the program(s) under which the Application was originally awarded are not of a material nature that would necessitate a new Application and that any new forms and clarifications to the Application are of a nature that can be resolved through the Administrative Deficiency process; or

(C) if there are changes to the Application as referenced in subparagraph (A) of this paragraph or if such changes in the rules pursuant to subparagraph (B)(ii) of this paragraph are of a material nature the Applicant will be required to submit a new Application in full, along with the applicable fees, to be reviewed and evaluated in its entirety for a new Determination Notice to be issued. If there is public opposition but the Application remains the same pursuant to subparagraph (A) of this paragraph, a new Application will not be required to be submitted; however, the Application must be presented before the Board for consideration of the re-issuance of the Determination Notice.

(4) Withdrawal of Application. An Applicant may withdraw an Application prior to or after receiving an award of funding by submitting to the Department written notice of the withdrawal.

(5) Evaluation Process. Priority Applications, which shall include those Applications believed likely to be competitive, will undergo a program review for compliance with submission requirements and selection criteria, as applicable. In general, Application reviews by the Department shall be prioritized based upon the likelihood that an Application will be competitive for an award based upon the set-aside, self score, received date, or other ranking factors. Thus, non-competitive or lower scoring Applications may

never be reviewed. The Director of Multifamily Finance will identify those Applications that will receive a full program review based upon a reasonable assessment of each Application's priority, but no Application with a competitive ranking shall be skipped or otherwise overlooked. This initial assessment may be a high level assessment, not a full assessment. Applications deemed to be priority Applications may change from time to time. The Real Estate Analysis division shall underwrite Applications that received a full program review and remain competitive to determine financial feasibility and an appropriate funding amount. In making this determination, the Department will use §10.302 of this chapter (relating to Underwriting Rules and Guidelines) and §10.307 of this chapter (relating to Direct Loan Requirements). The Department may have an external party perform all or part of the underwriting evaluation and components thereof to the extent it determines appropriate. The expense of any external underwriting shall be paid by the Applicant prior to the commencement of the aforementioned evaluation pursuant to §10.901(5) of this chapter (relating to Fee Schedule, Appeals and other Provisions). Applications will undergo a previous participation review in accordance with Chapter 1 Subchapter C of this title (relating to Previous Participation) and a Development Site may be evaluated by the Department or its agents through a physical site inspection or site visit, (which may include neighboring areas), independent of or concurrent with a site visit that may be performed in conjunction with §10.101(a)(3) (relating to Undesirable Neighborhood Characteristics). The Department will, from time to time during the review process, publish an application log which shall include the self-score and any scoring adjustments made by staff. The posting of such scores on the application log may trigger appeal rights and corresponding deadlines pursuant to Tex. Gov't. Code §2306.6715 and §10.902 of this chapter (relating to Appeals Process). The Department may also provide a courtesy scoring notice reflecting such score to the Applicant.

(6) Prioritization of Applications under various Programs. This paragraph identifies how ties or other prioritization matters will be handled when dealing with de-concentration requirements, capture rate calculations, and general review priority of Applications submitted under different programs.

(A) De-concentration and Capture Rate. Priority will be established based on the earlier date associated with an Application. The dates that will be used to establish priority are as follows:

(i) For Tax-Exempt Bond Developments, the issuance date of the Certificate of Reservation issued by the TBRB; and

(ii) For all other Developments, the date the Application is received by the Department; and

(iii) Notwithstanding the foregoing, after July 31 of the current program year, a Tax-Exempt Bond Development with a Certificate of Reservation from the TBRB will take precedence over any Housing Tax Credit Application from the current Application Round on the waiting list.

(B) General Review Priority. Review priority for Applications under various multifamily programs will be established based on Department staff's consideration of any statutory timeframes associated with a program or Application in relation to the volume of Applications being processed. In general, those with statutory deadlines or more restrictive deadlines will be prioritized for review and processing ahead of those that are not subject to the same constraints. In general, any non-Competitive Housing Tax Credit Applications received during the competitive tax credit round that include a request to be placed on the May, June or July Board agendas will not be prioritized for review or underwriting due to the statutory constraints on the award and allocation of competitive tax credits. Applicants are advised to keep this in consideration when planning the submission of an Application and issuance of the Certificate of Reservation.

(7) Administrative Deficiency Process. The purpose of the Administrative Deficiency process is to allow an Applicant to provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. Because the review of an Application occurs in several phases, deficiency notices may be issued during any of these phases. Staff will send the deficiency notice via an e-mail to the Applicant and one other contact party if identified by the Applicant in the Application. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period and may also be sent in response to reviews on post-award submissions. Responses are required to be submitted electronically as a PDF or multiple PDF files. A review of the response provided by the Applicant may reveal that issues initially identified as an Administrative Deficiency are actually determined to be beyond the scope of an Administrative Deficiency process, meaning that they in fact implicated matters of a material nature not susceptible to being resolved. Department staff may in good faith provide an Applicant confirmation that an Administrative Deficiency response has been received or that such response is satisfactory. Communications from staff that the response was satisfactory do not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Final determinations regarding the sufficiency of documentation submitted to cure an Administrative Deficiency as well as the distinction between material and non-material missing information are reserved for the Director of Multifamily Finance, Executive Director, and Board.

(A) It is critical that the use of the Administrative Deficiency process not unduly slow the review process, and since the process is intended to clarify or correct matters or obtain non-material missing information (that should already be in existence), there is a reasonable expectation that a party responding to an Administrative Deficiency will be able to respond immediately. It is the responsibility of a person who receives an Administrative Deficiency to address the matter fully by the close of business on the date by which resolution must be complete and the Administrative Deficiency fully resolved. Merely submitting materials prior to that time places the responsibility on

the responding party that if the materials do not fully resolve the matter there may be a point deduction or termination.

(B) Administrative Deficiencies for Competitive HTC Applications. Unless an extension has been timely requested and granted, if an Administrative Deficiency is not fully resolved to the satisfaction of the Department by 5:00 p.m. on the fifth~~third~~ business day following the date of the deficiency notice, then (5 points) ~~(1 point)~~ shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. ~~For each additional two (2) days the deficiency remains unresolved an additional (1 point) shall be deducted from the selection criteria score.~~ If Administrative Deficiencies are not resolved by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall ~~have (3 points) deducted and~~ be terminated, subject to appeal. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline or while the Application is under consideration for an award, and may not add any set-asides, increase the requested credit amount, revise the Unit mix (both income levels and Bedroom mixes), or adjust their self-score except in response to a direct request from the Department to do so as a result of an Administrative Deficiency. (§2306.6708(b); §2306.6708) To the extent that the review of Administrative Deficiency documentation or the imposing of point reductions for late responses alters the score assigned to the Application, such score will be reflected in the updated application log published on the Department's website.

(C) Administrative Deficiencies for all other Applications or sources of funds. If Administrative Deficiencies are not resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then an Administrative Deficiency Notice Late Fee of $500 for each business day the deficiency remains unresolved will be assessed, and the Application will not be presented to the Board for consideration until all outstanding fees have been paid. Applications with unresolved deficiencies after 5:00 p.m. on the tenth day following the date of the deficiency notice will be terminated or suspended from further processing so long as the active Application does not impact the processing or underwriting of other Applications. The Applicant will be responsible for the payment of fees accrued pursuant to this paragraph regardless of any termination. Department staff may or may not assess an Administrative Deficiency Notice Late Fee for or terminate Applications for Tax-Exempt Bond or Direct Loan Developments during periods when private activity bond volume cap or Direct Loan funds are undersubscribed. Applicants should be prepared for additional time needed for completion of staff reviews as described in paragraph (2)(B) of this section.

(8) Limited Priority Reviews. If, after the submission of the Application, an Applicant identifies an error in the Application that could likely be the subject of an Administrative Deficiency, the Applicant may request a limited priority review of the specific and limited issues in need of clarification or correction. The issue may not relate to the score of an Application. This limited priority review may only cover the specific issue and not the entire Application. If the limited priority review results in the identification of an issue that

requires correction or clarification, staff will request such through the Administrative Deficiency process as stated in paragraph (7) of this section, if deemed appropriate. A limited priority review is intended to address:

(A) clarification of issues that Department staff would have difficulty identifying due to the omission of information that the Department may have access to only through Applicant disclosure, such as a prior removal from a tax credit transaction or participation in a Development that is not identified in the previous participation portion of the Application; or

(B) technical correction of non-material information that would cause an Application deemed non-competitive to be deemed competitive and, therefore, subject to a staff review. For example, failure to mark the Nonprofit Set-Aside in an Application that otherwise included complete submission of documentation for participation in the Nonprofit Set-Aside.

(9) Challenges to Opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such comment is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date as identified in §10.4 of this chapter and no later than May 1, 2017 for Competitive HTC Applications. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

§10.202. Ineligible Applicants and Applications. The purpose of this section is to identify those situations in which an Application or Applicant may be considered ineligible for Department funding and subsequently terminated. Such matters may be brought to the attention of staff by anyone, including members of the general public. If such ineligibility is raised by non-staff members it must be made in writing to the Executive Director and the Applicant and must cite the specific ineligible criteria under paragraph (1) of this section and provide factual evidence to support the claim. Any unsupported claim or claim determined to be untrue may be subject to all remedies available to the Department or Applicant. Staff will make enquiry as it deems appropriate and may send a notice to the Applicant and provide them the opportunity to explain how they believe they or their Application is eligible.~~and~~ Staff will present the matter to the Board, accompanied by staff's recommendation. The Board may take such action as it deems warranted by the facts presented, including any testimony that may be provided, either declining to take action, in

which case the Applicant or Application, as applicable, remains eligible, or finding the Applicant is ineligible, or, for a matter relating to a specific Application, that that Application is ineligible. A Board finding of ineligibility is final. The items listed in this section include those requirements in §42 of the Code, Tex. Gov't Code, Chapter 2306, and other criteria considered important by the Department, and does not represent an exhaustive list of ineligibility criteria that may otherwise be identified in applicable rules or a NOFA specific to the programmatic funding. One or more of the matters enumerated in paragraph (1) of this section may also serve as a basis for debarment, or the assessment of administrative penalties, and nothing herein shall limit the Department's ability to pursue any such matter.

(1) Applicants. An Applicant shall be considered ineligible if any of the criteria in subparagraphs (A) - (M) of this paragraph apply to those identified on the organizational chart for the Applicant, Developer and Guarantor. ~~If any of the criteria apply to any other member of the Development Team, the Applicant will also be deemed ineligible unless a substitution of that Development Team member is specifically allowable under the Department's rules and sought by the Applicant or appropriate corrective action has been accepted and approved by the Department.~~ An Applicant is ineligible if the Applicant, Developer, or Guarantor:

(A) has been or is barred, suspended, or terminated from procurement in a state or Federal program, including listed in HUD's System for Award Management (SAM); (§2306.0504)

(B) has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within fifteen (15) years preceding the Application submission;

(C) is, at the time of Application, subject to an order in connection with an enforcement or disciplinary action under state or federal securities law or by the NASD; subject to a federal tax lien (other than a contested lien for which provision has been made); or the subject of a proceeding in which a Governmental Entity has issued an order to impose penalties, suspend funding, or take adverse action based on an allegation of financial misconduct or uncured violation of material laws, rules, or other legal requirements governing activities considered relevant by the Governmental Entity;

(D) has materially breached a contract with a public agency, and, if such breach is permitted to be cured under the contract, has been given notice of the breach and a reasonable opportunity to cure, and failed to cure that breach within the time specified in the notice of breach;

(E) has misrepresented to a subcontractor the extent to which the Developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Developer's participation in contracts with the agency, and the amount of financial assistance awarded to the Developer by the agency;

(F) has been found by the Board to be ineligible based on a previous participation review performed in accordance with Chapter 1 Subchapter C of this title;

(G) is delinquent in any loan, fee, or escrow payments to the Department in accordance with the terms of the loan, as amended, or is otherwise in default with any provisions of such loans;

(H) has failed to cure any past due fees owed to the Department within the time frame provided by notice from the Department and at least ten (10) days prior to the Board meeting at which the decision for an award is to be made;

(I) would be prohibited by a state or federal revolving door or other standard of conduct or conflict of interest statute, including Tex. Gov't Code, §2306.6733, or a provision of Tex. Gov't Code, Chapter 572, from participating in the Application in the manner and capacity they are participating;

(J) has, without prior approval from the Department, had previous Contracts or Commitments that have been partially or fully deobligated during the twelve (12) months prior to the submission of the Application, and through the date of final allocation due to a failure to meet contractual obligations, and the Person is on notice that such deobligation results in ineligibility under this chapter;

(K) has provided falsified documentation or made other intentional or negligent material misrepresentations or omissions in or in connection with an Application or Commitment for a Development.;

(L) was the owner or Affiliate of the owner of a Department assisted rental development for which the federal affordability requirements were prematurely terminated and the affordability requirements have not re-affirmed or Department funds repaid; or

(M) fails to disclose, in the Application, any Principal or any entity or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction, that has terminated voluntarily or involuntarily within the past ten (10) years or plans to or is negotiating to terminate their relationship with any other affordable housing development. Failure to disclose is grounds for termination. The disclosure must identify the person or persons and development involved, the identity of each other development, and contact information for the other Principals of each such development, a narrative description of the facts and circumstances of the termination or proposed termination, and any appropriate supporting documents. An Application may be referred to the Board for termination based upon factors in the disclosure. Staff shall present a determination to the Board as to a person's fitness to be involved as a principal with respect to an Application using the factors described in clauses (i) – (v) of this subparagraph as considerations:

(i) The amount of resources in a development and the amount of the benefit received from the development;

(ii) the legal and practical ability to address issues that may have precipitated the termination or proposed termination of the relationship;

(iii) the role of the person in causing or materially contributing to any problems with the success of the development;

(iv) the person's compliance history, including compliance history on other developments; and

(v) any other facts or circumstances that have a material bearing on the question of the person's ability to be a compliant and effective participant in their proposed role as described in the Application.

(2) Applications. An Application shall be ineligible if any of the criteria in subparagraphs (A) - (C) of this paragraph apply to the Application:

(A) a violation of Tex. Gov't Code, §2306.1113, exists relating to Ex Parte Communication. An ex parte communication occurs when an Applicant or Person representing an Applicant initiates substantive contact (other than permitted social contact) with a board member, or vice versa, in a setting other than a duly posted and convened public meeting, in any manner not specifically permitted by Tex. Gov't Code, §2306.1113(b). Such action is prohibited. For Applicants seeking funding after initial awards have been made, such as waiting list Applicants, the ex parte communication prohibition remains in effect so long as the Application remains eligible for funding. The ex parte provision does not prohibit the Board from participating in social events at which a Person with whom communications are prohibited may, or will be present; provided that no matters related to any Application being considered by the Board may be discussed. An attempted but unsuccessful prohibited ex parte communication, such as a letter sent to one or more board members but not opened, may be cured by full disclosure in a public meeting, and the Board may reinstate the Application and establish appropriate consequences for cured actions, such as denial of the matters made the subject to the communication.

(B) the Application is submitted after the Application submission deadline (time or date); is missing multiple parts of the Application; or has a Material Deficiency; or

(C) for any Development utilizing Housing Tax Credits or Tax-Exempt Bonds:

(i) at the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is or has been a person covered by Tex. Gov't Code, §2306.6703(a)(1) or §2306.6733;

(ii) the Applicant proposes to replace in less than fifteen (15) years any private activity bond financing of the Development described by the Application, unless the exceptions in Tex. Gov't Code, §2306.6703(a)(2) of the are met.

§10.203. Public Notifications (§2306.6705(9)). A certification, as provided in the Application, that the Applicant met the requirements and deadlines identified in paragraphs (1) - (3) of this section must be submitted with the Application. For Applications utilizing Competitive Housing Tax Credits, notifications must not be older than three (3) months from the first day of the Application Acceptance Period. For Tax-Exempt Bond Developments notifications and proof thereof must not be older than three (3) months prior to the date Parts 5 and 6 of the Application are submitted, and for all other Applications no older than three (3) months prior to the date the Application is submitted. If notifications were made in order to satisfy requirements of pre-application submission (if applicable to the program) for the same Application, then no additional notification is required at Application. However, re-notification is required by all Applicants who have submitted a change from pre-application to Application that reflects a total Unit increase of greater than 10 percent or a 5 percent increase in density (calculated as units per acre) as a result of a change in the size of the Development Site. In addition, should a change in elected official occur between the submission of a pre-application and the submission of an Application, Applicants are required to notify the newly elected (or appointed) official ~~within fourteen (14) days of when they take office~~no later than the Full Application Delivery Date.

(1) Neighborhood Organization Notifications.

(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state as of 30 days prior to the Full Application Delivery Date and whose boundaries include the proposed Development Site. As used in this section, "on record with the state" means on record with the Secretary of State.

(B) The Applicant must list, in the certification form provided in the Application, all Neighborhood Organizations on record with the county or state as of 30 days prior to the Full Application Delivery Date and whose boundaries include the proposed Development Site as of the submission of the Application.

(2) Notification Recipients. No later than the date the Application is submitted, notification must be sent to all of the persons or entities identified in subparagraphs (A) - (H) of this paragraph. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with return receipt requested or similar tracking mechanism in the format required in the Application Notification Template provided in the Application. Evidence of notification is required in the form of a certification provided in the Application. The Applicant is encouraged to retain proof of delivery in the event it is requested by the Department. Evidence of proof of delivery is demonstrated by a signed receipt for mail or courier delivery and confirmation of receipt by recipient for fax and e-mail. Officials to be

notified are those officials in office at the time the Application is submitted. Note that between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

(A) Neighborhood Organizations on record with the state or county as of 30 days prior to the Full Application Delivery Date whose boundaries include the Development Site;
(B) Superintendent of the school district in which the Development Site is located;
(C) Presiding officer of the board of trustees of the school district in which the Development Site is located;
(D) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
(E) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
(F) Presiding officer of the Governing Body of the county in which the Development Site is located;
(G) All elected members of the Governing Body of the county in which the Development Site is located; and
(H) State Senator and State Representative of the districts whose boundaries include the Development Site.

(3) Contents of Notification.

(A) The notification must include, at a minimum, all information described in clauses (i) - (vi) of this subparagraph.

(i) the Applicant's name, address, individual contact name, and phone number;
(ii) the Development name, address, city and county;
(iii) a statement indicating the program(s) to which the Applicant is applying with the Texas Department of Housing and Community Affairs;
(iv) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse or Rehabilitation;
(v) the physical type of Development being proposed (e.g. single family homes, duplex, apartments, high-rise etc.); and
(vi) the total number of Units proposed and total number of low-income Units proposed.

(B) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve a Target Population exclusively unless such targeting or preference is documented in the Application and is or will be in full compliance with all applicable state and federal laws, including state and federal fair housing laws.

§10.204. Required Documentation for Application Submission. The purpose of this section is to identify the documentation that is required at the time of Application submission, unless specifically indicated or otherwise required by Department rule. If any of the documentation indicated in this section is not resolved, clarified or corrected to the satisfaction of the Department through either original Application submission or the Administrative Deficiency process, the Application will be terminated. Unless stated otherwise, all documentation identified in this section must not be dated more than six (6) months prior to the close of the Application Acceptance Period or the date of Application submission as applicable to the program. The Application may include, or Department staff may request, documentation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, Development Site, or Development.

(1) Certification, Acknowledgement and Consent of Development Owner. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by the Development Owner and address the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification, that they have given it with all required authority and with actual knowledge of the matters certified.

(A) The Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or, if no local building codes are in place, then to the most recent version of the International Building Code.

(B) This Application and all materials submitted to the Department constitute records of the Department subject to Tex. Gov't Code, Chapter 552, and the Texas Public Information Act.

(C) All representations, undertakings and commitments made by Applicant in the Application process for Development assistance expressly constitute conditions to any Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment for such Development which the Department may issue or award, and the violation of any such condition shall be sufficient cause for the cancellation and rescission of such Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment by the Department. If any such representations, undertakings and commitments concern or relate to the ongoing features or operation of the Development, they shall each and all shall be enforceable even if not reflected in the Land Use Restriction Agreement. All such representations, undertakings and commitments are also

enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform, in accordance with the Land Use Restriction Agreement.

(D) The Development Owner has read and understands the Department's fair housing educational materials posted on the Department's website as of the beginning of the Application Acceptance Period.

(E) The Development Owner agrees to implement a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Development Owner will be required to submit a report of the success of the plan as part of the cost certification documentation, in order to receive IRS Forms 8609 or, if the Development does not have Housing Tax Credits, release of retainage.

(F) The Applicant will attempt to ensure that at least 30 percent of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in Tex. Gov't Code, §2306.6734.

(G) The Development Owner will affirmatively market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner will be required to identify how they will affirmatively market to veterans and report to the Department in the annual housing report on the results of the marketing efforts to veterans. Exceptions to this requirement must be approved by the Department.

(H) The Development Owner will comply with any and all notices required by the Department.

(I) If the Development has an existing LURA with the Department, the Development Owner will comply with the existing restrictions.

(2) Applicant Eligibility Certification. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by any individuals required to be listed on the organizational chart and also identified in subparagraphs (A) – (D) below. The certification must identify the various criteria relating to eligibility requirements associated with multifamily funding from the Department, including but not limited to the criteria identified under §10.202 of this chapter (relating to Ineligible Applicants and Applications).

(A) for for-profit corporations, any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation, and any individual who has Control with respect to such stock holder;

(B) for non-profit corporations or governmental instrumentalities (such as housing authorities), any officer authorized by the board, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, the Audit committee chair, the Board chair, and anyone identified as the Executive Director or equivalent;

(C) for trusts, all beneficiaries that have the legal ability to Control the trust who are not just financial beneficiaries; and

(D) for limited liability companies, all managers, managing members, members having a 10 percent or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.

(3) Architect Certification Form. The certification, addressing all of the accessibility requirements, must be executed by the Development engineer, an accredited architect or Third Party accessibility specialist. (§2306.6722; §2306.6730)

(4) Notice, Hearing, and Resolution for Tax-Exempt Bond Developments. In accordance with Tex. Gov't Code, §2306.67071, the following actions must take place with respect to the filing of an Application and any Department awards for a Tax-Exempt Bond Development.

(A) Prior to submission of an Application to the Department, an Applicant must provide notice of the intent to file the Application in accordance with §10.203 of this chapter (relating to Public Notifications (§2306.6705(9))).

(B) The Governing Body of a municipality must hold a hearing if the Development Site is located within a municipality or the extra territorial jurisdiction (ETJ) of a municipality. The Governing Body of a county must hold a hearing unless the Development Site is located within a municipality. For Development Sites located in an ETJ the county and municipality must hold hearings; however, the county and municipality may arrange for a joint hearing. The purpose of the hearing(s) must be to solicit public input concerning the Application or Development and the hearing(s) must provide the public with such an opportunity. The Applicant may be asked to substantively address the concerns of the public or local government officials.

(C) An Applicant must submit to the Department a resolution of no objection from the applicable Governing Body. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. In providing a resolution, a municipality or county should consult its own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any FHAST form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year

consolidated plans for HUD block grant funds such as HOME or CDBG funds. For an Application with a Development Site that is:

(i) Within a municipality, the Applicant must submit a resolution from the Governing Body of that municipality;
(ii) Within the extraterritorial jurisdiction (ETJ) of a municipality, the Applicant must submit both:
(I) a resolution from the Governing Body of that municipality; and
(II) a resolution from the Governing Body of the county; or
(iii) Within a county and not within a municipality or the ETJ of a municipality, a resolution from the Governing Body of the county.

(D) For purposes of meeting the requirements of subparagraph (C) of this paragraph, the resolution(s) must be submitted no later than the Resolutions Delivery Date described in §10.4 of this chapter (relating to Program Dates). An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Applicants should ensure that the resolutions all have the appropriate references and certifications or the Application may be terminated. The resolution(s) must certify that:

(i) Notice has been provided to the Governing Body in accordance with Tex. Gov't Code, §2306.67071(a) and subparagraph (A) of this paragraph;
(ii) The Governing Body has had sufficient opportunity to obtain a response from the Applicant regarding any questions or concerns about the proposed Development;
(iii) The Governing Body has held a hearing at which public comment may be made on the proposed Development in accordance with Tex. Gov't Code, §2306.67071(b) and subparagraph (B) of this paragraph; and
(iv) After due consideration of the information provided by the Applicant and public comment, the Governing Body does not object to the proposed Application.

(5) Designation as Rural or Urban.

(A) Each Application must identify whether the Development Site is located in an Urban Area or Rural Area of a Uniform State Service Region. The Department shall make available a list of Places meeting the requirements of Tex. Gov't Code, §2306.004(28-a)(A) and (B), for designation as a Rural Area and those that are an Urban Area in the Site Demographics Characteristics Report. Some Places are municipalities. For any Development Site located in the ETJ of a municipality and not in a Place, the Application shall have the Rural Area or Urban Area designation of the municipality whose ETJ within which the Development Site is located. For any Development Site not located within the boundaries of a Place or the ETJ of a municipality, the applicable designation is that of the closest Place.

(B) Certain areas located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area can request a Rural designation from the Department for purposes of receiving an allocation Housing Tax Credits (§2306.6740). In order to apply for such a designation, a letter must be submitted from a duly authorized official of the political subdivision or census designated place addressing the factors outlined in clauses (i) – (vi) of this subparagraph. Photographs and other supporting documentation are strongly encouraged. In order for the area to be designated Rural by the Department for the 2017 Application Round, such requests must be made no later than December 16, 2016. If staff is able to confirm the findings outlined in the request, the Rural designation will be granted without further action and will remain in effect until such time that the population as described in clause (i) of this subparagraph exceeds 25,000. In the event that staff is unable to confirm the information contained in the request, the Applicant will be given an opportunity to supplement their case. If, after receiving any supplemental information, staff still cannot confirm the rural nature of the Application, a recommendation for denial will be presented to the Board.

(i) The population of the political subdivision or census designated place does not exceed 25,000;

(ii) The characteristics of the political subdivision or census designated place and how those differ from the characteristics of the area(s) with which it shares a contiguous boundary;

(iii) The percentage of the total border of the political subdivision or census designated place that is contiguous with other political subdivisions or census designated places designated as urban. For purposes of this assessment, less than fifty percent contiguity with urban designated places is presumptively rural in nature;

(iv) The political subdivision or census designated place contains a significant number of unimproved roads or relies on unimproved roads to connect it to other places;

(v) The political subdivision or census designated place lacks major amenities commonly associated with urban or suburban areas; and

(vi) The boundaries of the political subdivision or census designated place contain, or are surrounded by, significant areas of undeveloped or agricultural land. For purposes of this assessment, significant being more than one-third of the total surface area of political subdivision/census designated place, or a minimum of 1,000 acres immediately contiguous to the border.

(6) Experience Requirement. Evidence that meets the criteria as stated in subparagraph (A) of this paragraph must be provided in the Application, unless an experience certificate was issued by the Department in 2014, 2015 or 2016 which may be submitted as

acceptable evidence of this requirement. Experience of multiple parties may not be aggregated to meet this requirement.

(A) A natural Person, with control of the Development through placement in service, who is also a Principal of the Developer, Development Owner, or General Partner must establish that they have experience in the development and placement in service of 150 units or more. Acceptable documentation to meet this requirement shall include any of the items in clauses (i) - (ix) of this subparagraph:

(i) American Institute of Architects (AIA) Document (A102) or (A103) 2007 - Standard Form of Agreement between Owner and Contractor;
(ii) AIA Document G704--Certificate of Substantial Completion;
(iii) AIA Document G702--Application and Certificate for Payment;
(iv) Certificate of Occupancy;
(v) IRS Form 8609 (only one per development is required);
(vi) HUD Form 9822;
(vii) Development agreements;
(viii) Partnership agreements; or
(ix) other documentation satisfactory to the Department verifying that a Principal of the Development Owner, General Partner, or Developer has the required experience.

(B) The names on the forms and agreements in subparagraph (A)(i) - (ix) of this paragraph must reflect that the individual seeking to provide experience is a Principal of the Development Owner, General Partner, or Developer as listed in the Application. For purposes of this requirement any individual attempting to use the experience of another individual or entity must demonstrate they had the authority to act on their behalf that substantiates the minimum 150 unit requirement.

(C) Experience may not be established for a Person who at any time within the preceding three years has been involved with affordable housing in another state in which the Person or Affiliate has been the subject of issued IRS Form 8823 citing non-compliance that has not been or is not being corrected with reasonable due diligence.

(D) If a Principal is determined by the Department to not have the required experience, an acceptable replacement for that Principal must be identified prior to the date the award is made by the Board.

(E) Notwithstanding the foregoing, no person may be used to establish such required experience if that Person or an Affiliate of that Person would not be eligible to be an Applicant themselves.

(7) Financing Requirements.

(A) Non-Department Debt Financing. Interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department must be included in the Application. For any Development that is a part of a larger development plan on the same site, the Department may request and evaluate information related to the other components of the development plan in instances in which the financial viability of the Development is in whole or in part dependent upon the other portions of the development plan. Any local, state or federal financing identified in this section which restricts household incomes at any level that is lower than restrictions required pursuant to this chapter or elected in accordance with Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) must be identified in the rent schedule and the local, state or federal income restrictions must include corresponding rent levels in accordance with §42(g) of the Code. The income and corresponding rent restrictions will be memorialized in a recorded LURA and monitored for compliance. Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) and (ii) of this subparagraph.

(i) Financing is in place as evidenced by:

(I) a valid and binding loan agreement; and

(II) a valid recorded deed(s) of trust lien on the Development in the name of the Development Owner as grantor in favor of the party providing such financing and covered by a lender's policy of title insurance in their name;

(ii) Term sheets for interim and permanent loans issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money must:

(I) have been signed by the lender;

(II) be addressed to the Development Owner or Affiliate;

(III) for a permanent loan, include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization;

(IV) include either a committed and locked interest rate, or the currently projected interest rate and the mechanism for determining the interest rate;

(V) include all required Guarantors, if known;

(VI) include the principal amount of the loan;

(VII) include an acknowledgement of the amounts and terms of all other anticipated sources of funds; and

(VIII) include and address any other material terms and conditions applicable to the financing. The term sheet may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits, if applicable; or

(iii) For Developments proposing to refinance an existing USDA Section 515 loan, a letter from the USDA confirming that it has been provided with the Preliminary Assessment Tool.~~a complete loan transfer application.~~

(B) Gap Financing. Any anticipated federal, state, local or private gap financing, whether soft or hard debt, must be identified and described in the Application. Applicants must provide evidence that an application for such gap financing has been made. Acceptable documentation may include a letter from the funding entity confirming receipt of an application or a term sheet from the lending agency which clearly describes the amount and terms of the financing. Other Department funding requested with Housing Tax Credit Applications must be on a concurrent funding period with the Housing Tax Credit Application, and no term sheet is required for such a request. Permanent loans must include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization or for non-amortizing loan structures a term of not less than thirty (30) years. A term loan request must also comply with the applicable terms of the NOFA under which an Applicant is applying.

(C) Owner Contributions. If the Development will be financed in part by a capital contribution by the General Partner, Managing General Partner, any other partner or investor that is not a partner providing the syndication equity, a guarantor or a Principal in an amount that exceeds 5 percent of the Total Housing Development Cost, a letter from a Third Party CPA must be submitted that verifies the capacity of the contributor to provide the capital from funds that are not otherwise committed or pledged. Additionally, a letter from the contributor's bank(s) or depository(ies) must be submitted confirming sufficient funds are readily available to the contributor. The contributor must certify that the funds are and will remain readily available at Commitment and until the required investment is completed. Regardless of the amount, all capital contributions other than syndication equity will be deemed to be a part of and therefore will be added to the Deferred Developer Fee for feasibility purposes under §10.302(i)(2) of this chapter (relating to Underwriting Rules and Guidelines) or where scoring is concerned, unless the Development is a Supportive Housing Development, the Development is not supported with Housing Tax Credits, or the ownership structure includes a nonprofit organization with a documented history of fundraising sufficient to support the development of affordable housing.

(D) Equity Financing. (§2306.6705(2) and (3)) If applicable to the program, the Application must include a term sheet from a syndicator that, at a minimum, includes:

(i) an estimate of the amount of equity dollars expected to be raised for the Development;
(ii) the amount of Housing Tax Credits requested for allocation to the Development Owner;
(iii) pay-in schedules;
(iv) anticipated developer fees paid during construction;

(v) syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis; and

(vi) include an acknowledgement of the amounts and terms of all other anticipated sources of funds.

(E) Financing Narrative. (§2306.6705(1)) A narrative must be submitted that describes all aspects of the complete financing plan for the Development, including but not limited to, the sources and uses of funds; construction, permanent and bridge loans, rents, operating subsidies, project-based assistance, and replacement reserves; and the status (dates and deadlines) for applications, approvals and closings, etc. associated with the commitments for all funding sources. For applicants requesting HOME funds, Match in the amount of at least 5 percent of the HOME funds requested must be documented with a letter from the anticipated provider of Match indicating the provider's willingness and ability to make a financial commitment should the Development receive an award of HOME funds. The information provided must be consistent with all other documentation in the Application.

(8) Operating and Development Cost Documentation.

(A) 15-year Pro forma. All Applications must include a 15-year pro forma estimate of operating expenses, in the form provided by the Department. Any "other" debt service included in the pro forma must include a description.

(B) Utility Allowances. This exhibit, as provided in the Application, must be submitted along with documentation from the source of the utility allowance estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate and must comply with the requirements of §10.614 of this chapter (relating to Utility Allowances), including deadlines for submission. Where the Applicant uses any method that requires Department review, documentation indicating that the requested method has been granted by the Department must be included in the Application.

(C) Operating Expenses. This exhibit, as provided in the Application, must be submitted indicating the anticipated operating expenses associated with the Development. Any expenses noted as "other" in any of the categories must be identified. "Miscellaneous" or other nondescript designations are not acceptable.

(D) Rent Schedule. This exhibit, as provided in the Application, must indicate the type of Unit designation based on the Unit's rent and income restrictions. The rent and utility limits available at the time the Application is submitted should be used to complete this exhibit. Gross rents cannot exceed the maximum rent limits unless documentation of project-based rental assistance is provided and rents are consistent with such assistance and applicable legal requirements. The unit mix and net rentable square footages must be consistent with the site plan and architectural drawings. For Units restricted in connection with Direct Loans, the restricted Units will generally be

designated "floating" unless specifically disallowed under the program specific rules. For Applications that propose utilizing Direct Loan funds, at least 90 percent of the Units restricted in connection with the Direct Loan program must be available to households or families whose incomes do not exceed 60 percent of the Area Median Income.

(E) Development Costs. This exhibit, as provided in the Application, must include the contact information for the person providing the cost estimate and must meet the requirements of clauses (i) and (ii) of this subparagraph.

(i) Applicants must provide a detailed cost breakdown of projected Site Work costs (excluding site amenities), if any, prepared by a Third Party engineer or cost estimator. If Site Work costs (excluding site amenities) exceed $15,000 per Unit and are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis.

(ii) If costs for Off-Site Construction are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then the Off-Site Cost Breakdown prepared by a Third Party engineer must be provided. The certification from a Third Party engineer must describe the necessity of the off-site improvements, including the relevant requirements of the local jurisdiction with authority over building codes. If any Off-Site Construction costs are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those costs should be included in Eligible Basis. If off-site costs are included in Eligible Basis based on PLR 200916007, a statement of findings from a CPA must be provided which describes the facts relevant to the Development and affirmatively certifies that the fact pattern of the Development matches the fact pattern in PLR 200916007.

(F) Rental Assistance/Subsidy. (§2306.6705(4)) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds or proof of application for such funds must be provided. Such documentation shall, at a minimum, identify the source and annual amount of the funds, the number of units receiving the funds, and the term and expiration date of the contract or other agreement.

(G) Occupied Developments. The items identified in clauses (i) - (vi) of this subparagraph must be submitted with any Application where any structure on the Development Site is occupied at any time after the Application Acceptance Period begins or if the Application proposes the demolition of any housing occupied at any time after the Application Acceptance Period begins. If the current property owner is unwilling to provide the required documentation then a signed statement from the Applicant attesting to that fact must be submitted. If one or more of the items described in clauses (i) - (vi) of this subparagraph is not applicable based upon the type of

occupied structures on the Development Site, the Applicant must provide an explanation of such non-applicability. Applicant must submit:

(i) at least one of the items identified in subclauses (I) - (IV) of this clause:

(I) historical monthly operating statements of the Existing Residential Development for twelve (12) consecutive months ending not more than three (3) months from the first day of the Application Acceptance Period;
(II) the two (2) most recent consecutive annual operating statement summaries;
(III) the most recent consecutive six (6) months of operating statements and the most recent available annual operating summary; or
(IV) all monthly or annual operating summaries available; and

(ii) a rent roll not more than six (6) months old as of the first day the Application Acceptance Period that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, and tenant names or vacancy;
(iii) a written explanation of the process used to notify and consult with the tenants in preparing the Application; (§2306.6705(6))
(iv) a relocation plan outlining relocation requirements and a budget with an identified funding source; (§2306.6705(6))
(v) any documentation necessary for the Department to facilitate, or advise an Applicant with respect to or to ensure compliance with the Uniform Relocation Act and any other relocation laws or regulations as may be applicable; and
(vi) if applicable, evidence that the relocation plan has been submitted to all appropriate legal or governmental agencies or bodies. (§2306.6705(6))

(9) Architectural Drawings. All Applications must include the items identified in subparagraphs (A) - (D) of this paragraph, unless specifically stated otherwise, and must be consistent with all applicable exhibits throughout the Application. The drawings must have a legible scale and show the dimensions of each perimeter wall and floor heights.

(A) For all New Construction, Reconstruction and Adaptive Reuse Developments a site plan is submitted that includes the items identified in clauses (i) – (v) of this subparagraph and for all Rehabilitation Developments, the site plan includes the items identified in clauses (i) – (ix) of this subparagraph:
(i) includes a unit and building type table matrix that is consistent with the Rent Schedule and Building/Unit Configuration forms provided in the Application;
(ii) identifies all residential and common buildings;
(iii) clearly delineates the flood plain boundary lines and shows all easements;
(iv) if applicable, indicates possible placement of detention/retention pond(s);
(v) indicates the location and number of the parking spaces;
(vi) indicates the location and number of the accessible parking spaces;

(vii) describes, if applicable, how flood mitigation or any other required mitigation will be accomplished;
(viii) delineates compliant accessible routes; and
(ix) indicates the distribution of accessible Units.

(B) Building floor plans must be submitted for each building type. Applications for Rehabilitation (excluding Reconstruction) are not required to submit building floor plans unless the floor plan changes. Applications for Adaptive Reuse are only required to include building plans delineating each Unit by number and type. Building floor plans must include square footage calculations for balconies, breezeways, corridors and any other areas not included in net rentable area;

(C) Unit floor plans for each type of Unit must be included in the Application and must include the square footage for each type of Unit. Applications for Adaptive Reuse are only required to include Unit floor plans for each distinct typical Unit type such as one-bedroom, two-bedroom and for all Unit types that vary in Net Rentable Area by 10 percent from the typical Unit; and

(D) Elevations must be submitted for each side of each building type (or include a statement that all other sides are of similar composition as the front) and include a percentage estimate of the exterior composition and proposed roof pitch. Applications for Rehabilitation and Adaptive Reuse may submit photographs if the Unit configurations are not being altered and post-renovation drawings must be submitted if Unit configurations are proposed to be altered.

(10) Site Control.

(A) Evidence that the Development Owner has Site Control must be submitted. If the evidence is not in the name of the Development Owner, then an Affiliate of the Development Owner must have Site Control that allows for an ability to assign the Site Control to the Development Owner. All of the sellers of the proposed Property for the thirty-six (36) months prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development Team must be identified at the time of Application. The Department may request documentation at any time after submission of an Application of the Development Owner's ability to compel title of any affiliated property acquisition(s) and the Development Owner must be able to promptly provide such documentation or the Application, award, or Commitment may be terminated. The Department acknowledges and understands that the Property may have one or more encumbrances at the time of Application submission and the Department will take into account whether any such encumbrance is reasonable within the legal and financial ability of the Development Owner to address without delaying development on the timeline contemplated in the Application. Tax-Exempt Bond Lottery Applications must have Site Control valid through December 1 of the prior program year with the option to extend through March 1 of the current program year.

(B) In order to establish Site Control, one of the items described in clauses (i) - (iii) of this subparagraph must be provided. In the case of land donations, Applicants must demonstrate that the entity donating the land has Site Control as evidenced through one of the items described in clauses (i) – (iii) of this subparagraph or other documentation acceptable to the Department.

(i) a recorded warranty deed vesting indefeasible title in the Development Owner or, if transferrable to the Development Owner, an Affiliate of the Owner, with corresponding executed settlement statement (or functional equivalent for an existing lease with at least forty-five (45) years remaining); or

(ii) a contract or option for lease with a minimum term of forty-five (45) years that includes a price; address and/or legal description; proof of consideration in the form specified in the contract; and expiration date; or

(iii) a contract for sale or an option to purchase that includes a price; address and/or legal description; proof of consideration in the form specified in the contract; and expiration date;

(C) If the acquisition can be characterized as an identity of interest transaction, as described in §10.302 of this chapter, then the documentation as further described therein must be submitted in addition to that of subparagraph (B) of this paragraph.

(11) Zoning. (§2306.6705(5)) Acceptable evidence of zoning for all Developments must include one of subparagraphs (A) - (D) of this paragraph. In instances where annexation of a Development Site occurs while the Application is under review, the Applicant must submit evidence of appropriate zoning with the Commitment or Determination Notice.

(A) No Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating that the Development is located within the boundaries of a political subdivision that has no zoning.

(B) Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating the Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development.

(C) Requesting a Zoning Change. The Application must include evidence in the form of a letter from a local government official with jurisdiction over zoning matters that the Applicant or Affiliate has made formal application for a required zoning change and that the jurisdiction has received a release whereby the applicant for the zoning change has agreed to hold the political subdivision and all other parties harmless in the event the appropriate zoning is not granted. Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice.

(D) Zoning for Rehabilitation Developments. In an area with zoning, the Application must include documentation of current zoning. If the Property is currently conforming but with an overlay that would make it a non-conforming use as presently zoned, the Application must include a letter from a local government official with appropriate jurisdiction which addresses the items in clauses (i) - (v) of this subparagraph:

(i) a detailed narrative of the nature of non-conformance;
(ii) the applicable destruction threshold;
(iii) that it will allow the non-conformance;
(iv) Owner's rights to reconstruct in the event of damage; and
(v) penalties for noncompliance.

(12) Title Commitment/Policy. A title commitment or title policy must be submitted that includes a legal description that is consistent with the Site Control. If the title commitment or policy is dated more than six (6) months prior to the beginning of the Application Acceptance Period, then a letter from the title company indicating that nothing further has transpired during the six-month period on the commitment or policy must be submitted.

(A) The title commitment must list the name of the Development Owner as the proposed insured and lists the seller or lessor as the current owner of the Development Site.
(B) The title policy must show that the ownership (or leasehold) of the Development Site is vested in the name of the Development Owner.

(13) Ownership Structure and Previous Participation.

(A) Organizational Charts. A chart must be submitted that clearly illustrates the complete organizational structure of the final proposed Development Owner and of any Developer and Guarantor, identifying all Principals thereof and providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner, Developer and Guarantor, as applicable, whether directly or through one or more subsidiaries. Nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors must be included in this exhibit and trusts must list all beneficiaries that have the legal ability to control or direct activities of the trust and are not just financial beneficiaries.

(B) Previous Participation. Evidence must be submitted that each entity shown on the organizational chart described in subparagraph (A) of this paragraph that the Development Owner and each Affiliate (with an ownership interest in the Development), including entities and individuals (unless excluded under 10 TAC Chapter 1, Subchapter C) has provided a copy of the completed previous participation information to the Department. Individual Principals of such entities identified on the organizational chart must provide the previous participation information, unless excluded from such requirement pursuant to Chapter 1 Subchapter C of this title. In

addition, any Person (regardless of any Ownership interest or lack thereof) receiving more than 10 percent of the Developer Fee is also required to submit this information. The information must include a list of all developments that are, or were, previously under ownership or Control of the Applicant and/or each Principal, including any Person providing the required experience. All participation in any Department funded or monitored activity, including non-housing activities, as well as Housing Tax Credit developments or other programs administered by other states using state or federal programs must be disclosed. The individuals providing previous participation information will authorize the parties overseeing such assistance to release compliance histories to the Department.

(14) Nonprofit Ownership. Applications that involve a §501(c)(3) or (4) nonprofit General Partner or Owner shall submit the documentation identified in subparagraph (A) or (B) of this paragraph as applicable.

(A) Competitive HTC Applications. Applications for Competitive Housing Tax Credits involving a §501(c)(3) or (4) nonprofit General Partner and which meet the Nonprofit Set-Aside requirements, must submit all of the documents described in this subparagraph and indicate the nonprofit status on the carryover documentation and IRS Forms 8609. (§2306.6706) Applications that include an affirmative election to not be treated under the set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit only need to submit the documentation in subparagraph (B) of this paragraph.

(i) An IRS determination letter which states that the nonprofit organization has been determined by the Internal Revenue Service to be tax-exempt under §501(c)(3) or (4) of the Code;

(ii) The Nonprofit Participation exhibit as provided in the Application, including a list of the names and contact information for all board members, directors, and officers;

(iii) A Third Party legal opinion stating:

(I) that the nonprofit organization is not affiliated with or Controlled by a for-profit organization and the basis for that opinion;

(II) that the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit Set-Aside pursuant to §42(h)(5) of the Code and the basis for that opinion;

(III) that one of the exempt purposes of the nonprofit organization is to provide low-income housing;

(IV) that the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board;

(V) that the Qualified Nonprofit Development will have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or co-Developer as evidenced in the development agreement;

(VI) that the nonprofit organization has the ability to do business as a nonprofit in Texas;

(iv) a copy of the nonprofit organization's most recent financial statement as prepared by a Certified Public Accountant; and

(v) evidence in the form of a certification that a majority of the members of the nonprofit organization's board of directors principally reside:

(I) in this state, if the Development is located in a Rural Area; or

(II) not more than ninety (90) miles from the Development, if the Development is not located in a Rural Area.

(B) All Other Applications. Applications that involve a §501(c)(3) or (4) nonprofit General Partner or Owner must submit an IRS determination letter which states that the nonprofit organization has been determined by the Internal Revenue Service to be tax-exempt under §501(c)(3) or (4) of the Code; and the Nonprofit Participation exhibit as provided in the Application. If the Application involves a nonprofit that is not exempt from taxation under §501(c)(3) or (4) of the Code, then they must disclose in the Application the basis of their nonprofit status.

(15) Site Design and Development Feasibility Report. This report, compiled by the Applicant or Third Party Consultant, and prepared in accordance with this paragraph, which reviews site conditions and development requirements of the Development and Development Site, is required for any New Construction or Reconstruction Development.

(A) Executive Summary as a narrative overview of the Development in sufficient detail that would help a reviewer of the Application better understand the site, the site plan, off site requirements (including discussion of any seller contributions or reimbursements), any other unique development requirements, and their impact on Site Work and Off Site Construction costs. The summary should contain a general statement regarding the level of due diligence that has been done relating to site development (including discussions with local government development offices). Additionally, the overview should contain a summary of zoning requirements, subdivision requirements, property identification number(s) and millage rates for all taxing jurisdictions, development ordinances, fire department requirements, site ingress and egress requirements, building codes, and local design requirements impacting the Development (include website links but do not attach copies of ordinances). Careful focus and attention should be made regarding any atypical items materially impacting costs or the successful and timely execution of the Development plan.

(B) Survey or current plat as defined by the Texas Society of Professional Surveyors in their Manual of Practice for Land Surveying in Texas (Category 1A - Land Title Survey

or Category 1B - Standard Land Boundary Survey). Surveys may not be older than twelve (12) months from the beginning of the Application Acceptance Period. Plats must include evidence that it has been recorded with the appropriate local entity and that, as of the date of submission, it is the most current plat. Applications proposing noncontiguous single family scattered sites are not required to submit surveys or plats at Application, but this information may be requested during the Real Estate Analysis review.

(C) Preliminary site plan prepared by the civil engineer with a statement that the plan materially adheres to all applicable zoning, site development, and building code ordinances. The site plan must identify all structures, site amenities, parking spaces (include handicap spaces and ramps) and driveways, topography (using either existing seller topographic survey or U.S. Geological Survey (USGS)/other database topography), site drainage and detention, water and waste water utility tie-ins, general placement of retaining walls, set-back requirements, and any other typical or locally required items. Off-site improvements required for utilities, detention, access or other requirement must be shown on the site plan or ancillary drawings.

(D) Architect or civil engineer prepared statement describing the entitlement, site development permitting process and timing, building permitting process and timing, and an itemization specific to the Development of total anticipated impact, site development permit, building permit, and other required fees.

(16) Section 811 Project Rental Assistance Program. All Competitive HTC Applications, Direct Loan only Applications and Tax-Exempt Bond Development Applications that are layered with Direct Loan funds must meet the requirements of subparagraphs (A) or (B) of this paragraph. Applications that are unable meet the requirements of subparagraphs (A) or (B) must certify to that effect in the Application.

(A) Applicants must apply for and obtain a determination by the Department that an Existing Development is approved to participate in the Department's Section 811 Project Rental Assistance Program ("Section 811 PRA Program"). The approved Existing Development must commit at least the lower of 10 units or 10% of the total number of Units in the Development to the Section 811 PRA Program unless the Integrated Housing Rule (10 TAC §1.15) or Section 811 PRA Program guidelines (§PRA.305) or other requirements limit the proposed Development to fewer than 10 Units. ~~–~~An approved Existing Development may be used to satisfy the requirements of this paragraph in more than one Housing Tax Credit or other Multifamily Housing program Application, as long as at the time of Carryover, Award Letter or Determination Notice, as applicable, the ~~a~~ minimum number of Units as stated above ~~of 10 Units~~ are provided for each Development awarded housing tax credits or Direct Loan funds. Once an Applicant submits their Application, Applicants may not withdraw their commitment to satisfy the threshold criteria of this subparagraph, although an Applicant may request to utilize a different approved Existing Development than the one submitted in association with the awarded Application to satisfy this criteria. Existing Developments that are included in an Application that does not receive an award are not obligated to participate in the Section

811 PRA Program. An Applicant may be exempt from having to provide 811 units in an Existing Development if approval from either their lender or investor cannot be obtained and documentation to that effect is submitted in the Application, but they would be required to provide such Units through subparagraph (B) of this paragraph.

(B) Applicants that cannot meet the requirements of subparagraph (A) of this paragraph must submit evidence of such through a self-certification that the Applicant and any Affiliate do not have an ownership interest in or control of any Existing Development that would meet the criteria outlined in the Section 811 PRA Program Request for Applications, and if applicable, by submitting a copy of any rejection letter(s) that have been provided in response to the Request for Applications. In such cases, the Applicant is able to satisfy the threshold requirement of this paragraph through this subparagraph (B). Applications must meet all of the requirements in clauses (i) – (v) of this subparagraph. Applicants must commit at least the lower of 10 Units or 10% of the total number of Units in the Development for which the Application(s) has been submitted for participation in the Section 811 PRA Program unless the Integrated Housing Rule (10 TAC §1.15) or Section 811 PRA Program guidelines or other requirements limit the proposed Development to fewer than 10 Units. Once elected in the Application(s), Applicants may not withdraw their commitment to have the proposed Development participate in the Section 811 PRA Program unless the Department determines that the Development cannot meet all of the Section 811 PRA Program criteria or the Applicant chooses to request an amendment by Carryover, Award Letter, or subsequent to the issuance of the Determination Notice but prior to closing (for Tax-Exempt Bond Developments), or to place the Units on an Approved Existing Development. If the Applicant or an Affiliate obtain an ownership interest in an Approved Existing Development, the Applicant can submit an Amendment request authorizing that the Application satisfies this criteria under subparagraph (A), not subparagraph (B). Such an Amendment request will be considered a non-material change that has not been implemented, and Applicants will not be subject to the amendment fee required under §10.901(13) (relating to Fee Schedule, Appeals and other Provisions).

(i) The Development must not be an ineligible Elderly Development;

(ii) Unless the Development is also proposing to use any federal funding, the Development must not be originally constructed before 1978;

(iii) The Development must have ~~u~~Units available to be committed to the Section 811 PRA Program in the Development, meaning that those Units do not have any other sources of project-based rental assistance within 6 months of receiving Section 811 PRA Program assistance, not have an existing use restriction for Extremely Low-income households, and the Units do not have an existing restriction for Persons with Disabilities;

(iv) The Development Site must be located in one of the following areas: Austin-Round Rock MSA, Brownsville-Harlingen MSA, Corpus Christi MSA; Dallas-Fort Worth-Arlington MSA; El Paso MSA; Houston-The Woodlands-Sugar Land MSA; McAllen-Edinburg-Mission MSA; or San Antonio-New Braunfels MSA; and

(v) No new construction activities or~~of~~ projects shall be located in the mapped 500-year floodplain or in the 100-year floodplain according to FEMA's Flood Insurance Rate Maps (FIRM). Rehabilitation Developments that have previously received HUD funding or obtained HUD insurance do not have to follow sections (i) – (iii) of this subparagraph. Existing structures may be assisted in these areas, except for sites located in coastal high hazard areas (V Zones) or regulatory floodways, but must meet the following requirements:

(I) The existing structures must be flood-proofed or must have the lowest habitable floor and utilities elevated above both the 500-year floodplain and the 100-year floodplain.

(II) The project must have an early warning system and evacuation plan that includes evacuation routing to areas outside of the applicable floodplains.

(III) Project structures in the 100-year floodplain must obtain flood insurance under the National Insurance Program. No activities or projects located within the 100-year floodplain may be assisted in a community that is not participating in or has been suspended from the National Flood Insurance Program.

§10.205. Required Third Party Reports. The Environmental Site Assessment, Property Condition Assessment, Appraisal (if applicable), and the Market Analysis must be submitted no later than the Third Party Report Delivery Date as identified in §10.4 of this chapter (relating to Program Dates). For Competitive HTC Applications, the Environmental Site Assessment, Property Condition Assessment, Appraisal (if applicable), and the Primary Market Area map (with definition based on census tracts, and site coordinates in decimal degrees, area of PMA in square miles, and list of census tracts included) must be submitted no later than the Full Application Delivery Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) and the Market Analysis must be submitted no later than the Market Analysis Delivery Date as identified in §11.2 of this title. For Competitive HTC Applications, if the reports, in their entirety, are not received by the deadline, the Application will be terminated. An electronic copy of the report in the format of a single file containing all information and exhibits clearly labeled with the report type, Development name and Development location are required. All Third Party reports must be prepared in accordance with Subchapter D of this chapter (relating to Underwriting and Loan Policy). The Department may request additional information from the report provider or revisions to the report as needed. In instances of non-response by the report provider, the Department may substitute in-house analysis. The Department is not bound by any opinions expressed in the report.

(1) Environmental Site Assessment. This report, required for all Developments and prepared in accordance with the requirements of §10.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines), must not be dated more than twelve (12) months prior to the first day of the Application Acceptance Period. If this timeframe is exceeded, then a letter or updated report must be submitted, dated not more than three (3) months prior to the first day of the Application Acceptance Period from the Person or

organization which prepared the initial assessment confirming that the site has been re-inspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report.

(A) Developments funded by USDA will not be required to supply this information; however, it is the Applicant's responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(B) If the report includes a recommendation that an additional assessment be performed, then a statement from the Applicant must be submitted with the Application indicating those additional assessments and recommendations will be performed prior to closing. If the assessments require further mitigating recommendations, then evidence indicating the mitigating recommendations have been carried out must be submitted at cost certification.

(2) Market Analysis. The Market Analysis, required for all Developments and prepared in accordance with the requirements of §10.303 of this chapter (relating to Market Analysis Rules and Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If the report is older than six (6) months, but not more than twelve (12) months prior to the first day of the Application Acceptance Period, the Qualified Market Analyst that prepared the report may provide a statement that reaffirms the findings of the original Market Analysis. The statement may not be dated more than six (6) months prior to the first day of the Application Acceptance Period and must be accompanied by the original Market Analysis.

(A) The report must be prepared by a disinterested Qualified Market Analyst approved by the Department in accordance with the approval process outlined in §10.303 of this chapter;

(B) Applications in the USDA Set-Aside proposing Rehabilitation with residential structures at or above 80 percent occupancy at the time of Application submission, the appraisal, required for Rehabilitation Developments and Identity of Interest transactions prepared in accordance with §10.304 of this chapter (relating to Appraisal Rules and Guidelines), will satisfy the requirement for a Market Analysis; however, the Department may request additional information as needed. (§2306.67055; §42(m)(1)(A)(iii))

(C) It is the responsibility of the Applicant to ensure that this analysis forms a sufficient basis for the Applicant to be able to use the information obtained to ensure that the Development will comply with fair housing laws.

(3) Property Condition Assessment (PCA). This report, required for Rehabilitation (excluding Reconstruction) and Adaptive Reuse Developments and prepared in accordance with the requirements of §10.306 of this chapter (relating to Property Condition Assessment Guidelines), must not be dated more than six (6) months prior to the first day

of the Application Acceptance Period. If the report is older than six (6) months, but not more than twelve (12) months prior to the first day of the Application Acceptance Period, the report provider may provide a statement that reaffirms the findings of the original PCA. The statement may not be dated more than six (6) months prior to the first day of the Application Acceptance Period and must be accompanied by the original PCA. For Developments which require a capital needs assessment from USDA the capital needs assessment may be substituted and may be more than six (6) months old, as long as USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §10.306 of this chapter. All Rehabilitation Developments financed with Direct Loans must also submit a capital needs assessment estimating the useful life of each major system. This assessment must include a comparison between the local building code and the International Existing Building Code of the International Code Council.

(4) Appraisal. This report, required for all Rehabilitation Developments and prepared in accordance with the requirements of §10.304 of this chapter, is required for any Application claiming any portion of the building acquisition in Eligible Basis, and Identity of Interest transactions pursuant to Subchapter D of this chapter, must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. For Developments that require an appraisal from USDA, the appraisal may be more than six (6) months old, as long as USDA has confirmed in writing that the existing appraisal is still acceptable.

§10.206. Board Decisions (§§2306.6725(c); 2306.6731; and 42(m)(1)(A)(iv)). The Board's decisions regarding awards shall be based upon the Department's and the Board's evaluation of the proposed Developments' consistency with, and fulfillment of, the criteria and requirements set forth in this chapter, Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) and other applicable Department rules and other applicable state, federal and local legal requirements, whether established in statute, rule, ordinance, published binding policy, official finding, or court order. The Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, including good cause, and the reasons for any decision that conflicts with the recommendations made by Department staff. Good cause includes the Board's decision to apply discretionary factors where authorized. The Department reserves the right to reduce the amount of funds requested in an Application, condition the award recommendation or terminate the Application based on the Applicant's inability to demonstrate compliance with program requirements.

§10.207.Waiver of Rules for Applications.

(a) General Waiver Process. This waiver section, unless otherwise specified, is applicable to Subchapter A of this chapter (relating to General Information and Definitions), Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions), Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules for Applications), Subchapter D of this chapter (relating to Underwriting and Loan Policy), Subchapter E of

this chapter (relating to Post Award and Asset Management Requirements), Subchapter F of this chapter (relating to Compliance Monitoring) Subchapter G of this chapter (relating to Fee Schedule, Appeals, and Other Provisions), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), and Chapter 13 (relating to Multifamily Direct Loan Program Rules). An Applicant may request a waiver in writing at or prior to the submission of the pre-application (if applicable) or the Application or subsequent to an award. Waiver requests on Competitive HTC Applications will not be accepted between submission of the Application and any award for the Application. Staff may identify and initiate a waiver request as part of another Board action request. Where appropriate, the Applicant is encouraged to submit with the requested waiver any plans for mitigation or alternative solutions. Any such request for waiver must be specific to the unique facts and circumstances of an actual proposed Development and must be submitted to the Department in the format required in the Multifamily Programs Procedures Manual. Any waiver, if granted, shall apply solely to the Application and shall not constitute a general modification or waiver of the rule involved. Waiver requests that are limited to Development design and construction elements not specifically required in Tex. Gov't Code, Chapter 2306 must meet the requirements of paragraph (1) of this subsection. All other waiver requests must meet the requirements of paragraph (2) of this subsection.

(1) The waiver request must establish good cause for the Board to grant the waiver which may include limitations of local building or zoning codes, limitations of existing building structural elements for Adaptive Reuse or Rehabilitation (excluding Reconstruction) Developments, required amenities or design elements in buildings designated as historic structures that would conflict with retaining the historic nature of the building(s), or provisions of the design element or amenity that would not benefit the tenants due to limitations of the existing layout or design of the units for Adaptive Reuse or Rehabilitation (excluding Reconstruction) Developments. Staff may recommend the Board's approval for such a waiver if the Executive Director finds that the Applicant has established good cause for the waiver. A recommendation for a waiver may be subject to the Applicant's provision of alternative design elements or amenities of a similar nature or that serve a similar purpose. Waiver requests for items that were elected to meet scoring criteria or where the Applicant was provided a menu of options to meet the requirement will not be considered under this paragraph.

(2) The waiver request must establish how it is necessary to address circumstances beyond the Applicant's control and how, if the waiver is not granted, the Department will not fulfill some specific requirement of law. In this regard, the policies and purposes articulated in Tex. Gov't Code, §§2306.001, 2306.002, 2306.359, and 2306.6701, are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program.

(b) Waivers Granted by the Board. The Board, in its discretion, may waive any one or more of the rules in Subchapters A through G of this chapter, Chapter 11, Chapter 12 and Chapter 13, except no waiver shall be granted to provide directly or implicitly any forward commitments or any waiver that is prohibited by statute (i.e., statutory requirements may

not be waived). The Board, in its discretion, may grant a waiver that is in response to a natural, federally declared disaster that occurs after the adoption of the multifamily rules to the extent authorized by a governor declared disaster proclamation suspending regulatory requirements.

Subchapter G – Fee Schedule, Appeals and other Provisions

§10.901. Fee Schedule. Any fees, as stated in this section, not paid will cause an Applicant to be ineligible to apply for Department funding, ineligible to receive additional Department funding associated with a Commitment, Determination Notice or Contract, and ineligible to submit extension requests, ownership transfers, and Application amendments until such time the Department receives payment. Payments of the fees shall be in the form of a check and to the extent there are insufficient funds available, it may cause the Application, Commitment, Determination Notice or Contract to be terminated or Allocation rescinded. The Department may extend the deadline for specific extenuating and extraordinary circumstances, provided the Applicant submits a written request for an extension no later than ten (10) business days prior to the deadline associated with the particular fee. For those requests that do not have a specified deadline, the written request for a fee waiver and description of extenuating and extraordinary circumstances must be included in the original request cover letter.

(1) Competitive Housing Tax Credit Pre-Application Fee. A pre-application fee, in the amount of $10 per Unit, based on the total number of Units reflected in the pre-application, must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Pre-applications in which a Community Housing Development Corporation (CHDO) or a private Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, may be eligible to receive a discount of 10 percent off the calculated pre-application fee provided such documentation is submitted with the fee. (§2306.6716(d))

(2) Refunds of Pre-application Fees. (§2306.6716(c)) Upon written request from the Applicant, the Department shall refund the balance of the pre-application fee for a pre-application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Initial processing will constitute 50 percent of the review, threshold review prior to a deficiency issued will constitute 30 percent of the review, and deficiencies submitted and reviewed constitute 20 percent of the review.

(3) Application Fee. Each Application must be accompanied by an Application fee.

(A) Housing Tax Credit Applications. ~~The fee will be $30 per Unit based on the total number of Units.~~ For Applicants having submitted a competitive housing tax credit pre-application which met the pre-application threshold requirements, and for which a pre-application fee was paid, the Application fee will be $20 per Unit based on the total number of Units in the full Application. Otherwise, the Application fee will be $30 per Unit based on the total number of Units in the full Application. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, may be eligible to receive a

discount of 10 percent off the calculated Application fee provided such documentation is submitted with the fee. (§2306.6716(d))

(B) Direct Loan Applications. The fee will be $1,000 per Application except for those Applications that are layered with Housing Tax Credits and submitted simultaneously with the Housing Tax Credit Application. Pursuant to Tex. Gov't Code §2306.147(b), the Department is required to waive Application fees for private nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services and if HOME funds are awarded. In lieu of the Application fee, these organizations must include proof of their exempt status and a description of their supportive services as part of the Application. The Application fee is not a reimbursable cost under the HOME Program.

(4) Refunds of Application Fees. Upon written request from the Applicant, the Department shall refund the balance of the Application fee for an Application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Initial processing will constitute 20 percent, the site visit will constitute 20 percent, program review will constitute 40 percent, , and underwriting review will constitute 20 percent.

(5) Third Party Underwriting Fee. Applicants will be notified in writing prior to the evaluation in whole or in part of a Development by an independent external underwriter if such a review is required. The fee must be received by the Department prior to the engagement of the underwriter. The fees paid by the Development Owner to the Department for the external underwriting will be credited against the Commitment or Determination Notice Fee, as applicable, established in paragraphs (8) and (9) of this section, in the event that a Commitment or Determination Notice is issued by the Department to the Development Owner.

(6) Administrative Deficiency Notice Late Fee. (Not applicable for Competitive Housing Tax Credit Applications.) Applications that fail to resolve Administrative Deficiencies pursuant to §10.201(7) of this chapter may incur a late fee in the amount of $500 for each business day the deficiency remains unresolved.

(7) Third Party Deficiency Request Fee. For Competitive Housing Tax Credits (HTC) Applications, a fee equal to $500 must be submitted with a Third Party Request for Administrative Deficiency that is submitted per Application pursuant to §11.10 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan).

(8) Housing Tax Credit Commitment Fee. No later than the expiration date in the Commitment, a fee equal to 4 percent of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and returns the credits by November 1 of the current Application Round, then a refund of 50 percent of the Commitment Fee may be issued upon request.

(9) Tax Exempt Bond Development Determination Notice Fee. No later than the expiration date in the Determination Notice, a fee equal to 4 percent of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and is not able close on the bonds within ninety (90) days of the issuance date of the Determination Notice, then a refund of 50 percent of the Determination Notice Fee may be issued upon request.

(10) Building Inspection Fee. (For Housing Tax Credit and Tax-Exempt Bond Developments only.) No later than the expiration date in the Commitment or Determination Notice, a fee of $750 must be submitted. Building inspection fees in excess of $750 may be charged to the Development Owner not to exceed an additional $250 per Development.

(11) Tax-Exempt Bond Credit Increase Request Fee. Requests for increases to the credit amounts to be issued on IRS Forms 8609 for Tax-Exempt Bond Developments must be submitted with a request fee equal to 4 percent of the amount of the credit increase for one (1) year.

(12) Extension Fees. All extension requests for deadlines relating to the Carryover, 10 Percent Test (submission and expenditure), Construction Status Reports, or Cost Certification requirements submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee. Any extension request submitted fewer than thirty (30) days in advance or after the original deadline must be accompanied by an extension fee of $2,500. ~~Extension fees will increase by $500 for each~~A subsequent request on the same activity, regardless of whether the first request was submitted thirty (30) calendar days in advance of the applicable deadline, must include a fee of $3,000 and if a third request for such amendment is made, it must include a fee of $3,500. An extension fee will not be required for extensions requested on Developments that involve Rehabilitation when the Department or U.S. Department of Agriculture (USDA) is the primary lender if USDA or the Department is the cause for the Applicant not meeting the deadline.

(13) Amendment Fees. An amendment request for a non-material change that has not been implemented will not be required to pay an amendment fee. Material amendment requests (whether implemented or not), or non-material amendment requests that have already been implemented will be required to submit an amendment fee of $2,500. ~~Amendment fees will increase by $500 for each~~ A subsequent request, related to the same application, regardless of whether the first request was non-material and did not require a fee, must include a fee of $3,000 and if a third request for such amendment is made, it must include a fee of $3,500. Amendment fees and fee increases are not required for the Direct Loan programs.

(14) Right of First Refusal Fee. Requests for approval of the satisfaction of the Right of First Refusal provision of the Land Use Restriction Agreement (LURA) must be accompanied by a non-refundable fee of $2,500.

(15) Qualified Contract Pre-Request Fee. A Development Owner must file a preliminary Qualified Contract Request to confirm eligibility to submit a Qualified Contract request. The Pre-Request must be accompanied by a non-refundable processing fee of $250.

(16) Qualified Contract Fee. Upon eligibility approval of the Qualified Contract Pre-Request, the Development Owner may file a Qualified Contract Request. Such request must be accompanied by a non-refundable processing fee of $3,000.

(17) Ownership Transfer Fee. Requests to approve an ownership transfer must be accompanied by a non-refundable processing fee of $1,000.

(18) Unused Credit or Penalty Fee. Development Owners who have more tax credits allocated to them than they can substantiate through Cost Certification will return those excess tax credits prior to issuance of IRS Form 8609. For Competitive Housing Tax Credit Developments, a penalty fee equal to the one year credit amount of the lost credits (10 percent of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of IRS Form 8609 if the tax credits are not returned, and 8609's issued, within one hundred eighty (180) days of the end of the first year of the credit period. This penalty fee may be waived without further Board action if the Department recaptures and re-issues the returned tax credits in accordance with Internal Revenue Code, §42. If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Executive Director will recommend to the Board the imposition of a penalty on the score for any Competitive Housing Tax Credit Applications submitted by that Applicant or any Affiliate for any Application in an Application Round occurring concurrent to the return of credits or if no Application Round is pending, the Application Round immediately following the return of credits. If any such point penalty is recommended to be assessed and presented for final determination by the Board, it must include notice from the Department to the affected party not less than fourteen (14) calendar days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point penalties. The penalty will be assessed in an amount that reduces the Applicant's final awarded score by an additional 20 percent.

(19) Compliance Monitoring Fee. Upon receipt of the cost certification for HTC Developments or HTC Developments that are layered with Direct Loan funds, or upon the completion of the 24-month development period and the beginning of the repayment period for Direct Loan only Developments, the Department will invoice the Development Owner for compliance monitoring fees. The amount due will equal $40 per tax credit Unit and $34 per Direct Loan designated Unit, with two fees due for units that are dually designated. For HTC Developments, the fee will be collected, retroactively if applicable, beginning with the first year of the credit period. For Direct Loan only Developments, the fee will be collected beginning with the first year of the repayment period. The invoice must be paid prior to the issuance of IRS Form 8609 for HTC properties. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service. Compliance fees may be adjusted from time to time by the Department.

(20) Public Information Request Fee. Public information requests are processed by the Department in accordance with the provisions of Tex. Gov't Code, Chapter 552. The Department uses the guidelines promulgated by the Office of the Attorney General to determine the cost of copying and other costs of production.

(21) Adjustment of Fees by the Department and Notification of Fees. (§2306.6716(b)) All fees charged by the Department in the administration of the tax credit and HOME programs may be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. Unless otherwise determined by the Department, all revised fees shall apply to all Applications in process and all Developments in operation at the time of such revisions.

§10.902.Appeals Process (§2306.0321; §2306.6715).

(a) An Applicant or Development Owner may appeal decisions made by the Department pursuant to the process identified in this section. Matters that can be appealed include:

(1) A determination regarding the Application's satisfaction of applicable requirements, Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications), pre-application threshold criteria, underwriting criteria;

(2) The scoring of the Application under the applicable selection criteria;

(3) A recommendation as to the amount of Department funding to be allocated to the Application;

(4) Misplacement of an Application or parts of an Application, mathematical errors in scoring an Application, or procedural errors resulting in unequal consideration of the Applicant's proposal;

(5) Denial of a change to a Commitment or Determination Notice;

(6) Denial of a change to a loan agreement;

(7) Denial of a change to a LURA;

(8) Any Department decision that results in the erroneous termination of an Application; and

(9) Any other matter for which an appeal is permitted under this chapter.

(b) An Applicant or Development Owner may not appeal a decision made regarding an Application filed by or an issue related to another Applicant or Development Owner.

(c) An Applicant or Development Owner must file its appeal in writing with the Department not later than seven (7) calendar days after the date the Department publishes the results of any stage of the Application evaluation or otherwise notifies the Applicant or Development Owner of a decision subject to appeal. The appeal must be signed by the person designated to act on behalf of the Applicant or an attorney that represents the Applicant. For Application related appeals, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application as supplemented in accordance with the limitations and requirements of this chapter.

(d) The Executive Director may respond in writing not later than fourteen (14) calendar days after the date of actual receipt of the appeal by the Department. If the Applicant is not satisfied with the Executive Director's response to the appeal or the Executive Director does not respond, the Applicant may appeal directly in writing to the Board. While additional information can be provided in accordance with any rules related to public comment before the Board, the Department expects that a full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal be disclosed in the appeal documentation filed with the Executive Director. Full disclosure allows the Executive Director to make a fully informed decision based on a complete analysis of the circumstances, and verification of any information that may warrant a granting of the appeal in the Applicant's or Development Owner's favor.

(e) An appeal filed with the Board must be received by Department staff not more than seven (7) days after a response from the Executive Director and at least seven (7) days prior to the applicable Board meeting or if the period for an Executive Director response has elapsed the appeal can be heard by the Board if filed at least three (3) days prior to the applicable meeting.

(f) Board review of an Application related appeal will be based on the original Application.

(g) The decision of the Board regarding an appeal is the final decision of the Department.

(h) The Department will post to its website an appeal filed with the Department or Board and any other document relating to the processing of an Application related appeal. (§2306.6717(a)(5))

§10.903. Adherence to Obligations. (§2306.6720) Any Applicant, Development Owner, or other Person that fails to adhere to its obligations with regard to the programs of the Department, whether contractual or otherwise, made false or misleading representations to the Department with regard to an Application, request for funding, or compliance requirements, or otherwise violated a provision of Tex. Gov't Code, Chapter 2306 or a rule adopted under that chapter, may be subject to:

(1) Assessment of administrative penalties in accordance with the Department's rules regarding the assessment of such penalties. Each day the violation continues or occurs is a separate violation for purposes of imposing a penalty; and/or

(2) in the case of the competitive Low Income Housing Tax Credit Program, a point reduction of up to ten (10) points for any Application involving that Applicant over the next two Application Rounds succeeding the date on which the Department first gives written notice of any such failure to adhere to obligations or false or misleading representations. Point reductions under this section may be appealed to the Board.

§10.904. Alternative Dispute Resolution (ADR) Policy. In accordance with Tex. Gov't Code, §2306.082, it is the Department's policy to encourage the use of appropriate ADR procedures under the Governmental Dispute Resolution Act, Tex. Gov't Code, Chapter 2010, to assist in resolving disputes under the Department's jurisdiction. As described in Civil Practices and Remedies Code, Chapter 154, ADR procedures include mediation. Except as prohibited by law and the Department's Ex Parte Communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title. Any Applicant may request an informal conference with staff to attempt to resolve any appealable matter, and the Executive Director may toll the running of periods for appeal to accommodate such meetings. In the event a successful resolution cannot be reached, the statements made in the meeting process may not be used by the Department as admissions.

(4) Senator José Menéndez

The Senate of The State of Texas

Senator José Menéndez

District 26

October 14, 2016

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

Dear Director Irvine,

Thank you for your continued leadership at the Texas Department of Housing and Community Affairs (TDHCA). Under your watch, Texas has put more families in affordable housing. I'm proud of the work you and your agency accomplish. Last legislative session I authored the historic preservation amendment to Senate 1316 and helped pass the bill that is now a part of Texas Government Code 2306.6725. This statute provides the allocation of housing tax credits by TDHCA, which has a responsibility to assign points based on the ability of the proposed project to include the rehabilitation of historic structures. We have found that there are items in the proposed 2017 Qualified Application Plan (QAP) and other rules which hamper the success of revitalization projects in many parts of the state, notably proximity to railroads and concerted revitalization plans.

First, Texas communities were settled on the railroad, and as such, our historic structures tend to be near them. Rail yards were the center of commerce and towns sprang up around them. These historical structures are part of a city's identity and should be repurposed for affordable housing. I'm worried that requiring all tax credit properties to be 500 feet away from railroads would have a chilling effect on revitalization efforts. Therefore, I am encouraging TDHCA to remove this unnecessary barrier in the QAP by exempting historic properties from this requirement.

Second, the proposed 2017 proposed rules arbitrarily limit a downtown revitalization area to only cities with a population of 100,000 or more. This immediately disqualifies any rural or mid-sized Texas city. It concerns me that this requirement would limit tax credits to only 37 cities. Our goal should be to provide the most resources in areas of the state that needs it the most. Therefore, I propose TDHA amend this section by allowing qualified census tracts (QCT) in concerted revitalization plans (CRP) to compete, regardless of population size. By utilizing QCT and CRP, Texas is more in line with Chapter 42 of the Internal Revenue Code. Using QCT and CRP we are able to target our limited tax credits to maximize developments.

The QAP is a complicated process. Moreover, no system will ever be perfect and there will always be unintended negative consequences to implementation. In this case, however, I hope you will reassess the selection criteria and rules to better aid Texas cities and towns to preserve our past through preservation of historical structures. This was my goal when I added the historical preservation amendment to Senate Bill 1316. Thank you again for your hard and important work. If I can ever be of service, please don't hesitate to contact my office.

Sincerely,

Senator José Menéndez
The 26th District of Texas

Cc: Sharon Gamble, 9% Competitive Housing Tax Credit Program Administrator
Marni Holloway, Director of Multfamily Finance
Michael Lyttle, Chief of External Affairs

(9) City of Harlingen

CITY OF HARLINGEN TEXAS

CAPITAL OF THE LOWER RIO GRANDE VALLEY

Mission Statement:
"Ensure a business-friendly climate focused on economic growth, quality of life and efficient delivery of excellent services to our community."

September 8, 2016

Ms. Sharon Gamble
9% Competitive Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

Re: Use of LITHC for Historic Preservation

Dear Ms. Gamble:

I have reviewed the proposed 2017 QAP and wish to comment on a couple of the provisions. As mayor of a Rio Grande Valley community who supports both quality affordable housing for our citizens and the historic preservation of our buildings, I fail to understand why TDHCA would propose rules that assume these two goals are not compatible. Yet the proposed rules I have reviewed do just that.

The 84th Legislature made the rehabilitation and adaptive reuse of certified historic structures a priority for Texas through the Low Income Housing Tax Credit process. As written, your proposed rules would have a decidedly negative effect on the legislature's intent by making a typical historic project uncompetitive.

For example, TDHCA proposes that a project that qualifies for historic site points lose points if located in an area served by a school not having high Educational Quality scores. I do not understand the rationale behind that proposal. There is no logical relationship between a historic site and educational excellence. These two separate criteria should each stand on their own merits and not be coupled.

Also, the draft QAP expands the current buffer zone from active railroad tracks from 100' to 500' for evacuation purposes. This change negatively impacts downtown revitalization in Cities such as ours.

Texas cities were founded on railroad stops. Many historic structures are located in the settlement areas along and very near the railroad. There is no better evacuation option than the typical downtown street grid where historic properties are located. A grid street system provides exponential routes versus a one-way in and out scenario in a suburban environment.

The 500% increase in buffer seems arbitrary, has no demonstrable relationship to high quality housing, lacks scientific data demonstrating it would increase safety and is likely to result in many historic sites being disqualified form participating in the program. In many cities in Texas and across the nation, high end housing is located close to railroads and public transportation. In many cases such a location would

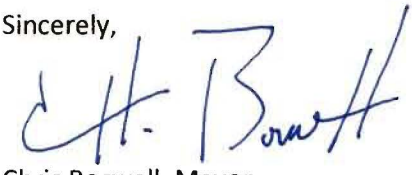
be a plus for the people living in the housing.

I also question the policy reason for dropping the poverty threshold from 55% to 30%. This change will greatly reduce the ability for Harlingen, as well as many other areas of South Texas to compete for Housing Tax Credit deals in areas where we desperately need affordable housing. This rule change may accomplish some desired goal in large cities like Houston or Dallas, but in the Rio Grande Valley there are many desirable locations for housing in areas that are close to our small, very clean and beautiful downtown areas. I ask that you consider the differences between the Valley and other areas of the state and not write rules that would preclude good, affordable housing in our downtown area that are very different than the inner cities in larger communities.

This provision will also indirectly affect the number of historic structures that could be rehabilitated through this program since most historic structures are located in older parts of communities that often have a higher poverty rate. Provisions like this should not be inserted in the QAP as a backhanded way of limiting the use of these funds to rehabilitate historic buildings.

For these reasons I urge you to decouple education excellence points from historic sight points, retain the current railroad buffer rule and retain the 55% poverty threshold, at least for our region. I appreciate the opportunity to comment on these rules and stand ready to discuss this matter with you in more detail as the process moves forward.

Sincerely,



Chris Boswell, Mayor
City of Harlingen

Cc: Mr. Tim Irvin,
Executive Director
Tx. Dept. of Housing & Comm. Affairs

Senator Eddie Lucio, Jr.
Tx. State Senator, District #27

Representative Eddie Lucio, III
Tx. State Representative District #38

Marni Holloway
Director of Multifamily Finance
Tx. Dept. of Housing & Comm. Affairs

(13) Fort Worth Housing Solutions (included list of supporting Housing Authorities that included the following: Abilene, Arlington, Austin, Baytown, Beeville, Bowie County, Central Texas Council of Governments, Central Texas Housing Consortium, Dallas, Denton, Edinburg, El Paso, Fort Worth, Georgetown, Granbury, Gregory, Hidalgo County, Houston, Kenedy, Mount Pleasant, New Boston, Pecos, Plano, Port Arthur, San Antonio, Tarrant County, Taylor, Travis County)

October 14, 2016

Ms. Sharon Gamble
Mr. Brent Stewart
TDHCA
221 East 11th Street
Austin, Texas 78701

Re: 2017 Uniform Multifamily Rules and QAP

Dear Ms. Gamble and Mr. Stewart:

Please accept these comments on the draft Uniform Multifamily Rule, Qualified Allocation Plan, and Real Estate Analysis Rules on behalf of the state's 28 leading public housing authorities.

Abilene
Arlington
Austin
Baytown
Beeville
Bowie County
Central Texas Council of Governments
Central Texas Housing Consortium
Dallas
Denton
Edinburgh
El Paso
Fort Worth
Georgetown
Granbury
Gregory
Hidalgo County
Houston
Kenedy
Mount Pleasant
New Boston
Pecos
Plano
Port Arthur
San Antonio
Tarrant County
Taylor
Travis County

These housing authorities span the entire state, including large cities, towns, and counties all over Texas.

1. Revise Undesirable Neighborhood Characteristics Rule

Legacy public housing sites house tens of thousands of children in Texas. Unfortunately, HUD cost-containment rules resulted in housing that was obsolete the day it was built many decades ago. For example, HUD considered air conditioning a "luxury amenity" and prohibited it in public housing design.

The Rental Assistance Demonstration (RAD) program provides a unique opportunity to undo the mistakes of the past. As you know, the low-income housing tax credit program is a critical component of RAD financing. Through RAD and in partnership with TDHCA, we have the opportunity right now to redevelop public housing.

We are truly appreciative of the Department's efforts in recent years to balance revitalization with high opportunity, and especially in the 2017 draft rules to make adjustments so that our large cities are still eligible to participate. The undesirable neighborhood characteristics rule is one part of the rules where further work is needed.

Attached to this letter is a mark-up of the rule, and all of these changes are logical extensions of the proposed rule. The Department should allow for flexibility in its rule so that the board of TDHCA will have the information pursuant to the disclosure rule, but then can decide whether redevelopment of a site is good housing policy for the State of Texas. Because this provision of the rules is so interwoven with fair housing, a letter from HUD that a site is consistent with site and neighborhood standards regulations should also be allowed as mitigating evidence.

On the subject of crime and neighborhoodscout.com, we have several concerns. First, this website requires a paid subscription. Second, the data is not transparent. We understand that the Department attempted to purchase the data a few years ago, and that this was not possible. It is very difficult to refute a statistic when the geographic boundaries of the beat or neighborhood are unknown and the underlying crime data is not provided. Third, some of the most successful public housing redevelopment efforts nationwide have involved high-crime areas. Cabrini-Green redevelopment, which has not been perfect but has certainly been better than the high-rise towers that existed before, is a prominent example. The reality is that children, unfortunately, are living in high-crime neighborhoods all over Texas and will continue to do so regardless of the 2017 TDHCA rules. The question for the Department is whether it wants to be part of the solution, or whether it wants to redline neighborhoods—the Fifth Ward in Houston, East Austin, downtown Fort Worth – with some of the greatest housing need in the State from participating in housing programs.

On schools, the reality is that many kids attend charter schools. In Austin, as many as 15% of kids attend charter school, and more are being built every day. The argument that a child will not have an opportunity for a good education if affordable housing is constructed in certain neighborhoods is not based in reality. Moreover, huge swaths of our largest cities are ineligible from participating in housing programs with the draft rule as it currently stands. We urge the Department to focus on elementary schools only, which are often neighborhood schools. The vast majority of children in affordable housing attend elementary schools.

As for remediation, the proposed 2017 rule is much stricter and severely constrains the board of TDHCA in exercising discretion. We urge the board to restore the discretion that was already in the rule *before* the federal court dismissed the Dallas lawsuit.

2. Revise Community Revitalization Points So HUD Revitalizing Areas Qualify

These points have become almost impossible to win. Opening this scoring item to HUD-approved plans such as a demolition/disposition approval or the Choice Neighborhoods program should qualify. We also urge the Department to limit these points to qualified census tracts as is required by Section 42(m)(1)(B)(ii)(III) of the Internal Revenue Code.

The requirement of a city resolution is unnecessary and should be removed. If HUD approves a revitalization plan, why would the Department not accept that approval?

The requirement that funding must have been committed to the plan already is also too restrictive. This section needs to be revised to allow redevelopment where HUD has found that a site is part of a "revitalizing area" under HUD regulations. HUD has always carved out an exception to fair housing for revitalizing areas in the site and neighborhood standards. Examples of revitalizing areas at 24 CFR 983.57(e)(3)(vi) include "sites that are an integral part of the overall local strategy for the preservation or restoration of the immediate neighborhood and sites in a neighborhood experiencing significant private investment that is demonstrably improving the economic character of the area (a '**revitalizing area**')."

A letter from a city official or HUD should that a site is a revitalizing area should suffice for these points.

3. Cost Per Square Foot Points Should Focus on Eligible Hard Cost, Not Building Cost

One of the most helpful changes in the 2017 proposed QAP is the term "Eligible Hard Cost" which allows developers voluntarily to include costs in eligible basis to qualify for points. We applaud the Department for this change, which will lead to more transparency and due diligence regarding costs at application.

We do recommend clarifying that the Building Cost limits only apply to Eligible Building Costs so that the first sentences read:

"An Application may qualify to receive up to twelve (12) points based on either the Building Cost per square foot of the proposed Development voluntarily included in eligible basis ("Eligible Building Cost") or the Hard Costs per square foot of the proposed Development voluntarily included in eligible basis ("Eligible Hard Cost"), as originally submitted in the Application. For purposes of this paragraph, Eligible Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Eligible Hard Cost will include general contractor overhead, profit, and general requirements."

Real Estate Analysis Rules

Two changes to the REA rules would be very helpful in RAD transactions: developer fee and property valuation in determining acquisition credits.

The first is allowing 15% developer fee on acquisition costs in 4% tax credit transaction if financed through the RAD program. This would be a carve-out to the general rule that no developer fee is allowed on related-party acquisitions, and would reflect the work that is required in seeking the necessary HUD approval, such as for demolition/disposition and RAD. Also, because the 4% program is not competitive, this change would not harm other developments' feasibility.

The second change to REA rules is to allow the appraisal determining acquisition value in a RAD transaction to reflect market value of the property rather than restricted value. As discussed and approved by the board at the October 13 meeting, this approach to valuation is consistent with HUD guidance and with state agency underwriting practices of RAD transactions throughout the country, including Colorado, Florida, Georgia, New Jersey, Pennsylvania, South Carolina, and

Virginia. Nationwide a number of closed RAD transactions have been awarded acquisition credits based on building values derived using market rents under the income approach. Tax counsel for these transactions have opined that this approach is reasonable, as have national accounting and appraisal firms. The reason this approach has been accepted nationwide is that in the "As Is" condition public housing developments operate on a breakeven basis, preventing an accurate valuation under the income approach. There are several ways in which HUD may allow the release of public housing restrictions. For public housing converting to Section 8 assistance, at the closing of RAD transactions, the existing public housing restrictions are removed and the property is unencumbered. This release of public housing restrictions supports the use of a market-rent derived value. The additional resources generated by this approach can be significant in markets with strong rental markets, where affordability crises often exist. For example, in Austin the differential between appraised value based on market rents versus RAD rents represented approximately $5 million in additional tax credit equity generated from acquisition tax credits.

Below is the requested revision:

" §10.304(d)(10)(B) Appraisal Rules and Guidelines: Value Estimates, Developments with Project-Based Rental Assistance.

(B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value". For public housing converting to project-based rental assistance or project-based vouchers under the Rental Assistance Demonstration (RAD) program, the value must be based on the unrestricted market rents. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates and/or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter."

Thank you for the opportunity to provide comments. We look forward to continuing to work with TDHCA so that important redevelopment opportunities can be appropriately pursued with the 4% and 9% low-income housing tax credit programs.

Sincerely,

Naomi W. Byrne
President, Fort Worth Housing Solutions
PHA QAP Committee Chair

Supporting Public Housing Authorities:

Abilene
Arlington
Austin
Baytown
Beeville
Bowie County
Central Texas Council of Governments
Central Texas Housing Consortium
Dallas
Denton
Edinburgh
El Paso
Fort Worth
Georgetown
Granbury
Gregory
Hidalgo County
Houston
Kenedy
Mount Pleasant
New Boston
Pecos
Plano
Port Arthur
San Antonio
Tarrant County
Taylor
Travis County

(3) Undesirable Neighborhood Characteristics.

(A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. An Applicant may choose to disclose the presence of such characteristics at the time the pre-application (if applicable) is submitted to the Department. Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit the documentation described under subparagraphs (C) and (D) of this paragraph at pre- application and staff may perform an assessment of the Development Site to determine Site eligibility. The Applicant understands that any determination made by staff or the Board at the time of bond inducement regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the undesirable neighborhood characteristics become available while the full Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board. Should staff determine that the Development Site has any of the characteristics described in subparagraph (B) of this paragraph and such characteristics were not disclosed, the Application may be subject to termination. Termination due to non-disclosure may be appealed pursuant to §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)). The presence of any characteristics listed in subparagraph (B) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit, and include, where applicable, a review as described in subparagraph (C) of this paragraph. The assessment of the Development Site and neighborhood will be presented to the Board with a recommendation with respect to the eligibility of the Development Site. Factors to be considered by the Board, despite the existence of the undesirable neighborhood characteristics are identified in subparagraph (E) of this paragraph. Should the Board make a determination that a Development Site is ineligible, the termination of the Application resulting from such Board action is not subject to appeal.

(B) The undesirable neighborhood characteristics include those noted in clauses (i) - (iv) of this subparagraph and additional information as provided in subparagraphs (C) and (D) must be submitted in the Application. If an Application for a Development Site involves three or more undesirable neighborhood characteristics, in order to be found eligible it will be expected that, in addition to demonstrating satisfactory mitigation for each characteristic disclosed, the Development Site must be located within an area in which there is a concerted plan of revitalization already in place or that private sector economic forces, such as those referred to as gentrification are already underway and indicate a strong likelihood of a reasonably rapid transformation of the area to a more economically vibrant area. In order to be considered as an eligible Site despite the presence of such undesirable neighborhood characteristic, an Applicant must demonstrate actions being taken that would lead a reader to conclude that there is a high probability the undesirable characteristic will be sufficiently mitigated within a reasonable time, typically prior to placement in service, and that the undesirable

characteristic will either no longer be present or will have been sufficiently mitigated such that it would not have required disclosure.

a. The Development Site is located within a census tract that has a poverty rate above ~~40~~30 40 percent for individuals

~~b. The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.~~

c. The Development Site is located within 1,000 feet (measured from nearest boundary of blighted structure) of ~~multiple~~ at least 5 vacant structures visible from the street, which that have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.

d. The Development Site is ~~l~~located within the attendance zones of an elementary school~~, a middle school or a high school~~ that does not have a Met Standard rating by the Texas Education Agency. ~~Any school in the attendance zone that has not achieved Met Standard for three consecutive years and has failed by at least one point in the most recent year, unless there is a clear trend indicating imminent compliance, shall be unable to mitigate due to the potential for school closure as an administrative remedy pursuant to Chapter 39 of the Texas Education Code.~~ In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary~~, middle and high school, respectively,~~ which may possibly be attended by the tenants in determining whether or not disclosure is required. The applicable school rating will be the 2016~~5~~ accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K- 6), ~~middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12)~~, the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. ~~Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating.~~ Development Sites subject to an Elderly Limitation or Single Room Occupancy is considered exempt and does not have to disclose the presence of this characteristic.

(C) Should any of the undesirable neighborhood characteristics described in subparagraph (B) of this paragraph exist, the Applicant must submit the Undesirable Neighborhood Characteristics Report that contains the information described in clauses (i)-(viii) of this subparagraph and subparagraph (D) of this paragraph so that staff may conduct a further Development Site and neighborhood review.

(i) A determination regarding neighborhood boundaries, which will be based on the review of a combination of natural and manmade physical features (rivers, highways, etc.), apparent changes in land use, the Primary Market Area as defined in the Market Analysis, census tract or municipal boundaries, and information obtained from any Site visits;

(ii) An assessment of general land use in the neighborhood, including comment on the prevalence of residential uses;

(iii) An assessment concerning any of the features reflected in paragraph (3) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (3);

(iv) An assessment of the number of existing affordable rental units (generally includes rental properties subject to TDHCA, HUD, or USDA restrictions) in the Primary Market Area, including comment on concentration based on the size of the Primary Market Area;

(v) An assessment of the percentage of households residing in the census tract that have household incomes equal to or greater than the median household income for the MSA or county where the Development Site is located; ~~and~~

An assessment of the number of market rate multifamily units in the neighborhood and their current rents and levels of occupancy;

(vii) An assessment of school performance for each of the schools in the attendance zone containing the Development that did not achieve the Met Standard rating, for the previous two academic years (regardless of whether the school Met Standard in those years), that includes the TEA Accountability Rating Report, a discussion of performance indicators and what progress has been made over the prior year, and progress relating to the goals and objectives identified in the campus improvement plan in effect; and

(viii) Any additional information necessary to complete an assessment of the Development Site, as requested by staff.

(D) Information regarding mitigation of undesirable neighborhood characteristics should be relevant to the undesirable characteristics that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application and may include, but is not limited to, the measures described in clauses (i)-(iv) of this subparagraph. In addition to those measures described herein, documentation from the local municipality may also be submitted stating the Development is consistent with their obligation to affirmatively further fair housing. The mitigation must be accompanied by a report summarizing the data and to support the conclusion of a reasonable expectation by staff and the Board that the issues will be resolved or significantly improved by the time the Development is placed into service. Conclusions for such reasonable expectation must be affirmed by an industry professional, as appropriate.

(i) Evidence that the poverty rate within the census tract has decreased over the five-year period preceding the date of Application, or that the census tract is contiguous to a census tract with a poverty rate below ~~20%~~ 40% and there are no physical barriers between them such as highways or rivers which would be reasonably considered as separating or dividing the neighborhood containing the proposed Development from the low poverty area must be submitted. Other mitigation may include, but is not limited to, evidence of the availability of adult education and job training that will lead to full-time permanent employment for tenants, a description of additional tenant services to be provided at the development that address root causes of poverty, evidence of gentrification in the area (which may include contiguous census tracts) and a clear and compelling reason that the Development should be located at the Site. ~~Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility.~~

(ii) Evidence that crime rates are ~~substantially~~ decreasing, based on violent crime data from the city's police department or county sheriff's department, for the police beat or patrol area within which the Development Site is located, based on the population of the police beat or patrol area that would yield a crime rate below the threshold indicated in this section. The instances of violent crimes within the police beat or patrol area that encompass the census tract, calculated based on the population of the census tract, may also be used. A map plotting all instances of violent crimes within a one-half mile radius of the Development Site may also be provided that reflects that the crimes identified are not at a level that would warrant an ongoing concern. The data must include incidents reported during the entire 2015 and 2016 calendar year. Violent crimes reported through the date of Application submission may be requested by staff as part of the assessment performed under subparagraph (C) of this paragraph. A written statement from the local police department or local law enforcement agency, including a description of efforts by such enforcement agency addressing issues of crime and the results of their efforts may be provided, and depending on the data provided by the Applicant, such written statement may be required, as determined by staff. For Rehabilitation or Reconstruction Developments, to the extent that the high level of criminal activity is concentrated at the Development Site, documentation may be submitted to indicate such issue(s) could be remedied by the proposed Development. Evidence of such remediation should go beyond what would be considered a typical scope of work and should include a security plan, partnerships with external agencies, or other efforts to be implemented that would deter criminal activity. Information on whether such security features have been successful at any of the Applicant's existing properties should also be submitted, if applicable.

(iii) Evidence of mitigation efforts to address blight or abandonment may include new construction in the area already underway that evidences public and/or private investment. ~~Acceptable mitigation to address extensive blight should go beyond the acquisition or demolition of the blighted property and identify the efforts and timeline associated with the completion of a desirable permanent use of the site(s) such as new or rehabilitated housing, new business, development and completion of dedicated municipal or county-owned park space.~~ In instances where blight exists but may only include a few properties, mitigation efforts could include partnerships with

local agencies to engage in community-wide clean-up efforts, or other efforts to address the overall condition of the neighborhood.

(iv) Evidence of mitigation for all of the schools in the attendance zone that have not achieved Met Standard will include documentation from a school official with oversight of the school in question that indicates current progress towards meeting the goals and performance objectives identified in the Campus Improvement Plan. For schools that have not achieved Met Standard for two consecutive years, a letter from the superintendent, member of the school board or a member of the transformation team that has direct experience, knowledge and oversight of the specific school must also be submitted. The letter should, at a minimum and to the extent applicable, identify the efforts that have been undertaken to increase student performance, decrease mobility rate, benchmarks for re-evaluation, increased parental involvement, plans for school expansion, and long-term trends that would point toward their achieving Met Standard by the time the Development is placed in service. ~~The letter from such education professional should also speak to why they believe the staff tasked with carrying out the plan will be successful at making progress towards acceptable student performance considering that prior Campus Improvement Plans were unable to do so.~~ Such assessment could include whether the team involved has employed similar strategies at prior schools and were successful. In addition to the aforementioned letter from the school official, information should also be provided that addresses the types of services and activities offered at the Development or external partnerships that will facilitate and augment classroom performance.

(E) In order for the Development Site to be found eligible by the Board, despite the existence of undesirable neighborhood characteristics, the Board must find that the use of Department funds at the Development Site must be consistent with achieving at least one of the goals in clauses (i) – (iii) of this subparagraph.

(i) Preservation of existing occupied affordable housing units, subject to federal or state income restrictions and mitigating evidence supports a conclusion that the characteristic will be remedied in an appropriate time period, which may be after placement in service; or ~~to ensure they are safe and suitable, or development of new high quality affordable housing units that are subject to federal rent or income restrictions; and~~

(ii) Factual determination that the undesirable characteristic(s) that has been disclosed are not of such a nature or severity that ~~they~~ should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph. Such information sufficiently supports a conclusion that the characteristic(s) will be remedied by the time the Development places into service; Or

(iii) The Development satisfies HUD Site and Neighborhood Standards or is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order.

(17) 5th Ward Community Redevelopment Corporation

FIFTH WARD COMMUNITY REDEVELOPMENT CORPORATION
4300 Lyons Ave., Suite 300
P.O. Box 21502
Houston, TX
77226-1502

Main 713-674-0175
Fax: 713-674-0176
http:www.fifthwardcrc.org

October 12, 2016

Via Email – tim.irvine@tdhca.state.tx.us
Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, Texas 78701

Re: Comments - Draft 2017 Qualified Allocation Plan and Multifamily Rule

Dear Mr. Irvine,

Thank you to you and your staff for taking the time to meet with me regarding concerns with the proposed 2017 Qualified Allocation Plan (QAP) and Multifamily Rules (Rules) that impact the production of quality affordable housing in our inner city neighborhoods. Please accept the following comments and suggested changes.

§11.9. Competitive HTC Selection Criteria

(d) Criteria promoting community support and engagement.

(7) Concerted Revitalization Plan. This scoring category provides points to those Applicant's that has Development Site that is located in an area targeted for revitalization. We are concerned that the language required to be in the plan is too prescriptive. Not all revitalization plans will include specific language on affordable housing which is now required language in an eligible plan. We encourage staff to look at each plan and/or problems on an individual basis and respectfully recommend the following changes to this scoring category:

> "(7) Concerted Revitalization Plan. An Application may qualify for points under this paragraph only if no points are elected under ~~subsection (c)(4)~~ subsection (c)(4)(A) of this section related to Opportunity Index.
>
> (A) (II) The problems in the revitalization area must be identified through a process in which affected local residents had an opportunity to express their views….and prioritized. These problems ~~must include the limited availability of safe, decent, affordable housing and~~ may include the following:"

FIFTH WARD COMMUNITY REDEVELOPMENT CORPORATION
4300 Lyons Ave., Suite 300
P.O. Box 21502
Houston, TX
77226-1502

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http:www.fifthwardcrc.org

Additionally, since we now have a set-aside requiring the Department to award tax credits to the highest scoring revitalization development, its seems duplicative to grant 2-points to a Development that is explicitly identified by a city or county as contributing more than any other to the concerted revitalization effort. We therefore recommend that these 2-additional points under this scoring category be added to the 4-points under subparagraph (ii)*(I)* for a total of 6-points if the Applicant provides a letter from the appropriate local official providing documentation of measurable improvements within the revitalization area based on the target efforts outlined in the plan.

Lastly, we recommend the following change to subparagraph (ii) *(III)* so that developments proposed to be located in inner city revitalization areas receive the benefits of an additional point if the targeted area is also rich in amenities.

> "Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4)(B) ~~§11.9(c)(4)~~."

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(6) Historic Preservation. We recommend the following changes that will incentivize historic preservation and the use of historic tax credit leveraging in the production of affordable housing:

> "…At least 10 percent ~~seventy-five percent~~ of the residential units shall reside within the Certified Historic Structure and the Development must reasonably be expected to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609…"

Subchapter B. Site and Development Requirements and Restrictions
§10.101. Site Requirements and Restrictions

(2) Undesirable Site Features. A Development Site that is within a certain distance from one or more undesirable **site** features will be deemed ineligible for consideration unless otherwise determined by the Board. Several of the changes add significant barriers to site selection and inner city development and re-development activities. We understand that the Board may determine that the described feature is acceptable but Applicants will not spend their money, time

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and effort to pursue a site that might not receive Board approval because of the site's proximity to an ineligible site feature as described in Staff's draft. We request that this provision remain as written in 2016.

(3) Undesirable Neighborhood Characteristics. A Development Site that is within a certain distance from one or more undesirable **area** features described in this provision will be deemed ineligible for consideration unless the Applicant can "*demonstrate satisfactory mitigation for each characteristic disclosed*". As currently drafted if the Development Site is part of a revitalization effort, the Applicant must also prove that there is a *"strong likelihood of a reasonable rapid transformation of the area to a more economically vibrant area"*.

Several of the ineligible features including the performance of the area schools and the proximity of the Development Site to blighted structures are not within the control of an Applicant to solve and therefore it would not be possible for the Applicant to demonstrate "*satisfactory mitigation"* or the likelihood of *"reasonable rapid transformation of the area"*.

Furthermore, deeming a Development Site that is located in a census tract with a poverty rate above 30% as ineligible will significantly impact the production of affordable housing in our inner city neighborhoods that are gentrifying and undergoing active revitalization and in particular those transactions financed with 4% tax credits. Currently bond project are feasible if they are located in QCT census tracts that qualify the proposed development for the QCT basis boost. QCT census tracts are by definition in higher poverty areas.

We suggest delete this provision in its entirety from the Rules. Alternatively, we suggest going back to the 2016 rules with respect to ineligible poverty rates and our other requested change are as follows:

Paragraph (B) should be revised such that if undesirable neighborhood characteristics exist in order for the proposed development to be found eligible the Applicant should only be required to provide evidence that the Development Site is in an area covered by a concerted plan of revitalization to demonstrate satisfactory mitigation for each characteristic disclosed. This evidence will demonstrate that the city is focused on the area and is targeting the area for investment and improvement.

Paragraph (B) (i) The Development Site is located with a census tract that has a poverty rate above <u>40 percent</u> ~~30 percent~~ for individuals <u>(or 55 percent for Developments in Region 11 and 13)</u>.

FIFTH WARD COMMUNITY REDEVELOPMENT CORPORATION
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http:www.fifthwardcrc.org

Paragraph (B) (iv) The performance of the applicable schools should be striken from consideration of ineligibility since the Applicant has no control over the decision making process regarding school performance. Additionally, as stated in testimony to the Board, stable, quality and affordable housing which the housing tax credit program is designed to provide is a factor in improving school performance.

Subchapter C. Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules or Pre-Clearance for Applications

§10.204. Required Documentation for Application Submission

(16) Section 811 Project Rental Assistance Program. We believe that the Section 811 program should not be a threshold item. We believe this should remain a scoring item, where an applicant has the choice of participation.

We respectfully submit these suggested changes for staff's consideration and inclusion in the final 2017 QAP and Rules. Please do not hesitate to contact me with any questions.

Sincerely,

Harvey Clemons Jr.

Cc: Marni Holloway, TDHCA – marni.holloway@tdhca.state.tx.us
Sharon Gamble, TDHCA – Sharon.gamble@tdhca.state.tx.us

(19) Texas Association of Community Development Corporations

TACDC
ENHANCING COMMUNITIES THROUGHOUT TEXAS

October 14, 2016

Ms. Sharon Gamble
Tax Credit Program Manager
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Thank you for the opportunity to comment on the Draft 2017 Housing Tax Credit Qualified Allocation Plan and Multifamily Rules. On behalf of TACDC's members, we want to thank staff for undertaking a longer, more thorough review of the QAP and rules and soliciting input from developers and trade associations.

Our comments represent a consensus of our member's input on the draft plans.

QUALIFIED ALLOCATION PLAN

11.2 Program Calendar for Competitive Housing Tax Credits.
We strongly urge the Department to not shorten the Administrative Deficiency Response Deadline from 5 days to 3 days. While we can understand the importance of speeding up the application review process, shortening the window for addressing deficiencies places undue burden on applicants and ultimately could prevent high quality deals from getting credits.

11.9(c)(3) Tenant Services
We encourage TDHCA to add details to the following requirement in order to ensure value for the tenants.

(B) The Applicant certifies that the Development will have a dedicated Service Coordinator or Case Manager to contact local service providers, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. The Service Coordinator will pro-actively engage and assess residents' needs through direct communication and tailor services appropriately. A Development selecting these points will also provide:
☐Minimum of 1 monthly program on-site provided by a local service provider; AND
☐Minimum of 3 local service providers engaged to provide services to residents; OR
☐The applicant is a non-profit and is a self-providing services to residents of the Development.

11.9(c)(4) Opportunity Index.
We strongly support TDHCA increasing the poverty rate to 20% and allowing second and third quartile census tracts to score on the Opportunity Index. These changes alone open up new areas that are excellent places to locate housing while also avoiding the consequence of all developers going for the few highest income and lowest poverty census tracts in the Region and driving up land prices.

TACDC
ENHANCING COMMUNITIES
THROUGHOUT TEXAS

11.9(c)(8) Proximity to Urban Core.
We strongly support the creation of Proximity to Urban Core as a scoring item in the 2017 Draft QAP. We feel that this point category will provide an opportunity to balance exurban and suburban housing siting with housing located in the Urban Core.

11.9(d)(5) Community Support from State Representative.
If a state rep seat is vacated, allow developers an extension to request a letter after the seat is filled.

11.9(e)(2) Cost of Development per Square Foot.
We are very supportive of the re-write of this section allowing excess development costs to be taken out of basis and essentially be fundraised for by other sources.

2017 Multi-Family Rules –Subchapter B

10.101(a)(2) Undesirable Site Features
We support the inclusion of the following language that was added to the 2017 Draft that was posted for public comment: "Sites within the applicable distance of any undesirable features identified in subparagraphs (A) – (K) may be considered ineligible….." We think it is important that Staff and Board have the flexibility to waive the presence of Undesirable Site Features if the Developer can prove that the feature would not negatively impact residents.

10.101(a)(3) Undesirable Neighborhood Characteristics
In general, TACDC recommends that

10.101(a)(3)(B)(i) The Development Site is located within a census tract that has a poverty rate of 30 percent for individuals.
We request TDHCA increase the poverty trigger from 30 to 40 percent.

10.101(a)(3)(B)(iv) Met Standard for three consecutive years and has failed by at least one point…
TACDC recommends the three consecutive year Met Standard requirement for schools be deleted from this section. The TEA ratings do not provide sufficient reason for directing affordable housing away from large numbers of neighborhoods and communities. After discussing the presence of high quality, safe, and secure housing options with educators, our members are reporting that safe, affordable housing options are increasingly viewed by educators as an important element in reducing school transfers and absenteeism and improving grades among low income students. Building safe, quality affordable housing in areas without other quality housing options assists in improving schools by providing stability for students and help them to be successful in their schools

TACDC
ENHANCING COMMUNITIES THROUGHOUT TEXAS

"Development Sites subject to an Elderly Limitation or Single Room Occupancy are considered exempt and do not have to disclose the presence of this characteristic.
We support including Single Room Occupancy to this section. Single Room Occupancy developments have similar, if not more restrictive, occupancy standards as Elderly Limitation projects.

10.101(a)(3)(C) "Should any 3 or more of the undesirable neighborhood characteristics described in subparagraph (B) of this paragraph exist, the Applicant must submit the Undesirable Neighborhood Characteristics Report…."
TACDC encourages increasing the threshold for requiring an Undesirable Neighborhood Characteristics Report from any one characteristic to three characteristics.

Multi-Family Rules –Subchapter C

10.201(7)(B) Administrative Deficiencies for Competitive Applications
We recommend returning to a 5-day deficiency timeframe.

(20) Rural Rental Housing Association of Texas, Inc.

RURAL RENTAL HOUSING ASSOCIATION OF TEXAS, INC.
417-C West Central | Temple, Texas 76501 | 254.778.6111 | Fax 254.778.6110 | e-mail: office@rrhatx.com

October 11, 2016

Timothy K. Irvine
Executive Director
Texas Department of Housing
and Community Affairs
Austin, Texas

Dear Mr. Irvine,

Thank you for the opportunity to provide comments to the TDHCA 2017 Rules and Qualified Allocation Plan (QAP). I am writing on behalf of the Rural Rental Housing Association of Texas (RRHA), and representing more than 700 rural properties in Texas with our comments.

Staff has given the tax credit community a lot of opportunity to express priorities and opinions on changes for the 2017 QAP, and we want to thank the Department for the many hours dedicated to conversation on this subject. Our interests lie primarily in the preservation of existing rural properties, but our members are also interested in new rural construction. Without adequate efforts, and funding, to preserve the USDA portfolio, we may begin to lose many of these existing properties currently serving rural residents, due to lack of resources for maintenance and modernization.

Overall, we find our greatest challenges in the published 2017 QAP is with the poverty rates, the quartiles (and therefore the so called donut holes), and the high opportunity requirements including educational quality. Existing properties need preservation solutions and we find several of the 2017 changes challenging to that effort. We hope to work with staff to make the suggested changes we've identified in this comment letter.

Our comments follow: Green print suggests to "strike the language". Red print suggests to "add the language" or to emphasize/recommend a change .

Subchapter B—Site and Development Requirements and Restrictions.

We support the exception under 10.101 (2) permitting properties with existing financing from HUD, VA and USDA to be granted an exemption by the Board from these requirements. We have additional comments to this section. The ability to use tax exempt bond cap to revitalize multiple properties at one time, could be a major solution to our preservation efforts. In the interest of large-volume impact for preservation, we recommend the following changes to this section.

10.101(6) (B) Tax exempt bond developments must meet 7 points with amenities, unless the application is preserving multiple (3 or more) USDA rural properties under one bond transaction.

(7) Tenant Support Services: Tax exempt bonds must select at least 8 points, unless the application is preserving multiple (3 or more) USDA rural properties under one bond transaction.

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Subchapter C—Submission and Ineligibility

10.203(7)(iii)—For developments proposing to refinance USDA section 515 loan, a letter from USDA confirming it has been provided with a complete loan transfer application at the time of application. within 60 days of tax credit award. (strike application, add within 60 days of tax credit award). This requirement places an unnecessary burden on both the applicant and the USDA staff. At application, it is not known if an award will be received. RD will not likely process the application until it's known the project will receive an award, and it requires a lot from the owners to focus on both applications simultaneously. By June, the list of awardees begins to take shape, and the applicant will have a better idea whether or not they may receive credits. We request the Department delay receipt of the letter from USDA until 60 days after award of tax credits.

QAP Comments
1*1.4 Tax Credit Request and Award Limits*.

(c)Increase in Eligible Basis (30 percent Boost). (Add) Rural preservation of more than 3 properties under one bond structure will receive a 30% increase in eligible basis for 4% credits in rural designated properties. One of the difficulties the RRHA faces, individually and as a group, is the ability to preserve the portfolio of USDA 515 properties in Texas. We would welcome working with the TDHCA to make the 4% credits and bond cap a viable financing solution, and adding the 30% boost for existing rural properties would help begin that effort.

11.7 Tie Breaker Factors.

(4) (strike) Applications having achieved the maximum Educational Quality score and the highest number of point items on the Educational Quality menu that they were unable to claim because of the 5 point cap on that item. RRHA has recommended removal of Educational Quality as a section of the QAP, and we therefore recommend removal of Tie Breaker (4). We believe Tie Breaker (3) regarding Opportunity Index Scoring is sufficient to capture the Department's preference for high opportunity without repeating a selection for Educational Quality. We additionally ask that tie breaker number (6) becomes last. Applications proposed to be located in a census tract with the lowest poverty rate, as compared to another application with the same score, is requested to be the last tie breaker.

11.8 (b)(1)(I) Pre-application Disclosure of any Undesirable Neighborhood Characteristic under 10.101(a)(4). Move this disclosure requirement to full application. Property sites, and particularly new construction sites, will not know all of the undesirable neighborhood characteristics at pre-application and we ask that requirement be moved to full application, and the penalty points (the loss of pre-application points for failing to disclose one undesirable characteristic) be removed.

11.9 (c)(4) Opportunity Index

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A. RRHA requests that the poverty rate of less than the greater of 20% or the median poverty rate for the region meet the requirements in (i) or (ii), does not apply to USDA set-aside or At-Risk set-aside (add). Rural poverty rates are higher than urban areas of the State of Texas. The Bowen Statewide Rural Housing Analysis commissioned by TDHCA, states that in rural Texas overall, 19.2% of the population is living below the poverty level, compared with 16.4% in the urban areas of Texas. Additionally, the percentage of persons age 65+ living in poverty in rural regions, is nearly double the 1.1% and 1.2% living in urban areas and Texas, respectively. We therefore, request that set-aside's be exempt from the poverty rate requirement. We additionally request that all rural properties are not required to meet 1st-4th Quartile requirements.

(i) The Development Site is located in an urban census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and an income rate in the highest quartiles within the uniform service region. (2 points)

(ii) The Development Site is located in an urban census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile, ….(1 point)

(B)(i) (XV) (add) The Development site is located within 1 mile of an elementary, middle and high school that meets 77 or higher on the 2016 TEA Index 1 score, or the average of the regional subregion score (1 point for each school up to 3 points). RRHA has recommended the deletion of section (5) Educational Excellence, and added a new criteria under urban areas to recognize the

We further request that all 1 mile limitations in rural areas be changed to no less than 3 miles. Rural communities are often more spread out because of the availability of land, and people are accustomed to driving greater distances. Additionally, rural communities are often served by one census tract in the 3rd or 4th quartile, and surrounded by farm or ranch land in the 1st or 2nd quartile.

(B) An application that meets the foregoing criteria, (add) and USDA and At-Risk set-aside properties, may qualify for up to (7) points for any one or more of the following factors.

(ii) For Developments located in a Rural Area an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIV) of this subparagraph.

(VI) The development site is located within 3 miles of a public park (add) or outdoor recreation facility (1 point). How is a public park different from (XII) an outdoor recreation facility? We recommend they both be put under the same item selection.

(VII) The development site is located within (strike) 7 miles (add)15 miles of a University or Community College campus (1 point). It is unlikely that many Community College Campuses will be identified in a large percentage of rural areas, but in locations where they can be found, 15 miles is still a reasonable distance for faculty, staff and students to drive and will provide a greater likelihood of finding locations to qualify for this criteria.

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(VIII) The development site is located within 5 miles of a retail shopping (strike) center with XX square feet of stores, (add) with speciality stores, around a central plaza or a main street with 10 or more distinctly identifiable and separate businesses (add 3 points), or a retail shopping center containing 5 or more stores (add 1 point). This would be extremely difficult to verify the square footage of retail shopping, and store size is not an attraction; the items for sale are the opportunity and draw to shopping. Additionally, the charm of rural Texas is often in it's central plaza or 'core' of the community. This is what attracts people to many rural Texas communities and should be recognized and credited in a higher score than 1 point.
(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is (strike) 27% (add) 20% or higher. (1 point). The average percentage of adults achieving an Associates Degree in rural areas is 23.23%. The Bowen Statewide Rural Housing Analysis finds that, in aggregate, 20.9% of people in all rural regions are college graduates or hold advanced degrees. RRHA requests that the percentage in this menu item be lowered to 20% of adults with an Associates Degree or higher.

(X) Development site is within (strike) 2 (add) 3 miles of a government-sponsored, (add) non-profit sponsored, or privately-sponsored museum (1point). There is no apparent reason to exclude other types of sponsorship for museums, therefore RRHA recommends adding non-profit sponsored and privately sponsored to the government sponsored choice. In fact, it is often the non-profit and privately sponsored museums that offer free, or reduced admissions.

(XI) Development site is within (Strike) 1 mile (add) 3 miles of an indoor recreation facility available to the public (1 point).

(XII) (strike) Development site is within 1 mile of an outdoor recreation facility available to the public (1 point). (add) Development site is within 3 miles of a high school (1 point), elementary (1 point) or middle school (1 point) with a rating of MET STANDARD rating. RRHA is recommending 1 point for each school within the 3 miles, for a possible total of 3 points, to recognize desirability of, and close proximity to schools.

(XIII) This selection appears to be a duplicate of (VI) a public park, and we therefore recommend a different criteria. We have combined this selection with menu item (VI).

(XIII) Development site is within (strike) 1 miles (add) 3 miles of community, civic or service organizations that provide regular and recurring services available tot he entire community….(1 point)

(XIV) (add) Development Site is within 3 miles of a movie theater, and at least 3 restaurants open to the public (1 point). This selection is added to provide an additional choice, and to give rural a similar number of options as given to urban.

(5) Educational Quality. RRHA agrees with TAAHP's comments that Educational Excellence should be stricken entirely as a result of the Supreme Courts decision on ICP v TDHCA. Furthermore, the preceding section (c)(4) Opportunity Index is going to provide sufficient location criteria to locate properties where residents will be served with amenities offered by the

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community. RRHA has suggested an additional menu option under opportunity index for both rural and urban to recognize educational quality and proximity to schools.

(6) Underserved Area.

(C) A census tract (strike) within the boundaries of an incorporated area that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development within the past 15 years (3 points). There are many rural properties that are not in an incorporated area, and we therefore, suggest that the language, 'within the boundaries of an incorporated area' be removed.

(D) For areas not scoring points for (C) above, a census tract that does not have a Development subject to an active tax credit LURA, (add) or that has not received a competitive tax credit allocation for a property serving the same population as the proposed development in the past 15 years (2 points). RRHA recommends adding the population services for a lesser point than (C) above.

(7) Concerted Revitalization Plan.

We appreciate staff's efforts to provide revitalization incentives, and options. However linking the high opportunity threshold to this section as published in the Register, doesn't address the properties that need the rehab the most. Many of those properties could be impacted by natural disasters, or other easily explained and reasonable vacancy triggers, such as the end of a school year. We have several recommendations under this section, and hope the staff will remain open to more viable preservation solutions than the ones recommended. Texas developers didn't get fully engaged in USDA 515 new construction until the 1980's, and the recent survey by RRHA members shows that only about 18% of the entire state's portfolio was constructed prior to 1980, giving very little choice in properties that would qualify. Additionally, the tax credit program did not actually become operational until 1987 and later.

(B) For Developments located in a Rural Area.

(i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction in a location meeting the threshold requirements of the Opportunity Index 11.9(c)(4)(A) as changed in RRHA recommendations above, or strike the language entirely, (add) of a development of 50 or more units, in a rural area that is currently leased at (strike) 90% (add) 85% or greater by low income households and which was initially constructed prior to (strike) 1980 (add) 1985; or for a development of less than 50 units in a rural area that is currently leased at 80% or greater by low income households and which was initially constructed prior to 1985, as public housing or as affordable housing with support from USDA, HUD, the HOME program, or CDBG program.

(ii) conform the number of units and placed in service date to (i) above. (add) Any property that has less than 85% occupancy for a property of 50 or more units, or 80% occupancy for a property of less than 50 units, may petition the TDHCA Board for a waiver of this rule in order to rehab an existing property(s).

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(iii) Applications may receive 2 points in addition to those under sub-clause (i) or (ii) if the development is explicitly identified in a letter by the city or county as contributing (strike) more than any other development to the concerted revitalization efforts oft he city or county. City officials are not likely to make the statement that any one development effort contributes more than any other development effort to their plan, particularly in a small community. If the development contributes to revitalization efforts, we believe that should be sufficient, and request that the language "more than any other development" is removed.

(Iv) Applications may receive (1) additional point if the development is in a location that would score at least 4 points under Opportunity Index 11.9(c)(4), as amended in this letter. Otherwise, this should be removed entirely. we do not believe many of the existing rural properties will meet the threshold criteria under Opportunity Index.

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(3) Pre-application Participation
(G) The Development Site does not have Undesirable Neighborhood Characteristics as described in 1-TAC 10.101(a)(4) that were not disclosed with the (strike) pre-application (add) application.

Thank you for the opportunity to provide these comments. Members of our Association welcome, and will seek, the further opportunity to talk with TDHCA staff about these changes.

Sincerely,

Paul Farmer
President
Rural Rental Housing Association of Texas
(512) 756-6809 Ext.203

October 13, 2016
Timothy K. Irvine
Executive Director
Texas Department of Housing
and Community Affairs
Austin, Texas

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QAP Comments

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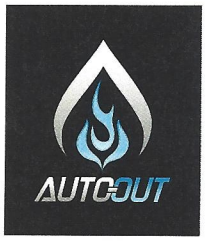

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tax credit allocation for a property serving the same population as the proposed development in the past 15 years (2 points). RRHA recommends adding the population services for a lesser point than (C) above.

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We appreciate staff's efforts to provide revitalization incentives, and options. However linking the high opportunity threshold to this section as published in the Register, doesn't address the properties that need the rehab the most. Many of those properties could be impacted by natural disasters, or other easily explained and reasonable vacancy triggers, such as the end of a school year. We have several recommendations under this section, and hope the staff will remain open to more viable preservation solutions than the ones recommended. Texas developers didn't get fully engaged in USDA 515 new construction until the 1980's, and the recent survey by RRHA members shows that only about 18% of the entire state's portfolio was constructed prior to 1980, giving very little choice in properties that would qualify. Additionally, the tax credit program did not actually become operational until 1987 and later.

(B) For Developments located in a Rural Area.

(i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction in a location meeting the threshold requirements of the Opportunity Index 11.9(c)(4)(A) as changed in RRHA recommendations above, or strike the language entirely, (add) of a development of 50 or more units, in a rural area that is currently leased at (strike) 90% (add) 85% or greater by low income households and which was initially constructed prior to (strike) 1980 (add) 1985; or for a development of less than 50 units in a rural area that is currently leased at 80% or greater by low income households and which was initially constructed prior to 1985, as public housing or as affordable housing with support from USDA, HUD, the HOME program, or CDBG program.

(ii) conform the number of units and placed in service date to (i) above. (add) Any property that has less than 85% occupancy for a property of 50 or more units, or 80% occupancy for a property of less than 50 units, may petition the TDHCA Board for a waiver of this rule in order to rehab an existing property(s).

(iii) Applications may receive 2 points in addition to those under sub-clause (i) or (ii) if the development is explicitly identified in a letter by the city or county as contributing (strike) more than any other development to the concerted revitalization efforts oft he city or county. City officials are not likely to make the statement that any one development effort contributes more than any other development effort to their plan, particularly in a small community. If the development contributes to revitalization efforts, we believe that should be sufficient, and request that the language "more than any other development" is removed.

(Iv) Applications may receive (1) additional point if the development is in a location that would score at least 4 points under Opportunity Index 11.9(c)(4), as amended in this letter. Otherwise, this should be removed entirely. we do not believe many of the existing rural properties will

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meet the threshold criteria under Opportunity Index.
(e) Criteria promoting the efficient use of limited resources and applicant accountability.
(3) Pre-application Participation
RURAL RENTAL HOUSING ASSOCIATION OF TEXAS
(G) The Development Site does not have Undesirable Neighborhood Characteristics as described in 1-TAC 10.101(a)(4) that were not disclosed with the (strike) pre-application (add) application.

Thank you for the opportunity to provide these comments. Members of our Association welcome, and will seek, the further opportunity to talk with TDHCA staff about these changes.

Sincerely,

Robin Williams, CAS & BoD - RRHA

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October 11, 2016

Revised

Timothy K. Irvine
Executive Director
Texas Department of Housing
and Community Affairs
Austin, Texas

Dear Mr. Irvine,

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Staff has given the tax credit community a lot of opportunity to express priorities and opinions on changes for the 2017 QAP, and we want to thank the Department for the many hours dedicated to conversation on this subject. Our interests lie primarily in the preservation of existing rural properties, but our members are also interested in new rural construction. Without adequate efforts, and funding, to preserve the USDA portfolio, we may begin to lose many of these existing properties currently serving rural residents, due to lack of resources for maintenance and modernization.

Overall, we find our greatest challenges in the published 2017 QAP is with the poverty rates, the quartiles (and therefore the so called donut holes), and the high opportunity requirements including educational quality. Existing properties need preservation solutions and we find several of the 2017 changes challenging to that effort. We hope to work with staff to make the suggested changes we've identified in this comment letter.

Our comments follow: Green print suggests to "strike the language". Red print suggests to "add the language" or to emphasize/recommend a change .

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We support the exception under 10.101 (2) permitting properties with existing financing from HUD, VA and USDA to be granted an exemption by the Board from these requirements. We have additional comments to this section. The ability to use tax exempt bond cap to revitalize multiple properties at one time, could be a major solution to our preservation efforts. In the interest of large-volume impact for preservation, we recommend the following changes to this section.

10.101(6) (B) Tax exempt bond developments must meet 7 points with amenities, unless the application is preserving multiple (3 or more) USDA rural properties under one bond transaction.

(7) Tenant Support Services: Tax exempt bonds must select at least 8 points, unless the application is preserving multiple (3 or more) USDA rural properties under one bond transaction.

RRHA OF TEXAS

Revised

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Subchapter C—Submission and Ineligibility

10.203(7)(iii)—For developments proposing to refinance USDA section 515 loan, a letter from USDA confirming it has been provided with a complete loan transfer application at the time of application. within 60 days of tax credit award. (strike application, add within 60 days of tax credit award). This requirement places an unnecessary burden on both the applicant and the USDA staff. At application, it is not known if an award will be received. RD will not likely process the application until it's known the project will receive an award, and it requires a lot from the owners to focus on both applications simultaneously. By June, the list of awardees begins to take shape, and the applicant will have a better idea whether or not they may receive credits. We request the Department delay receipt of the letter from USDA until 60 days after award of tax credits.

QAP Comments
1*1.4 Tax Credit Request and Award Limits*.

(c)Increase in Eligible Basis (30 percent Boost). (Add) Rural preservation of more than 3 properties under one bond structure will receive a 30% increase in eligible basis for 4% credits in rural designated properties. One of the difficulties the RRHA faces, individually and as a group, is the ability to preserve the portfolio of USDA 515 properties in Texas. We would welcome working with the TDHCA to make the 4% credits and bond cap a viable financing solution, and adding the 30% boost for existing rural properties would help begin that effort.

11.7 Tie Breaker Factors.

(4) (strike) Applications having achieved the maximum Educational Quality score and the highest number of point items on the Educational Quality menu that they were unable to claim because of the 5 point cap on that item. RRHA has recommended removal of Educational Quality as a section of the QAP, and we therefore recommend removal of Tie Breaker (4). We believe Tie Breaker (3) regarding Opportunity Index Scoring is sufficient to capture the Department's preference for high opportunity without repeating a selection for Educational Quality. We additionally ask that tie breaker number (6) becomes last. Applications proposed to be located in a census tract with the lowest poverty rate, as compared to another application with the same score, is requested to be the last tie breaker.

11.8 (b)(1)(I) Pre-application Disclosure of any Undesirable Neighborhood Characteristic under 10.101(a)(4). Move this disclosure requirement to full application. Property sites, and particularly new construction sites, will not know all of the undesirable neighborhood characteristics at pre-application and we ask that requirement be moved to full application, and the penalty points (the loss of pre-application points for failing to disclose one undesirable characteristic) be removed.

11.9 (c)(4) Opportunity Index

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Revised

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A. RRHA requests that the poverty rate of less than the greater of 20% or the median poverty rate for the region meet the requirements in (i) or (ii), does not apply to USDA set-aside or At-Risk set-aside (add). Rural poverty rates are higher than urban areas of the State of Texas. The Bowen Statewide Rural Housing Analysis commissioned by TDHCA, states that in rural Texas overall, 19.2% of the population is living below the poverty level, compared with 16.4% in the urban areas of Texas. Additionally, the percentage of persons age 65+ living in poverty in rural regions, is nearly double the 1.1% and 1.2% living in urban areas and Texas, respectively. We therefore, request that set-aside's be exempt from the poverty rate requirement. We additionally request that all rural properties are not required to meet 1st-4th Quartile requirements.

(i) The Development Site is located in an urban census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and an income rate in the highest quartiles within the uniform service region. (2 points)

(ii) The Development Site is located in an urban census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile, ….(1 point)

(B)(i) (XV) (add) The Development site is located within 1 mile of an elementary, middle and high school that meets 77 or higher on the 2016 TEA Index 1 score, or the average of the regional subregion score (1 point for each school up to 3 points). RRHA has recommended the deletion of section (5) Educational Excellence, and added a new criteria under urban areas to recognize the

We further request that all 1 mile limitations in rural areas be changed to no less than 3 miles. Rural communities are often more spread out because of the availability of land, and people are accustomed to driving greater distances. Additionally, rural communities are often served by one census tract in the 3rd or 4th quartile, and surrounded by farm or ranch land in the 1st or 2nd quartile.

(B) An application that meets the foregoing criteria, (add) and USDA and At-Risk set-aside properties, may qualify for up to (7) points for any one or more of the following factors.

(ii) For Developments located in a Rural Area an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIV) of this subparagraph.

(VI) The development site is located within 3 miles of a public park (add) or outdoor recreation facility (1 point). How is a public park different from (XII) an outdoor recreation facility? We recommend they both be put under the same item selection.

(VII) The development site is located within (strike) 7 miles (add)15 miles of a University or Community College campus (1 point). It is unlikely that many Community College Campuses will be identified in a large percentage of rural areas, but in locations where they can be found, 15 miles is still a reasonable distance for faculty, staff and students to drive and will provide a greater likelihood of finding locations to qualify for this criteria.

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(VIII) The development site is located within 5 miles of a retail shopping (strike) center with XX square feet of stores, (add) with speciality stores, around a central plaza or a main street with 10 or more distinctly identifiable and separate businesses (add 3 points), or a retail shopping center containing 5 or more stores (add 1 point). This would be extremely difficult to verify the square footage of retail shopping, and store size is not an attraction; the items for sale are the opportunity and draw to shopping. Additionally, the charm of rural Texas is often in it's central plaza or 'core' of the community. This is what attracts people to many rural Texas communities and should be recognized and credited in a higher score than 1 point.
(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is (strike) 27% (add) 20% or higher. (1 point). The average percentage of adults achieving an Associates Degree in rural areas is 23.23%. The Bowen Statewide Rural Housing Analysis finds that, in aggregate, 20.9% of people in all rural regions are college graduates or hold advanced degrees. RRHA requests that the percentage in this menu item be lowered to 20% of adults with an Associates Degree or higher.

(X) Development site is within (strike) 2 (add) 3 miles of a government-sponsored, (add) non-profit sponsored, or privately-sponsored museum (1point). There is no apparent reason to exclude other types of sponsorship for museums, therefore RRHA recommends adding non-profit sponsored and privately sponsored to the government sponsored choice. In fact, it is often the non-profit and privately sponsored museums that offer free, or reduced admissions.

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(C) A census tract (strike) within the boundaries of an incorporated area that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development within the past 15 years (3 points). There are many rural properties that are not in an incorporated area, and we therefore, suggest that the language, 'within the boundaries of an incorporated area' be removed.

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Thank you for the opportunity to provide these comments. Members of our Association welcome, and will seek, the further opportunity to talk with TDHCA staff about these changes.

Sincerely,

Paul Farmer
President
Rural Rental Housing Association of Texas
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October 11, 2016

Timothy K. Irvine
Executive Director
Texas Department of Housing
and Community Affairs
Austin, Texas

Dear Mr. Irvine,

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~~pre-selected~~ Rural site + development requirements and restrictions ~~with~~ of this Subchapter. ~~for 10.101~~

10.101(6) (B) Tax exempt bond developments must meet 7 points with amenities, unless the application is ~~preserving~~ multiple (3 or more) USDA rural properties under one bond transaction.

(7) Tenant Support Services: Tax exempt bonds must select at least 8 points, unless the application is ~~preserving~~ multiple (3 or more) USDA rural properties under one bond transaction.

rehabilitation rehabilitation

~~greater than 25yrs since construction/placed in service~~ ~~with more~~ preserving than 3 properties

Rehabs will be exempt, ~~subject to acceptable proof provided to TDHCA, from that the properties will replace existing systems w/ energy efficient amenities and continue to serve the community and current resident population, from~~

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(D) For areas not scoring points for (C) above, a census tract that does not have a Development subject to an active tax credit LURA, (add) or that has not received a competitive tax credit allocation for a property serving the same population as the proposed development in the past 15 years (2 points). RRHA recommends adding the population services for a lesser point than (C) above.

(7) Concerted Revitalization Plan.

We appreciate staff's efforts to provide revitalization incentives, and options. However linking the high opportunity threshold to this section as published in the Register, doesn't address the properties that need the rehab the most. Many of those properties could be impacted by natural disasters, or other easily explained and reasonable vacancy triggers, such as the end of a school year. We have several recommendations under this section, and hope the staff will remain open to more viable preservation solutions than the ones recommended. Texas developers didn't get fully engaged in USDA 515 new construction until the 1980's, and the recent survey by RRHA members shows that only about 18% of the entire state's portfolio was constructed prior to 1980, giving very little choice in properties that would qualify. Additionally, the tax credit program did not actually become operational until 1987 and later.

(B) For Developments located in a Rural Area.

(i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction in a location meeting the threshold requirements of the Opportunity Index 11.9(c)(4)(A) as changed in RRHA recommendations above, or strike the language entirely, (add) of a development of 50 or more units, in a rural area that is currently leased at (strike) 90% (add) 85% or greater by low income households and which was initially constructed prior to (strike) 1980 (add) 1985; or for a development of less than 50 units in a rural area that is currently leased at 80% or greater by low income households and which was initially constructed prior to 1985, as public housing or as affordable housing with support from USDA, HUD, the HOME program, or CDBG program.

(ii) conform the number of units and placed in service date to (i) above. (add) Any property that has less than 85% occupancy for a property of 50 or more units, or 80% occupancy for a property of less than 50 units, may petition the TDHCA Board for a waiver of this rule in order to rehab an existing property(s).

RURAL RENTAL HOUSING ASSOCIATION OF TEXAS, INC.
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(iii) Applications may receive 2 points in addition to those under sub-clause (i) or (ii) if the development is explicitly identified in a letter by the city or county as contributing (strike) more than any other development to the concerted revitalization efforts oft he city or county. City officials are not likely to make the statement that any one development effort contributes more than any other development effort to their plan, particularly in a small community. If the development contributes to revitalization efforts, we believe that should be sufficient, and request that the language "more than any other development" is removed.

(Iv) Applications may receive (1) additional point if the development is in a location that would score at least 4 points under Opportunity Index 11.9(c)(4), as amended in this letter. Otherwise, this should be removed entirely. we do not believe many of the existing rural properties will meet the threshold criteria under Opportunity Index.

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(3) Pre-application Participation
(G) The Development Site does not have Undesirable Neighborhood Characteristics as described in 1-TAC 10.101(a)(4) that were not disclosed with the (strike) pre-application (add) application.

Thank you for the opportunity to provide these comments. Members of our Association welcome, and will seek, the further opportunity to talk with TDHCA staff about these changes.

Sincerely,

Paul Farmer

Paul Farmer
President
Rural Rental Housing Association of Texas
(512) 756-6809 Ext.203

October 13, 2016
Timothy K. Irvine
Executive Director
Texas Department of Housing
and Community Affairs
Austin, Texas

Dear Mr. Irvine,
Thank you for the opportunity to provide comments to the TDHCA 2017 Rules and Qualified Allocation Plan (QAP). I am writing on behalf of the Rural Rental Housing Association of Texas (RRHA), and representing more than 700 rural properties in Texas with our comments.
Staff has given the tax credit community a lot of opportunity to express priorities and opinions on changes for the 2017 QAP, and we want to thank the Department for the many hours dedicated to conversation on this subject. Our interests lie primarily in the preservation of existing rural properties, but our members are also interested in new rural construction. Without adequate efforts, and funding, to preserve the USDA portfolio, we may begin to lose many of these existing properties currently serving rural residents, due to lack of resources for maintenance and modernization.
Overall, we find our greatest challenges in the published 2017 QAP is with the poverty rates, the quartiles (and therefore the so called donut holes), and the high opportunity requirements including educational quality. Existing properties need preservation solutions and we find several of the 2017 changes challenging to that effort. We hope to work with staff to make the suggested changes we've identified in this comment letter.
Our comments follow: Green print suggests to "strike the language". Red print suggests to "add the language" or to emphasize/recommend a change .
Subchapter B—Site and Development Requirements and Restrictions.
We support the exception under 10.101 (2) permitting properties with existing financing from HUD, VA and USDA to be granted an exemption by the Board from these requirements. We have additional comments to this section. The ability to use tax exempt bond cap to revitalize multiple properties at one time, could be a major solution to our preservation efforts. In the interest of large-volume impact for preservation, we recommend the following changes to this section.
10.101(6) (B) Tax exempt bond developments must meet 7 points with amenities, unless the application is preserving multiple (3 or more) USDA rural properties under one bond transaction.
(7) Tenant Support Services: Tax exempt bonds must select at least 8 points,
unless the application is preserving multiple (3 or more) USDA rural properties under one bond transaction.
Subchapter C—Submission and Ineligibility

10.203(7)(iii)—For developments proposing to refinance USDA section 515 loan, a letter from USDA confirming it has been provided with a complete loan transfer application at the time of application. within 60 days of tax credit award. (strike application, add within 60 days of tax credit award). This requirement places an unnecessary burden on both the applicant and the USDA staff. At application, it is not known if an award will be received. RD will not likely

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process the application until it's known the project will receive an award, and it requires a lot from the owners to focus on both applications simultaneously. By June, the list of awardees begins to take shape, and the applicant will have a better idea whether or not they may receive credits. We request the Department delay receipt of the letter from USDA until 60 days after award of tax credits.

QAP Comments

11.4 Tax Credit Request and Award Limits.

(c)Increase in Eligible Basis (30 percent Boost). (Add) Rural preservation of more than 3 properties under one bond structure will receive a 30% increase in eligible basis for 4% credits in rural designated properties. One of the difficulties the RRHA faces, individually and as a group, is the ability to preserve the portfolio of USDA 515 properties in Texas. We would welcome working with the TDHCA to make the 4% credits and bond cap a viable financing solution, and adding the 30% boost for existing rural properties would help begin that effort.

11.7 Tie Breaker Factors.

(4) (strike) Applications having achieved the maximum Educational Quality score and the highest number of point items on the Educational Quality menu that they were unable to claim because of the 5 point cap on that item. RRHA has recommended removal of Educational Quality as a section of the QAP, and we therefore recommend removal of Tie Breaker (4). We believe Tie Breaker (3) regarding Opportunity Index Scoring is sufficient to capture the Department's preference for high opportunity without repeating a selection for Educational Quality. We additionally ask that tie breaker number (6) becomes last. Applications proposed to be located in a census tract with the lowest poverty rate, as compared to another application with the same score, is requested to be the last tie breaker.

11.8 (b)(1)(I) Pre-application Disclosure of any Undesirable Neighborhood Characteristic under 10.101(a)(4). Move this disclosure requirement to full application. Property sites, and particularly new construction sites, will not know all of the undesirable neighborhood characteristics at pre-application and we ask that requirement be moved to full application, and the penalty points (the loss of pre-application points for failing to disclose one undesirable characteristic) be removed.

11.9 (c)(4) Opportunity Index

A. RRHA requests that the poverty rate of less than the greater of 20% or the median poverty rate for the region meet the requirements in (i) or (ii), does not apply to USDA set-aside or At-Risk set-aside (add). Rural poverty rates are higher than urban areas of the State of Texas. The Bowen Statewide Rural Housing Analysis commissioned by TDHCA, states that in rural Texas overall, 19.2% of the population is living below the poverty level, compared with 16.4% in the urban areas of Texas. Additionally, the percentage of persons age 65+ living in poverty in rural regions, is nearly double the 1.1% and 1.2% living in urban areas and Texas, respectively. We therefore, request that set-aside's be exempt from the poverty rate requirement. We additionally request that all rural properties are not required to meet 1st-4th Quartile requirements.

(i) The Development Site is located in an urban census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and an income rate in the highest quartiles within the uniform service region. (2 points)

(ii) The Development Site is located in an urban census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile, ….(1 point)

(B)(i) (XV) (add) The Development site is located within 1 mile of an elementary, middle and high school that meets 77 or higher on the 2016 TEA Index 1 score, or the average of the regional subregion score (1 point for each school up to 3 points). RRHA has recommended the deletion of section (5) Educational Excellence, and added a new criteria under urban areas to recognize the

We further request that all 1 mile limitations in rural areas be changed to no less than 3 miles.

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Rural communities are often more spread out because of the availability of land, and people are accustomed to driving greater distances. Additionally, rural communities are often served by one census tract in the 3rd or 4th quartile, and surrounded by farm or ranch land in the 1st or 2nd quartile.

(B) An application that meets the foregoing criteria, (add) and USDA and At-Risk set-aside properties, may qualify for up to (7) points for any one or more of the following factors.

(ii) For Developments located in a Rural Area an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIV) of this subparagraph.

(VI) The development site is located within 3 miles of a public park (add) or outdoor recreation facility (1 point). How is a public park different from (XII) an outdoor recreation facility? We recommend they both be put under the same item selection.

(VII) The development site is located within (strike) 7 miles (add)15 miles of a University or Community College campus (1 point). It is unlikely that many Community College Campuses will be identified in a large percentage of rural areas, but in locations where they can be found, 15 miles is still a reasonable distance for faculty, staff and students to drive and will provide a greater likelihood of finding locations to qualify for this criteria.

(VIII) The development site is located within 5 miles of a retail shopping (strike) center with XX square feet of stores, (add) with speciality stores, around a central plaza or a main street with 10 or more distinctly identifiable and separate businesses (add 3 points), or a retail shopping center containing 5 or more stores (add 1 point). This would be extremely difficult to verify the square footage of retail shopping, and store size is not an attraction; the items for sale are the opportunity and draw to shopping. Additionally, the charm of rural Texas is often in it's central plaza or 'core' of the community. This is what attracts people to many rural Texas communities and should be recognized and credited in a higher score than 1 point.

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(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is (strike) 27% (add) 20% or higher. (1 point). The average percentage of adults achieving an Associates Degree in rural areas is 23.23%. The Bowen Statewide Rural Housing Analysis finds that, in aggregate, 20.9% of people in all rural regions are college graduates or hold advanced degrees. RRHA requests that the percentage in this menu item be lowered to 20% of adults with an Associates Degree or higher.

(X) Development site is within (strike) 2 (add) 3 miles of a government-sponsored, (add) nonprofit sponsored, or privately-sponsored museum (1point). There is no apparent reason to exclude other types of sponsorship for museums, therefore RRHA recommends adding nonprofit sponsored and privately sponsored to the government sponsored choice. In fact, it is often the non-profit and privately sponsored museums that offer free, or reduced admissions.

(XI) Development site is within (Strike) 1 mile (add) 3 miles of an indoor recreation facility available to the public (1 point).

(XII) (strike) Development site is within 1 mile of an outdoor recreation facility available to the public (1 point). (add) Development site is within 3 miles of a high school (1 point), elementary (1 point) or middle school (1 point) with a rating of MET STANDARD rating. RRHA is recommending 1 point for each school within the 3 miles, for a possible total of 3 points, to recognize desirability of, and close proximity to schools.

(XIII) This selection appears to be a duplicate of (VI) a public park, and we therefore recommend a different criteria. We have combined this selection with menu item (VI).

(XIII) Development site is within (strike) 1 miles (add) 3 miles of community, civic or service organizations that provide regular and recurring services available tot he entire community….(1 point)

(XIV) (add) Development Site is within 3 miles of a movie theater, and at least 3 restaurants open to the public (1 point). This selection is added to provide an additional choice, and to give rural a similar number of options as given to urban.

(5) Educational Quality. RRHA agrees with TAAHP's comments that Educational Excellence

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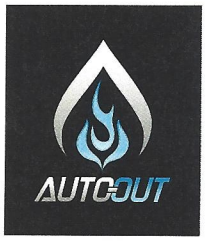

should be stricken entirely as a result of the Supreme Courts decision on ICP v TDHCA. Furthermore, the preceding section (c)(4) Opportunity Index is going to provide sufficient location criteria to locate properties where residents will be served with amenities offered by the community. RRHA has suggested an additional menu option under opportunity index for both rural and urban to recognize educational quality and proximity to schools.

(6) Underserved Area.

(C) A census tract (strike) within the boundaries of an incorporated area that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development within the past 15 years (3 points). There are many rural properties that are not in an incorporated area, and we therefore, suggest that the language, 'within the boundaries of an incorporated area' be removed.

(D) For areas not scoring points for (C) above, a census tract that does not have a Development subject to an active tax credit LURA, (add) or that has not received a competitive

tax credit allocation for a property serving the same population as the proposed development in the past 15 years (2 points). RRHA recommends adding the population services for a lesser point than (C) above.

(7) Concerted Revitalization Plan.

We appreciate staff's efforts to provide revitalization incentives, and options. However linking the high opportunity threshold to this section as published in the Register, doesn't address the properties that need the rehab the most. Many of those properties could be impacted by natural disasters, or other easily explained and reasonable vacancy triggers, such as the end of a school year. We have several recommendations under this section, and hope the staff will remain open to more viable preservation solutions than the ones recommended. Texas developers didn't get fully engaged in USDA 515 new construction until the 1980's, and the recent survey by RRHA members shows that only about 18% of the entire state's portfolio was constructed prior to 1980, giving very little choice in properties that would qualify. Additionally, the tax credit program did not actually become operational until 1987 and later.

(B) For Developments located in a Rural Area.

(i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction in a location meeting the threshold requirements of the Opportunity Index 11.9(c)(4)(A) as changed in RRHA recommendations above, or strike the language entirely, (add) of a development of 50 or more units, in a rural area that is currently leased at (strike) 90% (add) 85% or greater by low income households and which was initially constructed prior to (strike) 1980 (add) 1985; or for a development of less than 50 units in a rural area that is currently leased at 80% or greater by low income households and which was initially constructed prior to 1985, as public housing or as affordable housing with support from USDA, HUD, the HOME program, or CDBG program.

(ii) conform the number of units and placed in service date to (i) above. (add) Any property that has less than 85% occupancy for a property of 50 or more units, or 80% occupancy for a property of less than 50 units, may petition the TDHCA Board for a waiver of this rule in order to rehab an existing property(s).

(iii) Applications may receive 2 points in addition to those under sub-clause (i) or (ii) if the development is explicitly identified in a letter by the city or county as contributing (strike) more than any other development to the concerted revitalization efforts oft he city or county. City officials are not likely to make the statement that any one development effort contributes more than any other development effort to their plan, particularly in a small community. If the development contributes to revitalization efforts, we believe that should be sufficient, and request that the language "more than any other development" is removed.

(Iv) Applications may receive (1) additional point if the development is in a location that would score at least 4 points under Opportunity Index 11.9(c)(4), as amended in this letter. Otherwise, this should be removed entirely. we do not believe many of the existing rural properties will

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meet the threshold criteria under Opportunity Index.
(e) Criteria promoting the efficient use of limited resources and applicant accountability.
(3) Pre-application Participation
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(G) The Development Site does not have Undesirable Neighborhood Characteristics as described in 1-TAC 10.101(a)(4) that were not disclosed with the (strike) pre-application (add) application.

Thank you for the opportunity to provide these comments. Members of our Association welcome, and will seek, the further opportunity to talk with TDHCA staff about these changes.

Sincerely,

Robin Williams, CAS & BoD - RRHA

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(22) Texas Affiliation of Affordable Housing Providers

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October 14, 2016
Revised letter and attachments
Board of Directors
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Via Hand Delivery

Dear Chairman Oxer & Members of the Board:

On behalf of the Texas Affiliation of Affordable Housing Providers (TAAHP), we submit several recommendations for modifications to the 2017 Multifamily Program Rules, as well as the Qualified Allocation Plan (QAP) and the Underwriting and Loan Policy that are currently subject to public comment. TAAHP has more than 300 members including affordable housing professionals active in the development, ownership and management of affordable housing in the State of Texas.

It is TAAHP's policy to submit only recommendations that represent consensus opinions from the membership. TAAHP's recommendations were developed at a meeting with the TAAHP Membership on October 5, 2016 in response to the rules approved for public comment by the TDHCA Governing Board on September 8, 2015. With those comments as an introduction, please consider the following recommendations with regard to specific provisions of the rules:

Subchapter B – Site and Development Requirements and Restrictions

Section 10.101(a)(2) Undesirable Site Features

TAAHP requests changes to this section, which are included on the attached pages.

Justification: The radii in previous years' QAP are more appropriate. With regard to proximity to railroad tracks, the proposed change is consistent with HUD's guidelines on proximity to active railroad tracks which are more appropriate guidelines to use because they address the impact to the resident, rather than redline entire swaths of urban areas.

Section 10.101(a)(2)(B) Undesirable Neighborhood Characteristics.

TAAHP requests that this entire section be deleted.

Justification: This section is a remnant of the remediation plan and should be removed from the rules in the wake of the dismissal of the ICP litigation. It is an anti-urban provision that works to eliminate large swaths of urban areas from the competition. Furthermore, because data sources like Neighborhood Scout and school performance data are inherently faulty and produce inconsistent results, such measures are of questionable value in determining the worth of certain neighborhoods.

In the event that TDHCA does not support an entire removal of this section, we recommend the attached revisions.

§10.101(b)(2) Development Size Limitations.

TAAHP requests the attached changes.

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Justification: In prior years, the QAP allowed developments in Rural areas that exceeded 80 units. Rural Areas exist in major MSAs such as Dallas, Austin, Houston, San Antonio, El Paso and Mc Allen that have significant demand. The market study is the most reasonable method to determine the number of units demand in the market.

Section 10.101(b)(4) Mandatory Development Amenities

TAAHP requests the attached changes regarding the deletion of solar screens on all windows and a slight revision to the exception for PTAC units.

Justification: Solar screens should continue to be a point item under the green initiatives point category but not a mandatory amenity because they add construction costs to a project, limit the amount of ambient light in units, and negatively impact the appearance of developments. Energy efficient windows are a much better design option for appearance, light and energy efficiency.

Modern PTAC units are energy and cost efficient, and older existing buildings typically don't have the plate height to allow for both central air and a reasonable ceiling height. The current rule allows them in SRO, efficiency units and historic preservation properties, which is lower case and an undefined term. Our proposed rule replaces "historic preservation" with "Rehabilitation" which is a defined term.

Section 10.101(b)(7) Tenant Supportive Services

TAAHP requests deletion of the new language regarding who provides these services.

Justification: Many properties, especially smaller rural ones, cannot financial support a separate staff person or a third party provider to provide supportive services. In many rural communities, those third party providers are not even available.

Subchapter C: Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications

Section 10.201(7)(B) Administrative Deficiencies for Competitive HTC Applications.

TAAHP recommends changing the period to cure a deficiency from three days to five days.

Justification: More times than not, requests for deficiencies create a ripple effect, where making a change to one document requires the applicant to change several other documents to be consistent. When one of the documents requires input from a third party, addressing the deficiency takes time. Five days is more appropriate than three days.

§10.203 Public Notifications

TAAHP requests deletion of the new 14-day requirement.

Justification: It is very difficult to keep track of newly elected or appointed officials, especially with respect to school districts and school superintendents. The 14-day period creates yet another pitfall for Applicants who are trying to coordinate many evolving bits of information. Under prior rules Applicants have until the date of full application to notify newly elected/appointed officials.

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§10.204(13) Required Documentation for Application Submission – Previous Participation.
As reworded, this provision now seems to require that all Affiliates of a Development Owner complete the previous participation documentation. Please add after Affiliates "that have an ownership interest in the Development."

Section 10.204(16) Section 811 Project Based Rental Assistance Program

TAAHP requests that this Section be moved to the scoring criteria under the QAP as in past years. We believe this change can be made since the QAP addresses the Section 811 Program under the Tenants with Special Needs section of the QAP. Adding this provision back into the QAP would be a natural outgrowth of the Tenants with Special Needs section.

The justification for moving back to the scoring section is that as threshold, this provision burdens 4% developments in two ways. First, administering 811 units creates added operating expenses to deals that often need tax exemptions or soft money to work. Second, adding this requirement limits the ability to position these developments as "workforce housing" and gives neighbors another reason to strongly oppose.

In the event that TDHCA determined that it cannot be moved back to scoring, TAAHP requests that 4% tax credit/tax exempt bond transactions are exempted from this threshold provision.

Regardless of whether this section remains as a threshold item or a scoring item, TAAHP requests that this rule revert back to the previous version where the Applicant has a choice regarding placing Section 811 residents in an existing development or in the development for which an application is submitted. This flexibility is important to applicants, especially when committing existing developments to accept Section 811 residents requires lender and investor approval. TAAHP recommends language allowing applicants to choose to locate the Section 811 residents in an existing development or in the development for which the application is submitted. Additionally, we request language that an Applicant be exempt from locating 811 residents in an existing development if the applicant provides evidence that it cannot receive approval from either its lender or investor.

Additionally, TAAHP recommends that for developments with 100 or fewer units, the unit requirement be 10% of total units, not 10 units.

Qualified Allocation Plan

Section 11.7 Tie Breaker Factors

TAAHP recommends the attached changes.

Justification: Having an educational quality factor as two of the seven tie breakers seems unnecessary. Poverty rate should be deleted so that linear distance is the last tie breaker should all others fail to break the tie.

Section 11.9 Competitive HTC Selection Criteria

(c) Criteria to service and support Texans most in need

(3) *Tenant Services*

In the event that educational quality is removed as a separate point category, TAAHP recommends reducing the total points available for this point category to 10 for all development types based on the scoring parity bill. Please see the attached changes.

(4) *Opportunity Index*

TAAHP requests the attached changes.

Justification: This section is greatly improved from previous years. The attached changes merely reflect some slight nuances to clarify some of the grey areas. Additionally, we recommend including aspects of the educational quality scoring item into the menu item, and deleting educational quality as a separate scoring item.

(5) Educational Quality

TAAHP recommends that this scoring item be deleted in its entirety but that aspects of it are included in the Opportunity Index scoring, as previously provided.

Justification: This scoring provision is the greatest barrier to applications with sites in highly populated urban areas from competing for 9% tax credits. Furthermore, the testing and the standards by which Texas schools are rated are flawed and unreliable. Over the past few rounds, this scoring item has effectively determined the winners and losers. Since the high opportunity scoring category still has a rigorous income and poverty threshold, the areas with well performing schools already have a point advantage. Maintaining this scoring item would provide for those areas to get even more points for the same neighborhood feature, especially given that TAAHP's recommendation is to add school ratings to the new high opportunity menu item.

(6) Underserved Area

TAAHP members have differing opinions in this point category, although members reached consensus on the language in the attached changes.

(7) *Tenant Populations with Special Needs*

TAAHP recommends moving the Section 811 requirements back to this scoring category. TAAHP recommends reverting back to the language regarding scoring of Section 811 participation that was included in the 2016 QAP.

(d) Criteria promoting community support and engagement

(5) Community Support from State Representative

TAAHP requests the attached changes to this section.

Justification: Allowing state representatives to change their position mid-process creates another way for NIMBY-based concerns to pollute the process, thereby creating yet another barrier to placing affordable housing in high opportunity neighborhoods. Because this point category has a 16-point swing between letters of opposition and support, allowing state representative to change their position after developers have incurred significant expense to submit applications creates an unfair burden on the development community.

(6) Input from Community Organizations

TAAHP recommends a new four points scoring category for additional letters in the event that the application gets zero points under the Local Government Support scoring category. This is an extension of the current language which allows letters of support from "civic organizations." The additional four points are only available when the application scores a zero on the Local Government Support scoring category.

Justification: Municipalities often fail to place the requested resolutions on their agenda or the resolution fails for lack of motion, even in cases when city staff recommends approval of the proposed development. This additional four points for input from community organizations will help balance the scoring in those cases.

(7) Concerted Revitalization Plan

TAAHP recommends the attached changes. Please note that TAAHP recommends deleting the population minimum because this point item is so difficult to achieve with all the limiting requirements.

Justification: This scoring item is simply too difficult to achieve because even the most sophisticated planning efforts do not result in a final product that can meet the extremely codified TDHCA definition. The proposed changes are subtle but will open up areas that are truly undergoing revitalization to receiving these points.

(e) Criteria promoting the efficient use of limited resources and applicant accountability

(1) Cost of Development per Square Foot

TAAHP recommends some clarifying language in the attached changes. It is important that both Hard Costs and Building Costs are defined by cost that are voluntarily included in Eligible Basis.

(3) Pre-Application Participation

TAAHP recommends the attached changes regarding deleting the subsection (g) regarding the disclosure of undesirable site features.

Justification: It is difficult to fully vet all aspects of a neighborhood prior to pre-application. Losing these points based on something that the Applicant simply missed prior to pre-app is an undue burden.

(4) Leveraging of Private, State and Federal Resources

TAAHP recommends the attached language, which reflects the 2016 language.

Justification: There are several other provisions that create a cap on credits per application. This one is very difficult to achieve and results in an under-leverage of credits.

Section 11.10 Third Party Request for Administrative Deficiency for Competitive HTC Applications

TAAHP recommends the attached language.

Justification: Staff sometimes make errors, as we all do. It is important that these errors be caught during the third party request for administrative deficiency process.

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Subchapter D – Underwriting and Loan Policy

§10.304(d)(10)(B) Appraisal Rules and Guidelines: Value Estimates, Developments with Project-Based Rental Assistance

TAAHP recommends the attached changes.

Justification: Nationwide a number of closed RAD transactions have been awarded acquisition credits based on building values derived using market rents under the income approach. Tax counsel for these transactions have opined that this approach is reasonable, as have national accounting and appraisal firms. The reason this approach has been accepted nationwide is that in the "As Is" condition public housing developments operate on a breakeven basis, preventing an accurate valuation under the income approach. There are several ways in which HUD may allow the release of public housing restrictions. For public housing converting to Section 8 assistance, at the closing of RAD transactions, the existing public housing restrictions are removed and the property is unencumbered. This release of public housing restrictions supports the use of a market-rent derived value.

Tax credits are an essential tool in the rehabilitation and redevelopment of public housing developments under the RAD program, and the nationally accepted use of a market rent-derived value allows housing authorities to generate needed financing to structure financially feasible transactions. In areas with strong rental markets where affordability crises often exist, the differential between the market rents a housing authority could realize in an unencumbered scenario and the RAD rents provide a mechanism for the housing authority to maximize the value of existing assets to generate more financing to improve and preserve existing affordable housing.

We thank you for your time and consideration of these recommendations. Please note that representatives from the TAAHP QAP committee are happy to meet with your staff in order to discuss these recommendations fully.

Thank you for your service to Texas.

Sincerely,

Janine Sisak

Chair TAAHP QAP Committee

cc: Tim Irvine – TDHCA Executive Director
Brent Stewart – TDHCA Director of Real Estate Analysis
TAAHP Membership

UNDESIRABLE SITE FEATURES

(2) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph maybe considered ineligible as determined by the Board unless Applicant provides information regarding mitigation of the applicable undesirable site feature(s). Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs ("VA") may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application ~~and must include a letter stating the Rehabilitation of the existing units is consistent with achieving at least one or more of the stated goals as outlined in the State of Texas Analysis of Impediments to Fair Housing Choice or, if within the boundaries of a participating jurisdiction or entitlement community, as outlined in the local analysis of impediments to fair housing choice and identified in the participating jurisdiction's Action Plan.~~ The distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the undesirable feature. The minimum distances noted assume that the land between the proposed Development Site and the particular undesirable feature has no significant intervening barriers or obstacles such as waterways or bodies of water, major high speed roads, park land, or walls, such as noise suppression walls adjacent to railways or highways, in which case this section does not apply. Where there is a local ordinance that regulates the proximity of such undesirable feature to a multifamily development that has smaller distances than the minimum distances noted below, documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application. The distances identified in subparagraphs (A) - (J) of this paragraph are intended primarily to address sensory concerns such as noise or smell, social factors making it inappropriate to locate residential housing in proximity to certain businesses. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (K) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

(A)Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Transportation Code, §396.001;

(B)Development Sites located within 300 feet of a solid waste or sanitary landfills;

(C)Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local Government Code, §243.002, or as zoned, licensed and regulated as such by the local municipality;

(D)Development Sites in which the buildings are located within of the easement of any overhead high voltage transmission line, support structures for high voltage transmission lines, or other similar

structures. This does not apply to local service electric lines and poles; high voltage transmission are lines that carry 138 Kv of power or greater.

(E)Development Sites located within ~~5~~ 100 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail, or the Applicant submits a noise study with the application and commits at the time of commitment to provide sound attenuation of noise levels in excess of 65 decibels;

(F)Development Sites located within 500 feet of heavy industrial (i.e. facilities that require extensive capital investment in land and machinery, are not easily relocated and produce high levels of external noise such as manufacturing plants, fuel storage facilities (excluding gas stations) etc.);

(G)Development Sites located within 10 miles of a nuclear plant;

(H)Development Sites in which the buildings are located within of the accident zones or clear zones of any airport;

(I)Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids. Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance ("PIPA");

(J)Development Sites located within 1000 feet ~~2 miles~~ of refineries capable of refining more than 100,000 barrels of oil daily; or

(K)Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated.

(1)Applications having achieved a score on Proximity to the Urban Core

(2)Applications scoring higher on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.

(3)Applications having achieved the maximum Opportunity Index Score and the highest number of point items on the Opportunity Index menu that they were unable to claim because of the 7 point cap on that item.

(4)Applications having achieved the maximum Educational Quality score and the highest number of point items on the Educational Quality menu that they were unable to claim because of the 5 point cap on that item.

(5)The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site.

(6)Applications proposed to be located in a census tract with the lowest poverty rate as compared to another Application with the same score.

(7)Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear measurement will be performed from closest boundary to closest boundary.

(3) Undesirable Neighborhood Characteristics.

(A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. An Applicant may choose to disclose the presence of such characteristics at the time the pre-application (if applicable) is submitted to the Department. Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit the documentation described under subparagraphs (C) and (D) of this paragraph at pre- application and staff may perform an assessment of the Development Site to determine Site eligibility. The Applicant understands that any determination made by staff or the Board at the time of bond inducement regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the undesirable neighborhood characteristics become available while the full Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board. Should staff determine that the Development Site has any of the characteristics described in subparagraph (B) of this paragraph and such characteristics were not disclosed, the Application may be subject to termination. Termination due to non-disclosure may be appealed pursuant to §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)). The presence of any characteristics listed in subparagraph (B) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit, and include, where applicable, a review as described in subparagraph (C) of this paragraph. The assessment of the Development Site and neighborhood will be presented to the Board with a recommendation with respect to the eligibility of the Development Site. Factors to be considered by the Board, despite the existence of the undesirable neighborhood characteristics are identified in subparagraph (E) of this paragraph. Should the Board make a determination that a Development Site is ineligible, the termination of the Application resulting from such Board action is not subject to appeal.

(B) The undesirable neighborhood characteristics include those noted in clauses (i) – (iv) of this subparagraph and additional information as provided in subparagraphs (C) and (D) must be submitted in the Application. If an Application for a Development Site involves three or more undesirable neighborhood characteristics, in order to be found eligible it will be expected that, in addition to demonstrating satisfactory mitigation for each characteristic disclosed, the Development Site must be located within an area in which there is a concerted plan of revitalization already in place or that private sector economic forces, such as those referred to as gentrification are already underway and indicate a strong likelihood of a reasonably rapid transformation of the area to a more economically vibrant area. In order to be considered as an eligible Site despite the presence of such undesirable neighborhood characteristic, an Applicant must demonstrate actions being taken that would lead a reader to conclude that there is a high probability the undesirable characteristic will be sufficiently mitigated within a reasonable time, typically prior to placement in service, and that the undesirable characteristic will either no longer be present or will have been sufficiently mitigated such that it would not have required disclosure.

a. The Development Site is located within a census tract that has a poverty rate above ~~4030~~ 40 percent for individuals

~~b.The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons~~

~~(annually) as reported on neighborhoodscout.com.~~

c. The Development Site is located within 1,000 feet (measured from nearest boundary of blighted structure) of ~~multiple~~ at least 5 vacant structures visible from the street, which that have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.

d. The Development Site is ~~l~~located within the attendance zones of an elementary school~~, a middle school or a high school~~ that does not have a Met Standard rating by the Texas Education Agency. ~~Any school in the attendance zone that has not achieved Met Standard for three consecutive years and has failed by at least one point in the most recent year, unless there is a clear trend indicating imminent compliance, shall be unable to mitigate due to the potential for school closure as an administrative remedy pursuant to Chapter 39 of the Texas Education Code.~~ In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary~~, middle and high school, respectively,~~ which may possibly be attended by the tenants in determining whether or not disclosure is required. The applicable school rating will be the 2016~~5~~ accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K- 6), ~~middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12)~~, the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. ~~Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating.~~ Development Sites subject to an Elderly Limitation or Single Room Occupancy is considered exempt and does not have to disclose the presence of this characteristic.

(C) Should any of the undesirable neighborhood characteristics described in subparagraph (B) of this paragraph exist, the Applicant must submit the Undesirable Neighborhood Characteristics Report that contains the information described in clauses (i)-(viii) of this subparagraph and subparagraph (D) of this paragraph so that staff may conduct a further Development Site and neighborhood review.

(i) A determination regarding neighborhood boundaries, which will be based on the review of a combination of natural and manmade physical features (rivers, highways, etc.), apparent changes in land use, the Primary Market Area as defined in the Market Analysis, census tract or municipal boundaries, and information obtained from any Site visits;

(ii) An assessment of general land use in the neighborhood, including comment on the prevalence of residential uses;

(iii) An assessment concerning any of the features reflected in paragraph (3) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (3);

(iv) An assessment of the number of existing affordable rental units (generally includes rental properties subject to TDHCA, HUD, or USDA restrictions) in the Primary Market Area, including comment on concentration based on the size of the Primary Market Area;

(v) An assessment of the percentage of households residing in the census tract that have household incomes equal to or greater than the median household income for the MSA or county where the Development Site is located; ~~and~~

An assessment of the number of market rate multifamily units in the neighborhood and their current rents and levels of occupancy;

(vii) An assessment of school performance for each of the schools in the attendance zone containing the Development that did not achieve the Met Standard rating, for the previous two academic years (regardless of whether the school Met Standard in those years), that includes the TEA Accountability Rating Report, a discussion of performance indicators and what progress has been made over the prior year, and progress relating to the goals and objectives identified in the campus improvement plan in effect; and

(viii) Any additional information necessary to complete an assessment of the Development Site, as requested by staff.

(D) Information regarding mitigation of undesirable neighborhood characteristics should be relevant to the undesirable characteristics that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application and may include, but is not limited to, the measures described in clauses (i)-(iv) of this subparagraph. In addition to those measures described herein, documentation from the local municipality may also be submitted stating the Development is consistent with their obligation to affirmatively further fair housing. The mitigation must be accompanied by a report summarizing the data and to support the conclusion of a reasonable expectation by staff and the Board that the issues will be resolved or significantly improved by the time the Development is placed into service. Conclusions for such reasonable expectation must be affirmed by an industry professional, as appropriate.

(i) Evidence that the poverty rate within the census tract has decreased over the five-year period preceding the date of Application, or that the census tract is contiguous to a census tract with a poverty rate below ~~20%~~ 40% and there are no physical barriers between them such as highways or rivers which would be reasonably considered as separating or dividing the neighborhood containing the proposed Development from the low poverty area must be submitted. Other mitigation may include, but is not limited to, evidence of the availability of adult education and job training that will lead to full-time permanent employment for tenants, a description of additional tenant services to be provided at the development that address root causes of poverty, evidence of gentrification in

the area (which may include contiguous census tracts) and a clear and compelling reason that the Development should be located at the Site. ~~Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility.~~

(ii) Evidence that crime rates are ~~substantially~~ decreasing, based on violent crime data from the city's police department or county sheriff's department, for the police beat or patrol area within which the Development Site is located, based on the population of the police beat or patrol area that would yield a crime rate below the threshold indicated in this section. The instances of violent crimes within the police beat or patrol area that encompass the census tract, calculated based on the population of the census tract, may also be used. A map plotting all instances of violent crimes within a one-half mile radius of the Development Site may also be provided that reflects that the crimes identified are not at a level that would warrant an ongoing concern. The data must include incidents reported during the entire 2015 and 2016 calendar year. Violent crimes reported through the date of Application submission may be requested by staff as part of the assessment performed under subparagraph (C) of this paragraph. A written statement from the local police department or local law enforcement agency, including a description of efforts by such enforcement agency addressing issues of crime and the results of their efforts may be provided, and depending on the data provided by the Applicant, such written statement may be required, as determined by staff. For Rehabilitation or Reconstruction Developments, to the extent that the high level of criminal activity is concentrated at the Development Site, documentation may be submitted to indicate such issue(s) could be remedied by the proposed Development. Evidence of such remediation should go beyond what would be considered a typical scope of work and should include a security plan, partnerships with external agencies, or other efforts to be implemented that would deter criminal activity. Information on whether such security features have been successful at any of the Applicant's existing properties should also be submitted, if applicable.

(iii) Evidence of mitigation efforts to address blight or abandonment may include new construction in the area already underway that evidences public and/or private investment. ~~Acceptable mitigation to address extensive blight should go beyond the acquisition or demolition of the blighted property and identify the efforts and timeline associated with the completion of a desirable permanent use of the site(s) such as new or rehabilitated housing, new business, development and completion of dedicated municipal or county-owned park space.~~ In instances where blight exists but may only include a few properties, mitigation efforts could include partnerships with local agencies to engage in community-wide clean-up efforts, or other efforts to address the overall condition of the neighborhood.

(iv) Evidence of mitigation for all of the schools in the attendance zone that have not achieved Met Standard will include documentation from a school official with oversight of the school in question that indicates current progress towards meeting the goals and performance objectives identified in the Campus Improvement Plan. For schools that have not achieved Met Standard for two consecutive years, a letter from the superintendent, member of the school board or a member of the transformation team that has direct experience, knowledge and oversight of the specific school must also be submitted. The letter should, at a minimum and to the extent applicable, identify the efforts that have been undertaken to increase student performance, decrease mobility rate, benchmarks for re-evaluation, increased parental involvement, plans for school expansion, and long-term trends that would point toward their achieving Met Standard by the time the Development is placed in service. ~~The letter from such education professional should also speak to why they believe the staff tasked with carrying out the plan will be successful at making progress towards acceptable student performance considering that prior Campus Improvement Plans were unable to do so.~~ Such assessment could include whether the team involved has employed similar

strategies at prior schools and were successful. In addition to the aforementioned letter from the school official, information should also be provided that addresses the types of services and activities offered at the Development or external partnerships that will facilitate and augment classroom performance.

(E) In order for the Development Site to be found eligible by the Board, despite the existence of undesirable neighborhood characteristics, the Board must find that the use of Department funds at the Development Site must be consistent with achieving at least one of the goals in clauses (i) – (iii) of this subparagraph.

(i) Preservation of existing occupied affordable housing units, subject to federal or state income restrictions and mitigating evidence supports a conclusion that the characteristic will be remedied in an appropriate time period, which may be after placement in service; or ~~to ensure they are safe and suitable, or development of new high quality affordable housing units that are subject to federal rent or income restrictions; and~~

(ii) Factual determination that the undesirable characteristic(s) that has been disclosed are not of such a nature or severity that ~~they~~ should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph. Such information sufficiently supports a conclusion that the characteristic(s) will be remedied by the time the Development places into service; Or

(iii) The Development satisfies HUD Site and Neighborhood Standards or is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order. ~~or HUD Site and Neighborhood Standards approval, as such documentation is provided by the Applicant as part of the disclosure~~.

DEVELOPMENT SIZE LIMITATIONS

§10.101(b)(2) Development Size Limitations. The minimum Development size is 16 Units. New Construction or Adaptive Reuse Developments in Rural Areas are limited to a maximum of 80. New Construction Tax Exempt Bond Developments may exceed 80 units if the Market Analysis clearly documents that there is significant demand for additional Units. Other Developments do not have a limitation as to the maximum number of Units.

MANDATORY DEVELOPMENT AMENITIES

(4)Mandatory Development Amenities. (§2306.187) New Construction, Reconstruction or Adaptive Reuse Units must include all of the amenities in subparagraphs (A) - (M) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs (D) - (M) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), (I), or (M) of this paragraph; however, access must be provided to a comparable amenity in a common area. All amenities listed below must be at no charge to the tenants. Tenants must be provided written notice of the applicable required amenities for the Development.

(A)All Units must be wired with RG-6/U COAX or better and CAT3 phone cable or better, wired to each bedroom, dining room and living room;

(B)Laundry connections;

(C)Exhaust/vent fans (vented to the outside) in the bathrooms;

~~(D)Solar screens on all windows (north-facing windows may exclude solar screens if north-facing operable windows provide insect screens);~~

(E)Disposal and Energy-Star rated dishwasher (not required for USDA; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit);

(F)Energy-Star rated refrigerator;

(G)Oven/Range;

(H)Blinds or window coverings for all windows;

(I)At least one Energy-Star rated ceiling fan per Unit;

(J)Energy-Star rated lighting in all Units which may include compact fluorescent or LED light bulbs;

(K)Plumbing fixtures must meet performance standards of Texas Health and Safety Code, Chapter 372;

(L)All Units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units only or ~~historic preservation~~ Rehabilitation where central would be cost prohibitive); and

(M)Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be one and a half (1.5) spaces per Unit for non- Elderly Developments and one (1) space per Unit for Elderly Developments. The minimum number of required spaces must be available to the tenants at no cost.

TENANT SUPPORTIVE SERVICES

(7)Tenant Supportive Services. The supportive services include those listed in subparagraphs (A) - (Z) of this paragraph. Tax Exempt Bond Developments must select a minimum of eight (8) points; Direct Loan Applications not layered with Housing Tax Credits must include enough services to meet a minimum of four (4) points. The points selected and complete list of supportive services will be included in the LURA and the timeframe by which services are offered must be in accordance with §10.619 of this chapter (relating to Monitoring for Social Services) and maintained throughout the Affordability Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. The services provided should be those that will directly benefit the Target Population of the Development. Tenants must be provided written notice of the elections made by the Development Owner. No fees may be charged to the tenants for any of the services, there must be adequate space for the intended services and services offered should be accessible to all (e.g., exercises classes must be offered in a manner that would enable a person with a disability to participate). Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. ~~These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider. Where applicable, the services must be documented by a written agreement with the provider.~~

SCORING – TIE BREAKER

Tie Breaker Factors

In the event there are Competitive HTC Applications that receive the same number of points in any given set-aside category, rural regional allocation or urban regional allocation, or rural or statewide collapse, the Department will utilize the factors in this section, in the order they are presented, to determine which Development will receive preference in consideration for an award. The tie breaker factors are not intended to specifically address a tie between equally underserved sub-regions in the rural or statewide collapse.

(1)Applications having achieved a score on Proximity to the Urban Core

(2)Applications scoring higher on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.

(3)Applications having achieved the maximum Opportunity Index Score and the highest number of point items on the Opportunity Index menu that they were unable to claim because of the 7 point cap on that item.

~~(4)Applications having achieved the maximum Educational Quality score and the highest number of point items on the Educational Quality menu that they were unable to claim because of the 5 point cap on that item.~~

(5)The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site.

~~(6)Applications proposed to be located in a census tract with the lowest poverty rate as compared to another Application with the same score.~~

(7)Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear measurement will be performed from closest boundary to closest boundary.

OPPORTUNITY INDEX

(4)Opportunity Index. The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials.

(A)A Proposed Development is eligible for a maximum of seven (7) opportunity index points if it is located in a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and meets the requirements in (i) or (ii) below. Rural developments, and developments that are competing in the At Risk and/or USDA set-asides can achieve the maximum 7 points without meeting (i) or (ii) below.

(i) The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and an income rate in the two highest quartiles within the uniform service region. (2 points)

(ii) The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile~~, without physical barriers such as highways or rivers between,~~ and the Development Site is no more than 2 miles from the boundary between the census tracts. and, (1 point)

(B)An application that meets the foregoing criteria may qualify for additional points up to seven (7) points for any one or more of the following factors. Each facility or amenity may be used only once for scoring purposes, regardless of the number of categories it fits:

(i) For Developments located in an Urban Area, an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIV) of this subparagraph.

(I) The Development site is located less than 1/2 mile on an accessible route from a public park with a~~n accessible~~ playground (1 point)

(II) The Development Site is located less than ½ mile on an accessible route from Public Transportation with a route schedule that provides regular service (meaning buses scheduled between 7 and 9 a.m. and between 4 and 6 p.m., Monday through Friday) to employment and basic services (1 point)

(III) The Development site is located within 1 mile of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point)

(IV) The Development is located within 3 miles of either an emergency room or an urgent care facility (1 point)

(V) The Development Site is within 2 miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten (1 point)

(VI) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less (1 point)

(VII) The development site is located within 1 mile of a public library (1 point)

(VIII) The Development Site is located within 5 miles of a University or Community College campus (1 point)

(IX) The Development Site is located within 3 miles of a concentrated retail shopping center of at least ~~1 million~~ 500,000 square feet or that includes at least 4 big-box national retail stores (1 point)

(X) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher as tabulated by 2010-2014 American Community Survey 5-Year Estimates. (1 point)

(XI) Development site is within 2 miles of a government or 501(c)(3) non profit-sponsored museum (1 point)

(XII) Development site is within 1 mile of an indoor recreation facility available to the public (1 point)

(XIII) Development site is within 1 mile of an outdoor recreation facility available to the public (1 point)

(XIV) Development site is within 1 mile of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point)

(XV) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score (3 points);

(XVI) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (2 points);

(XVII) The Development Site is within the attendance zone of any one of the following three schools (an elementary school, a middle school, and a high school) with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (1 point).

(ii)For Developments located in a Rural Area, an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIII) of this subparagraph.

(I) The Development site is located within ~~2~~ 5 miles of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and

prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point)

(II) The Development is located within 4 miles of health -related facility, such a full service hospital, community health center, or minor emergency center. Physician specialty offices are not considered in this category. (1 point)

(III) The Development Site is within 3 miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten (1 point)

(IV) The Development Site is located in a census tract with a property crime rate 26 per 1,000 or less (1 point)

(V) The development site is located within 3 miles of a public library (1 point)

(VI) The development site is located within 3 miles of a public park (1 point)

(VII) The Development Site is located within 15 ~~7~~ miles of a University or Community College campus (1 point)

(VIII) The Development Site is located within 5 miles of a retail shopping center with at least three retail establishments ~~XX square feet of~~ stores (1 point)

(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is ~~27~~ 20% or higher as tabulated by 2010-2014 American Community Survey 5-Year Estimates. (1 point)

(X) Development site is within 5 ~~2~~ miles of a government or 501(3)(c) non-profit sponsored museum (1 point)

(XI) Development site is within ~~1~~ 3 miles of an indoor recreation facility available to the public (1 point)

(XII) Development site is within ~~1~~ 3 miles of an outdoor recreation facility available to the public (1 point)

(XIII) Development site is within ~~1~~ 3 miles of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point)

UNDERSERVED AREAS

(6)Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive up to five (5) points if the Development Site is located in one of the areas described in subparagraphs (A) - (G) of this paragraph, and the Application contains evidence substantiating qualification for the points. If an Application qualifies for points under paragraph (4) of this subsection then the Application is not eligible for points under subparagraphs (A) and (B) of this paragraph.

(A) The Development Site is located wholly or partially within the boundaries of a colonia as such boundaries are determined by the Office of the Attorney General and within 150 miles of the Rio Grande River border. For purposes of this scoring item, the colonia must lack water, wastewater, or electricity provided to all residents of the colonia at a level commensurate with the quality and quantity expected of a municipality and the proposed Development must make available any such missing water, wastewater, and electricity supply infrastructure physically within the borders of the colonia in a manner that would enable the current dwellings within the colonia to connect to such infrastructure (2 points);

(B) An Economically Distressed Area (1 point);

(C) A census tract within the boundaries of an incorporated area that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development serving the same target population within the past 15 years (2 points);

(D) A census tract within the boundaries of an incorporated area that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development within the past 15 years (3 points);

(E) ~~For areas not scoring points for (C) or (D) above, a census tract that does not have a Development subject to an active tax credit LURA (2 points~~);

(F) A census tract within the boundaries of an incorporated area and all contiguous census tracts for which neither the census tract in which the Development is located nor the contiguous census tracts have received an award or HTC allocation serving the same target population within the past 15 years. This item will apply to cities with a population of 500,000 or more, and will not apply in the At-Risk Set-Aside (4 points).

(G) A census tract within the boundaries of an incorporated area and all contiguous census tracts for which neither the census tract in which the Development is located nor the contiguous census tracts have received an award or HTC allocation within the past 15 years ~~and continues to appear on the Department's inventory~~. This item will apply to cities with a population of 500,000 or more, and will not apply in the At-Risk Set-Aside (5 points).

COMMUNITY SUPPORT FROM STATE REPRESENTATIVE

Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2)) Applications may receive up to eight (8) points or have deducted up to eight (8) points for this scoring item. To qualify under this paragraph letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development and clearly state support for or opposition to the specific Development. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative and must be submitted no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Once a letter is submitted to the Department it may not be changed or withdrawn~~. except in the instance where a representative who has provided a letter provides an additional letter to the Department, on or before April 3, 2017, stating that in their estimation the factual representations made to them to secure their original letter have proven to have been inaccurate, misleading, or otherwise insufficient to form a basis for their support, neutrality or opposition and, accordingly, their letter is withdrawn~~. A change in this manner is final and will result in a score of zero (0) points. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. A letter expressly stating opposition is scored - 8 points. A letter expressly stating neutrality is scored 0 points. Any other letter conveying a sense of support is scored 8 points. If a tone of support cannot be discerned in a letter that does not expressly state support, neutrality or opposition, the representative will be contacted and given five (5) business days to indicate in writing if they wish to have the letter scored as support or neutral. If clarification is not timely provided, the letter will be scored as neutral.

INPUT FROM COMMUNITY ORGANIZATIONS

(6)Input from Community Organizations. (§2306.6725(a)(2)) Where, at the time of Application, the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization, then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. Additionally, the Application may receive up to four (4) additional points if it claims less than 17 points under Section 11.7(d)(1). No more than eight ~~four~~ (8 ~~4~~) points will be awarded under this point item under any circumstances. All letters must be submitted within the Application. Once a letter is submitted to the Department it may not be changed or withdrawn. Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item.

A. An Application may receive two (2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide evidence of its tax exempt status and its existence and participation in the community in which the Development Site is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts), or taxing entities.
B. An Application may receive two (2) points for a letter of support from a property owners association created for a master planned community whose boundaries include the Development Site and that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (4) of this subsection.
C. An Application may receive two (2) points for a letter of support from a Special Management District whose boundaries, as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site.

CONCERTED REVITALIZATION PLAN

(7) Concerted Revitalization Plan. An Application may qualify for points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.

~~(A)For Developments located in an Urban Area, and in a city with a population of 100,000 or more.~~

(i) an Application may qualify to receive up to six (6) points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed ~~and executed~~. The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems. The concerted revitalization plan that meets the criteria described in subclauses (I) - (IV) of this clause:

~~(I) The concerted revitalization plan must have been adopted by the municipality or county in which the Development Site is located. The resolution adopting the plan or other acceptable evidence that the plan has been duly adopted must be submitted with the application.~~

(II) The problems in the revitalization area must be identified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. These problems must include the limited availability of safe, decent, affordable housing and may include the following:

a. long-term disinvestment, such as significant presence of residential and/or commercial blight, streets infrastructure neglect such as inadequate drainage, and/or sidewalks in significant disrepair;
b. declining quality of life for area residents, such as high levels of violent crime, property crime, gang activity, or other significant criminal matters such as the manufacture or distribution of illegal substances or overt illegal activities;

(III) Staff will review the target area for presence of the problems identified in the plan and for targeted efforts within the plan to address those problems. In addition, but not in lieu of, such a plan may be augmented with targeted efforts to promote a more vital local economy and a more desirable neighborhood, including but not limited to:

a. creation of needed affordable housing by improvement of existing affordable housing that is in need of replacement or major renovation;
b. attracting private sector development of housing and/or business;
c. developing health care facilities;
d. providing public transportation;
e. developing significant recreational facilities; and/or
f. improving under-performing schools.

(IV) The adopted plan must have a sufficient, documented and committed budget to accomplish its purposes on its established timetable. The~~is~~ funding for the budgeted expenses must either be identified inthe plan or have already been spent in full or in part, such that the

problems identified within the plan will have been sufficiently mitigated and addressed within 5 years of being placed in service.

(ii)up to seven (7) points will be awarded based on:

(I) Applications will receive four (4) points for a letter from the appropriate local official providing documentation of measurable improvements within the revitalization area based on the target efforts outlined in the plan; and

(II) Applications may receive (2) points in addition to those under subclause (I) of this clause if the Development is explicitly identified in a ~~resolution by~~ letter from the the city or county as contributing more than any other to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause.. If multiple Applications submit letters ~~resolutions~~ under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points.

(III) Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4)

(B)For Developments located in a Rural Area.

(i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction in an location meeting the threshold requirements of the Opportunity Index, §11.9(c)(4)(A) of a development in a rural area that is currently leased at 90% or greater by low income households and which was initially constructed prior to 1980 as either public housing or as affordable housing with support from USDA, the HOME program, HUD, or the CDBG program. Demolition and relocation of units must be determined locally to be necessary to comply with the Affirmatively Furthering Fair Housing Rule, or if necessary to create an acceptable distance form Undesirable Site Features or Undesirable Neighborhood Characteristics.

(ii) Applications will receive 3 points for the rehabilitation of a development in a rural area that is currently leased at 90% or greater by low income households and which was initially constructed prior to 1980 as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program if the proposed location requires no disclosure of Undesirable Neighborhood Features under Section §10.101(a)(4) or required such disclosure but the disclosed items were found acceptable.

(iii) Applications may receive (2) points in addition to those under subclause (i) or (ii) of this clause if the Development is explicitly identified in a letter by the city or county as contributing more than any other Development to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause. The letter from the Governing Body of the city or county that approved the

plan is required to be submitted in the Application. If multiple Applications submit valid letters under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application as contributing more than any other Development to concerted revitalization efforts.

(iv) Applications may receive (1) additional point if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4).

COST OF DEVELOPMENT PER SQUARE FOOT

Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii))

An Application may qualify to receive up to twelve (12) points based on either the Building Cost per square foot of the proposed Development voluntarily included in eligible basis ("Eligible Building Cost") or the Hard Costs per square foot of the proposed Development voluntarily included in eligible basis ("Eligible Hard Cost"), as originally submitted in the Application. For purposes of this paragraph, Eligible Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Eligible Hard Cost will include general contractor overhead, profit, and general requirements. Structured parking or commercial space costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking or commercial construction, as applicable. The square footage used will be the Net Rentable Area ("NRA"). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule. If the proposed Development is a Supportive Housing Development, the NRA will include common area up to 50 square feet per Unit.

(A)A high cost development is a Development that meets one of the following conditions:

(i)the Development is elevator served, meaning it is either a Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors;

(ii)the Development is more than 75 percent single family design;

(iii)the Development is Supportive Housing; or

(iv)the Development Site qualifies for a minimum of five (5) points under subsection (c)(4) of this section, related to Opportunity Index, and is located in an Urban Area.

(B)Applications proposing New Construction or Reconstruction will be eligible for twelve (12) points if one of the following conditions is met:

(i)the Eligible Building Cost per square foot is less than $72.80 per square foot;

(ii)the Eligible Building Cost per square foot is less than $78 per square foot, and the Development meets the definition of a high cost development;

(iii)the Eligible Hard Cost per square foot is less than $93.60 per square foot; or

(iv)the Eligible Hard Cost per square foot is less than $104 per square foot, and the Development meets the definition of high cost development.

(C)Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:

(i)the Eligible Building Cost per square foot is less than $78 per square foot;

(ii)the Eligible Building Cost per square foot is less than $83.20 per square foot, and the Development meets the definition of a high cost development;

(iii)the Eligible Hard Cost per square foot is less than $98.80 per square foot; or

(iv)the Eligible Hard Cost per square foot is less than $109.20 per square foot, and the Development meets the definition of high cost development.

(D)Applications proposing New Construction or Reconstruction will be eligible for ten (10) points if one of the following conditions is met:

(i)the Eligible Building Cost is less than $93.60 per square foot; or

(ii)the Eligible Hard Cost is less than $114.40 per square foot.

(E)Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i)twelve (12) points for Applications which include Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than $104 per square foot;

(ii)twelve (12) points for Applications which include Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than $135.20 per square foot, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

(iii)eleven (11) points for Applications which include Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than $135.20 per square foot.

PRE-APPLICATION

(3)Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted during the Pre-Application Acceptance Period. Applications that meet the requirements described in subparagraphs (A) - (H) of this paragraph will qualify for six (6) points:

(A)The total number of Units does not increase by more than ten (10) percent from pre-application to Application;

(B)The designation of the proposed Development as Rural or Urban remains the same;

(C)The proposed Development serves the same Target Population;

(D)The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, and/or Rural);

(E)The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than six (6) points from what was reflected in the pre-application self score;

(F)The Development Site at Pre-Application and full Application are the same or have contiguous borders of at least 10% with the site at full application, and the site at both pre-application and at full application are entirely within the same census tract. The site at full Application may not require notification to any person or entity not required to have been notified at pre-application;

~~(G)The Development Site does not have Undesirable Neighborhood Characteristics as described in 10 TAC §10.101(a)(4) that were not disclosed with the pre-application; and~~

(H)The pre-application met all applicable requirements.

LEVERAGING

(4)Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3))

(A)An Application may qualify to receive up to three (3) points if at least five (5) percent of the total Units are restricted to serve households at or below 30 percent of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) - (iv) of this subparagraph:

(i)the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 9 percent of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or

(ii)if the Housing Tax Credit funding request is less than eight ~~seven~~ (8~~7~~) percent of the Total Housing Development Cost (3 points); or

(iii)if the Housing Tax Credit funding request is less than ~~eight~~ nine (8~~9~~) percent of the Total Housing Development Cost (2 points); or

(iv)if the Housing Tax Credit funding request is less than ~~nine~~ ten (~~9~~ 10) percent of the Total Housing Development Cost (1 point).

(B)The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50 percent of the developer fee can be deferred. Where costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

THIRD PARTY REQUEST FOR ADMINISTRATIVE DEFICIENCY

§11.10. Third Party Request for Administrative Deficiency for Competitive HTC Applications. The purpose of the Third Party Request for Administrative Deficiency ("RFAD") process is to allow an unrelated person or entity to bring new, material information about an Application to staff's attention. Such Person may request the staff to consider whether a matter in an Application in which the Person has no involvement should be the subject of an Administrative Deficiency. Staff will consider the request and proceed as it deems appropriate under the applicable rules including, if the Application in question is determined by staff to not be a priority Application, not reviewing the matter further~~. Staff actions are not subject to RFAD, as the request does not bring new information to staff's attention.~~ Requestors must provide, at the time of filing the challenge, all briefings, documentation, and other information that the requestor offers in support of the deficiency. A copy of the request and supporting information must be provided directly to the Applicant at the same time it is provided to the Department. Requestors must provide sufficient credible evidence that, if confirmed, would substantiate the deficiency request. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered. The results of a RFAD may not be appealed by the Requestor.

UNDERWRITING RULES: APPRAISAL RULES

§10.304(d)(10)(B) Appraisal Rules and Guidelines: Value Estimates, Developments with Project-Based Rental Assistance.

(B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value". ~~inclusive of the value associated with the rental assistance.~~ For public housing converting to project-based rental assistance or project-based vouchers under the Rental Assistance Demonstration (RAD) program, the value must be based on the unrestricted market rents. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates and/or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter.

(23) Texas Coalition of Affordable Developers

TX-CAD 2017 Final Comments

The Texas Coalition of Affordable Developers (TX-CAD) is pleased to submit our comments for the 2017 QAP and Multifamily Rules. TX-CAD is a coalition of Developers and consultants who have come together for the purpose of focusing on the improvement of affordable housing policy in Texas. The members of this group represent over 200 years of affordable housing development/policy and approximately 35,000 units of affordable housing in Texas.

QAP

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

The Leveraging issue was studied in depth several years ago and was determined to adversely impact deals – that it directly leads to "a race to the bottom". We believe that this still holds true. The economic impact of lowering the leveraging is devastating to deals and results in developments that are significantly less financially sound. Below is an example of the financial impact on a generic deal:

> *Assume the average Tax Credit Request is $1.5M, the average deal cost at that tax credit request is $18,750,000. ($18,750,000 * 8% = $1.5M). Now reduce the 8% to 7% ($18,750,000 * 7% = $1,312,500) - instead of $1.5M in credits, you can only request $1,312,500 in credits – a $187,500 reduction in annual credits.* ***Multiply that by the 10 year credit period and a 1% reduction in leveraging results in $1,875,000 LESS sources to fund the deal the exact same deal****.*

If you can't reduce your costs to recapture this reduction in credits (which has a circular effect), then you could reduce or defer your developer fee and even then you may still have a gap. A reduction in cost at this level will result in the lowest quality level of materials and finish out, further stigmatizing affordable housing with the public.

Alternatively, an applicant could drive up costs to lower the leveraging percentage but without a source of funding to cover the additional costs, the result is to financially stress a development potentially to a point that it adversely impacts the financial health of the deal or risks not being able to actually get the project closed or constructed.

Finally, one of the unintended consequences of implementing high opportunity scoring in the QAP is the higher cost of land that is competitive. With higher land costs and construction costs rising, to lower the leverage percentage by 1% risks unfeasibility for many high opportunity sites.

We believe this issue has been significantly vetted and shown by Department staff in prior years to not be in the best interest of the program and request it go back to the 2016 language as illustrated below:

> (ii) if the Housing Tax Credit funding request is less than eight (8) percent of the Total Housing Development Cost (3 points); or

(iii) if the Housing Tax Credit funding request is less than nine (9) percent of the Total Housing Development Cost (2 points); or
(iv) if the Housing Tax Credit funding request is less than ten (10) percent of the Total Housing Development Cost (1 point).

2. Third Party Request for Administrative Deficiency for Competitive HTC Applications (§11.10)

We want to ensure that the Development community continues to have the right to point out mistakes on the part of competing applicants, as well as Department staff. The language added to this year's QAP seems to indicate that staff mistakes cannot be a part of this review.

We believe that the Department should continue to be responsible for administering this process and that having applicants communicate these issues directly with each other is not good policy.

Lastly, we want to encourage the Department to post all information received from both the Requestor, Applicant, and staff determinations in a timely manner on the TDHCA web site.

Proposed Language Change:

The purpose of the Third Party Request for Administrative Deficiency ("RFAD") process is to allow an unrelated person or entity to bring new, material information about an Application to staff's attention. Such Person may request the staff to consider whether a matter in an Application in which the Person has no involvement should be the subject of an Administrative Deficiency. Staff will consider the request and proceed as it deems appropriate under the applicable rules including, if the Application in question is determined by staff to not be a priority Application, not reviewing the matter further. ~~*Staff actions are not subject to RFAD, as the request does not bring new information to staff's attention.*~~ *Requestors must provide, at the time of filing the challenge, all briefings, documentation, and other information that the requestor offers in support of the deficiency.* ~~*A copy of the request and supporting information must be provided directly to the Applicant at the same time it is provided to the Department.*~~ *Requestors must provide sufficient credible evidence that, if confirmed, would substantiate the deficiency request. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered. The results of a RFAD may not be appealed by the Requestor.*

3. Revitalization Plans (§11.9 (d)(7))

While we agree with the concept of the revitalization points, and encourage staff to look at these plans and or activities in a holistic way. We are concerned that new language regarding language required in the plan is too prescriptive and doesn't seem to match what staff or the Board says they want to see in these plans. Not all revitalization plans will include specific language on affordable housing, yet may be the epitome of revitalization for an area. We encourage staff to look at these plans and or activities in a holistic way, rather than simply a checklist of required language.

(IV) The adopted plan must have sufficient, documented and committed ~~funding~~ budget to accomplish its purposes on its established timetable. This funding for the budgeted expenses ~~must have been flowing in accordance with~~ be identified in the plan, such that the problems identified within the plan will have been sufficiently mitigated and addressed within 5 years of being placed in service ~~prior to the Development being placed into service~~.

4. Proximity to the Urban Core (§11.9(c)(8))

While we look forward to seeing the impact of this new scoring item, we believe that it should not be a scoring factor for the At-Risk Set Aside. We do not believe that five urban areas should have an unsurmountable scoring advantage in what is a statewide competition. All urban and rural areas in the At-Risk Set Aside should be competing on equal footing.

We also question whether the proposed language is in direct conflict with the legislative purpose of the Regional Allocation Formula, which already requires that the General Set Aside funds be allocated appropriately to the regions which contain the five cities that qualify for the Urban Core points.

Staff has removed other scoring items from consideration in At-Risk and we would ask that this also be removed

(8) Proximity to the Urban Core. A development in a County with a population over 1 million and in a City with a population over 500,000 if the Development Site is located within 4 miles of the main City Hall facility. The main City Hall facility will be determined by the location of regularly scheduled City Council, City Commission, or similar governing body meetings. Distances are measured from the nearest property boundaries, not inclusive of non-contiguous parking areas. This will not apply to applications within the At-Risk Set Aside (5 points).

5. Community Support from State Representative (§11.9(d)(5))

We understand the reason why this was added to the QAP, but we believe that it adds another avenue for NIMBY to adversely impact the scoring process. Legal options are available to a Representative if an applicant lies or misrepresents information to an elected official. Additionally, TDHCA can sanction an applicant who misrepresents items in their application. We do not believe that rescission of a letter should be an option.

(5) Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2)) Applications may receive up to eight (8) points or have deducted up to eight (8) points for this scoring item. To qualify under this paragraph letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development and clearly state support for or opposition to the specific Development. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative and must be submitted no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Once a letter is submitted to the Department it may not

be changed or withdrawn ~~except in the instance where a representative who has provided a letter provides an additional letter to the Department, on or before April 3, 2017, stating that in their estimation the factual representations made to them to secure their original letter have proven to have been inaccurate, misleading, or otherwise insufficient to form a basis for their support, neutrality or opposition and, accordingly, their letter is withdrawn~~. A change in this manner is final and will result in a score of zero (0) points. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. A letter expressly stating opposition is scored – 8 points. A letter expressly stating neutrality is scored 0 points. Any other letter conveying a sense of support is scored 8 points. If a tone of support cannot be discerned in a letter that does not expressly state support, neutrality or opposition, the representative will be contacted and given five (5) business days to indicate in writing if they wish to have the letter scored as support or neutral. If clarification is not timely provided, the letter will be scored as neutral.

In the event that the Department will not remove this section we believe that the draft language giving the ability to retract a letter based on the Representative's "estimation" as to whether information was "inaccurate, misleading, or otherwise insufficient to form a basis" for their decision is far too low a bar to have to meet. We believe that there should at a minimum be definitive proof of intent to deceive on the part of the Developer.

6. Pre Application Participation (§11.9(e)(3))

Having only a ten percent border in common from pre to full application means that essentially an entirely new site (with a new contract and/or new owner) can be brought to the full application. With so many of the scoring items in this year's QAP being distance based from a site's boundaries, it is essential that significant changes to sites from pre to full application be minimized.

Additionally, we believe the new language regarding pre application site changes from pre to full application is going to be problematic for the Department to be able to confirm.

(F) The Development Site at Pre-Application and full Application are the same. A reduced portion of a larger parcel submitted as site control at Pre Application may be used for the full Application. ~~or have contiguous borders of at least 10% with the site at full application, and the site at both pre-application and at full application are entirely within the same census tract.~~

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

"Voluntarily included in eligible basis" should apply to both Building Costs and Hard Costs, not just to Hard Costs. The purpose of modifying this section of the QAP was to allow applicants to provide actual total costs while still limiting and encouraging an efficient use of tax credits in financing the development. Building Cost is the measurement most often used in applications and therefore to

provide meaningful change, Building Cost used for scoring should be that voluntarily included in eligible basis, same as the change made for Hard Costs. The measurement factor for Hard Costs is used by applicants on a very limited basis due to the limited amount allowed for an expanded set of construction cost categories. Therefore allowing the eligible basis option for only Hard Costs will not produce the desired result.

Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii)) An Application may qualify to receive up to twelve (12) points based on the amount voluntarily included in eligible basis for either the Building Cost or the Hard Costs per square foot of the proposed Development ~~voluntarily included in eligible basis~~ ("Eligible Hard Cost"), as originally submitted in the Application.

Multifamily Rules

1. 811 Program as Threshold (§10.204(16))

We believe it is premature to make participation in the 811 Program a threshold item. Until the program has been fully implemented and has some history of performance, we believe this should remain a scoring item, where an applicant has the choice of participation.

2. Undesirable Neighborhood Characteristics (§10.101(a)(3))

We would like to see the higher limits for the poverty rate for Regions 11 and 13 be added back to this item. We would also like to see a more precise definition for the number of blighted structures in an area that triggers this item rather than "multiple". We suggest five structures visible from the street for your consideration.

3. Undesirable Site Feature (§10.101(a)(2))

We are unsure where many of these changes came from since they were not a topic of discussion at the round table. We would prefer that these items mirror HUD requirement, which is what the previous language reflected. We are specifically concerned about and would ask where these changes came from and what they are based on:

- The expansion of distance from rail road tracts
- High voltage lines – now being 100 ft outside of easement
- 2 miles from refinery (this was include several years ago, but have been unable to get a response about what this distance figure is based on)

4. Mandatory Development Amenities (§10.101(b)(4)(D))

We disagree with the addition of solar screens as a mandatory amenity for all developments. In additional to the enormous cost associated with the screens, we are concerned about potential conflicts/violations of local design ordinances. Comments received from green building consultants specializing in both LEED and NGBS certifications include the following:

1. Solar screens will reduce the SHGC effectiveness during the winter to help heat the units, at least on the south facing units. That may increase energy use during the heating cycle.
2. Solar screens reduce the amount of natural daylight coming into the room. Natural daylighting is a consideration when looking holistically at the design of the building and the units.
3. The whole idea of using a performance path method of certification (NGBS or LEED) is that you can show equivalent or better energy savings doing other things that mandating solar screens for all units

We believe that this language should instead be added as a Green Building option to be used when appropriate and by choice, not mandated.

5. Tenant Support Services (§10.101(b)(7))

We do not agree with the premise that all tenant services should be provided by a third party/off-site entity. Many of the tenant service provided at a development, such as onsite food pantry, notary services, and onsite social events, are most appropriately administered by on-site leasing or other property staff.

(7) Tenant Supportive Services. The supportive services include those listed in subparagraphs (A) -(Z) of this paragraph. Tax Exempt Bond Developments must select a minimum of eight (8) points; Direct Loan Applications not layered with Housing Tax Credits must include enough services to meet a minimum of four (4) points. The points selected and complete list of supportive services will be included in the LURA and the timeframe by which services are offered must be in accordance with §10.619 of this chapter (relating to Monitoring for Social Services) and maintained throughout the Affordability Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. The services provided should be those that will directly benefit the Target Population of the Development. Tenants must be provided written notice of the elections made by the Development Owner. No fees may be charged to the tenants for any of the services, there must be adequate space for the intended services and services offered should be accessible to all (e.g. exercises classes must be offered in a manner that would enable a person with a disability to participate). Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. These services are intended to be provided by a qualified and reputable provider ~~in the specified industry~~ such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. ~~In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider.~~ Where applicable, the services must be documented by a written agreement with the provider.

6. Evaluation Process (§10.201(5))

We do not believe that the posting of an online scoring log should be what triggers timeframes as important as appeal rights, nor do we believe that formal scoring notices from the Department should be

considered “a courtesy”. Given the problems with the postings of the logs in the 2015 round, and the frequency with which people of dropped from TDHCA email notifications it does not seem like sound administrative policy to have such an important item be left to such a passive and problematic process. Additionally, we believe that scoring notices are an important part of the administrative process and should be a mandatory, not something that staff “may” provide.

We believe the following language should be removed:

> ~~*The Department will, from time to time during the review process, publish an application log which shall include the self-score and any scoring adjustments made by staff. The posting of such scores on the application log may trigger appeal rights and corresponding deadlines pursuant to Tex. Gov't. Code §2306.6715 and §10.902 of this chapter (relating to Appeals Process). The Department may also provide a courtesy scoring notice reflecting such score to the Applicant.*~~

7. Site and Development Requirements and Restrictions (§10.101(b)(1)(A)(vi))

Under General Ineligibility Criteria, item vi, the addition of adaptive reuse as it relates to one for one replacement units is not appropriate. An adaptive reuse by definition includes no units because it was not being used for residential. “Adaptive Reuse -- The change-in-use of an existing building not, at the time of Application, being used, in whole or in part, for residential purposes…” Adaptive Reuse should be removed from item vi.

> *(vi) A Development utilizing a Direct Loan that is subject to the Housing and Community Development Act, §104(d) requirements and proposing Rehabilitation, or Reconstruction* ~~*or Adaptive Reuse*~~*, if the Applicant is not proposing at least the one-for-one replacement of the existing unit mix. Adding additional units would not violate this provision.*

8. Administrative Deficiencies for Competitive HTC Applications. (§10.201(7)(B))

We recommends keeping the period to cure a deficiency five days instead of reducing to three days.

Justification: More times than not, requests for deficiencies create a ripple effect, where making a change to one document requires the applicant to change several other documents to be consistent. When one of the documents requires input from a third party, addressing the deficiency takes time. Five days is more appropriate than three days.

Appraisal Methodology for RAD Developments

§10.304(d)(10)(B) Appraisal Rules and Guidelines: Value Estimates, Developments with Project-Based Rental Assistance.

Proposed Language:
(B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value". ~~inclusive of the~~

~~value associated with the rental assistance.~~ For public housing converting to project-based rental assistance or project-based vouchers under the Rental Assistance Demonstration (RAD) program, the value must be based on the ~~post conversion restricted rents and must consider any other on going restrictions that will remain in place even if not affecting rents~~ unrestricted market rents. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates and/or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter.

Rationale:

Nationwide a number of closed RAD transactions have been awarded acquisition credits based on building values derived using market rents under the income approach. Tax counsel for these transactions have opined that this approach is reasonable, as have national accounting and appraisal firms. The reason this approach has been accepted nationwide is that in the "As Is" condition public housing developments operate on a breakeven basis, preventing an accurate valuation under the income approach. There are several ways in which HUD may allow the release of public housing restrictions. For public housing converting to Section 8 assistance, at the closing of RAD transactions, the existing public housing restrictions are removed and the property is unencumbered. This release of public housing restrictions supports the use of a market-rent derived value.

Tax credits are an essential tool in the rehabilitation and redevelopment of public housing developments under the RAD program, and the nationally accepted use of a market rent-derived value allows housing authorities to generate needed financing to structure financially feasible transactions. In areas with strong rental markets where affordability crises often exist, the differential between the market rents a housing authority could realize in an unencumbered scenario and the RAD rents provide a mechanism for the housing authority to maximize the value of existing assets to generate more financing to improve and preserve existing affordable housing.

(24) Low Income Housing Information Service

Texas Low Income Housing Information Service

October 14, 2016

Texas Department of Housing and Community Affairs
221 E. 11th St
Austin, Texas 78701

TDHCA Staff & Board,

Texas Low Income Housing Information Service applauds the great efforts which the staff of the Texas Department of Housing and Community Affairs (TDHCA) have expended in working with stakeholders to craft the Draft 2017 Qualified Allocation Plan (QAP) and Draft Uniform Multifamily Rules. Overall, we believe that many of the rules and changes contained in these documents will advance this state's obligation to affirmatively further fair housing and to provide quality housing choices to low-income Texans who are dependent on affordable housing programs. However, there are several changes, as well as strong sentiments among stakeholders, which stand to impede this same obligation and are a regression from the 2016 QAP.

We submit the follow comments and recommendations on the Draft 2017 Qualified Allocation Plan and Draft Uniform Multifamily Rules.

Overview of Changes to Location-based Criteria

First, we'd like to quickly go over some of the changes made in this year's QAP which stand to open up new areas of the state to being competitive in the 9% LIHTC program:

1. Raising the allowable tract poverty rate in the opportunity index from 15% to the **higher** of 20% or the median tract poverty rate for the service region
2. Equalizing 1st, 2nd, and 3rd quartile tracts based on median household income for possible points in the opportunity index
3. Removing schools from the opportunity index
4. Using a school quality measure under Educational Quality that is the **lower** of 77 or the average of all schools for a service region
5. Providing opportunities to score points based on additional merits of these schools
6. Allowing for mitigation should a school campus not have a 'met standard' rating from TEA, as well as for other issues identified under Undesirable Neighborhood Characteristics
7. Awarding 5 points for simply being located within 4 miles of city hall in a municipality with at least 500,000 people
8. Awarding 5 points for being in an underserved census tract surrounded by other underserved census tracts that is located in a municipality with at least 500,000 people

With these changes, new areas have been opened to competition, while cumulatively these eight changes undermine the state's obligation to affirmatively further fair housing. Individually, these changes might have modest effects on the locations of LIHTC awardees. Together, however, they stand to potentially reopen the very areas where LIHTC development and other affordable housing types have been concentrated, thereby denying housing choices to low-income Texans. Some of these changes require further consideration by staff, and all should be considered when evaluating comments and

recommendations which call for further rule changes that will be even more consequential to the AFFH obligation for the state.

Below are our specific comments and recommendations.

Opportunity Index

Most troubling is the equalization of 1st, 2nd, and 3rd quartile tracts in scoring. This change is accompanied by a raising of the poverty threshold from 15 percent to the higher of 20 percent or the average for the state service region. This QAP went from rewarding deals in high opportunity tracts where few LIHTC developments are currently located to, poverty rate aside, placing three-fourths of census tracts in Texas on an equal playing field. Given that property values, a major factor in development decisions, are likely to be lower in 3rd quartile tracts, it is reasonable to presume that there will be a significant shift in the locations of awards in the 2017 cycle away from the progress which has been made over the past several competitive cycles. With the addition of the Proximity to the Urban Core points which are weighted equally with Educational Quality, there is a further reduced incentive to pursue developments in these top quartile tracts.

We recommend that 3rd quartile tracts be eligible for a maximum of 6 points for the opportunity index scoring item.

Educational Quality

It is unconscionable and offensive to witness such an effort from developers to discount the importance of a good education through the calls to remove this scoring item entirely. Say what one will about the TEA and its ever-changing metrics, but they are the sole source of the objective measures that you (TDHCA) have to work with. Emphasizing school quality in the state's QAP was the right thing to do. It has contributed to the trend of awards to areas which haven't had affordable housing available, providing new housing choices to low-income Texans.

There has also been a recommendation that school quality become one of the "menu items" under opportunity index. It is offensive to even consider relegating something so critical to life outcomes like a quality education to a mere option that might be chosen by developers. Knowing how school quality drives housing decisions in the market, and then understanding the effect this has on property values, it is reasonable to assume that this "option" will not be a desirable one when there are others that place smaller financial obligations upon applicants in the LIHTC program.

The changes called for in the Remedial Plan were implemented, produced undeniably positive results, and have set our state on a trajectory toward finally providing some real choice for its low-income residents. Retreating from these positive changes would not only be detrimental to those dependent on this housing, but would likely open the state up to future legal challenges based on the recently re-affirmed disparate impact methodology given the correlations between school quality and the increased presence of protected classes.

We recommend no changes to this section from its current form in the 2017 Draft.

Underserved Areas & Proximity to the Urban Core

Subsection 6(E) awards applications 5 points to applications if both the census tract of the proposed site and all contiguous tracts have not received any LIHTC reward for at least 15 years. Section 8 awards applications 5 points if the proposed development site is within 4 miles of the main City Hall facility. Both are bracketed to cities of 500,000 or more. This is a significant advantage available to qualifying proposals in large urban areas which smaller cities—many of which are suburbs—do not have. While it is unlikely that many areas exist where both of these point categories would apply, it is somewhat offensive that these items individually carry the same scoring weight as educational quality. Additionally, scoring criteria should not place suburban areas at such a disadvantage given the current lack of affordable housing options in many of these areas.

We recommend that at least one of the following two changes are made: 1) the population threshold for the 5-point underserved area item be lowered to 100,000 people; or 2) both of the aforementioned scoring items have their point award reduced to a level below that of educational quality.

Community Support from State Representative

Changes made in this rule appear to be in response to a couple of isolated incidents where representatives felt they were misled by the applicant and desired to withdraw their letters of support. These changes stand to make it even easier for state representatives to dodge the responsibility vested to themselves and effectively veto LIHTC developments. Allowing representatives to contest claims made by applicants after letters have been submitted will turn the agency's board and staff into a respective court and jury. The burden is upon the representative to get the information and facts they need to make their decision—something they do for a living inside our Capitol—so there is no need for the TDHCA to allow additional opportunities for dispute in this already-contentious process.

We recommend removal of this provision allowing state representatives to withdraw their submitted letters of support.

Undesirable Site Features (USF)

There is an important question to ask when considering changes which would place developments even closer to these feature: *would you want to live next to this?* Those of us who have likely had many housing choices available would answer a resounding 'no'. There is no reason to think the desires of a low-income household would be any different.

We recommend that at a minimum, these distances should remain at the greater of 2016 levels or those proposed 2017 Draft Uniform Multifamily Rules.

Undesirable Neighborhood Characteristics (UNC)

Without a QAP, these and USF are the only controls that staff has on what the locational priorities are in awarding non-competitive tax credits, as well as funding for housing through other programs. Calls to remove these in their entirety disregard the well-documented effects that concentrated poverty, lack of quality education, high crime, and structural blight have on the levels of opportunity afforded to neighborhood residents, as well as their general quality of life.

To the criticisms of using proprietary data from Neighborhood Scout for crime: it is unfortunate that there is not a publicly-available crime data source at the census tract level, but this is the best data

available for this purpose and is used for a small portion of the program. To not consider crime rates under this section would be a crime in and of itself and there is no reason to remove its consideration over unproven allegations of inaccuracy or unreliability.

We recommend no changes to this section from its current form in the 2017 Draft.

Thank you for your consideration of our comments and recommendations.

Best Regards,

Charlie Duncan
Fair Housing Planner

(25) Center for Supportive Housing

October 14, 2016

Ms. Sharon Gamble
Tax Credit Program Manager
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Ms. Gamble,

Thank you for the opportunity to present recommendations to the 2017 Multi-Family Rules. Please consider the below recommendations by CSH.

2017 Multi-Family Rules – TAC 10, Subchapter B

1. **Undesirable Neighborhood Characteristics**
   We strongly oppose all Undesirable Neighborhood characteristics and request removal of this entire section. These characteristics essentially eliminate the ability to serve many low-income neighborhoods along with entire communities from receiving safe, respectable and affordable housing. Should TDHCA not remove this section in entirety, we ask that the most restrictive language be changed back to 2016 standards.

   a. Poverty rate should not be decreased from 40% to 30%. There are 1,038 census tracts representing 20% of the State of Texas with a poverty rate greater than 30% (587 tracts or 11% in-between 30% and 40%) that would be excluded from receiving or preserving affordable housing. Areas of gentrification and areas of mixed-income often have poverty rates greater than 30%. Furthermore, this is in direct conflict with federal statute which encourages development in Qualified Census Tracts which often have poverty rates greater than 30%.

   b. Three consecutive year Met Standard requirement for schools be deleted from this section. TEA ratings have repeatedly come under scrutiny for being poorly assessed, administered and unreflective of the true nature of school performance. The TEA ratings do not provide sufficient reason for directing affordable housing away from large numbers of neighborhoods and communities. Building safe, quality affordable housing in areas will assist in improving schools by providing stability for students and help them to be successful in their schools. Deterring development or preservation in these areas is going to negatively impact low income households, often most in need of affordable housing.

      Furthermore, while Elderly Limitation is included in the exemption, all Elderly properties (Preference AND Limitation) along with Supportive Housing developments housing targeting only adults should be exempt. It is rare that a single child would live at any of these properties and we should not make development and housing decisions based on rare exceptions, but to serve the intended target population that the building will specifically serve.

c. We strongly oppose the seven required items under Undesirable Neighborhood Characteristics Report for any single undesirable characteristic. Instead of all 7 items being a requirement, we ask that these items be a guide for information that may be submitted for TDHCA to evaluate the site. For example, if one of 3 schools did not meet standard once in the past 3 years, a detailed explanation regarding blight does not pertain to the issue at hand. This list is an excessive amount of information for both the applicant to compile, but also for TDHCA to review, much of which may not be pertinent to characteristic in question.

2. **Administrative Deficiencies for Competitive HTC Applications - TAC 10, Subchapter B**
We ask that the cure period remain at 5 days for Administrative Deficiencies for Competitive HTC. Cures often require collaboration with several 3rd parties and 3 days is often not sufficient time to appropriately cure a deficiency.

   We also ask that point deductions not be imposed for late responses. We guarantee that we work as quickly as possible, but some cures can be out of our hands, especially if a 3rd party is out of the office during the short time period of the cure.

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

Sincerely,

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(27) Atlantic Housing Foundation, Inc.

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TDHCA QAP & Rule Changes
Items for Public Comment

- Multifamily Rules:
  - Subchapter B Section 10.101 Site Development Requirements and Restrictions – Rehabilitation Costs
    - The proposed increases for 4% transactions will exclude many large multifamily projects from utilizing the LIHTC for substantial renovations. LIHTC equity will return $0.315 per dollar of eligible cost ($0.415 for projects in QCTs) assuming a price per credit of $1.00. The balance of each dollar of cost must be funded with either debt or deferred developer fee. The availability of soft financing has dwindled and the criteria for obtaining soft financing skewed more heavily towards projects that are more likely to receive an allocation of 9% credits. Thus, any additional debt would be from the permanent lender. The additional rehabilitation expenditures could result in the ability to achieve higher rents and thus support additional debt expenditures, but that may not be true in all markets. In the absence of additional rental income potential, the only remaining source of funds would be deferred developer fee.
      - For a 200 property constructed more than 20 years ago, the additional rehabilitation cost requirement would be $1,000,000. Of that amount, assuming a price per credit of $1.00, the project could expect an additional $316,000 of LIHTC equity (or $416,000 if located in a QCT). The remaining $684,000 would need to be funded from additional debt or deferred developer fee. For a property of the same size constructed less than 20 years ago, the same analysis under the proposed rule change would result in the preceding figures being doubled.
      - The LIHTC remains the most effective means to substantially renovate existing properties and preserve affordable housing units without excessive leverage. The proposed rule could make the LIHTC program infeasible for many large multifamily developers, particularly those located outside of a QCT.
    - Presumably, TDHCA's concern is that credits would be allocated to projects which were not including enough in renovation expenditures to adequately preserve the properties through the Compliance Period. In

that case, would it be more precise to incorporate threshold criteria which require that systems of a certain age be replaced or that certain scope items (roofs, HVAC, flooring, common areas) be addressed absent some evidence of recent improvements addressing those items? The per unit minimum establishes a dollar amount to be spent, but does not necessarily direct that those dollars be spent on items that will preserve/enhance the property.

- In addition, there are numerous stakeholders in a LIHTC development, particularly investors and lenders, that are incentivized to ensure that any rehabilitation adequately addresses the long term and short term needs of a property. Restricting the types of developments that can access the resource seems like an overly punitive measure when there are stakeholders in place to ensure rehabs are done appropriately and more precise measures that could be applied as opposed to a broad criteria requiring only that a threshold amount be spent.

- QAP
  - Subchapter C Section 10.204 Required Documentation for Application Submission; incorporation of the Section 811 Program as a threshold item applicable to all multifamily developments.
    - TDHCA's inclusion of the Section 811 Program as a threshold item will result in developers being forced to either make the project for which an application is submitted or an existing project with the developer's portfolio fall under the definition of "federally assisted housing" according to 42 U.S.C. 13641.
      - The "federally assisted housing" designation applies to many projects which are funded in the 9% and 4% rounds each year, e.g. project with project based Section 8 contracts, HOME Funds, etc. The important distinction is that projects with HOME Funds or Section 8 contracts have actively sought to obtain those resources or keep those resources in place for their project. Making the Section 811 program a threshold criteria removes the choice as to whether or not to accept the "federally assisted housing" designation and the requirements that accompany the designation such as Davis Bacon Wages, application of the Uniform Relocation Act, etc.
        - The application of the URA substantially increases the administrative cost of an in-place rehab relocation due to the federal regulations with which the owner would be required to comply.
        - In addition, there are significant additional cost burdens implemented by the URA (42 months of the rental assistance payment) for any permanently displaced tenants, which would

occur for any in place rehab proposing to increase the percentage of affordable units from its existing configuration.
    - In the absence of the URA, the owner could determine what, in addition to moving expenses and any incentives offered to relocate, would be needed.
- Leaving participation in the 811 program as a scoring criterion would leave the decision as to whether to accept the additional costs and administrative burden created by the federally assisted designation up to the applicant.
- If THDCA wishes to expand the reach of the 811 program, perhaps it would be better achieved by imposing the threshold requirement on Direct Loan applications or others already choosing to receive funds that would designate the project as federally assisted.

(28) Locke Lord Attorneys and Counselors

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MEMORANDUM

TO: Texas Department of Housing and Community Affairs

FROM: Cynthia Bast

DATE: October 14, 2016

RE: PUBLIC COMMENTS ON RULES – **CHAPTER 10, SUBCHAPTER A**

On behalf of Locke Lord LLP and not any particular client of our firm, please find comments to draft Chapter 10, Texas Administrative Code ("**TAC**"), Subchapter A.

General Comment: Please see our General Comment with regard to Subchapter C, as such comment applies to the comments herein.

Section 10.3(a)(107) Definition of Qualified Nonprofit Organization

Comment: As currently written, the definition is somewhat confusing as to property transfer issues. Not all property transfers involving a nonprofit organization require that organization to comply with §2306.6706 of the Tex. Gov't Code. In fact, I believe the only transfer situations where such a restriction may be applicable would be: (1) where the property being transferred received its LIHTCs in the non-profit set-aside or (2) a 180-day ROFR transfer during the second 60-day period.

Recommendation: Change language as indicated below.

> An organization that meets the requirements of §42(h)(5)(C) of the Code for all purposes and, for an allocation in the nonprofit set-aside or subsequent transfer of the property, when applicable, meets the requirements of Tex. Gov't Code §2306.6706, and §2306.6729, and §42(h)(5) of the Code.

Section 10.4(4) Administrative Deficiency Response Deadline

Comment: Please see my comments on Section 10.201(7)(B) of Subchapter C. That section indicates that Administrative Deficiencies must be addressed within three business days (to avoid a loss of points). However, Section 10.4(4) indicates that the deadline is five business days. This discrepancy should be resolved. Moreover, the deadline should remain at five business days. Often, the response to an Administrative Deficiency is not within the control of an Applicant. The Applicant may need information from a third party. A three business day turnaround time is simply too short in many instances.

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MEMORANDUM

TO: Texas Department of Housing and Community Affairs

FROM: Cynthia Bast

DATE: October 14, 2016

RE: PUBLIC COMMENTS ON RULES – **CHAPTER 10, SUBCHAPTER B, SITE AND DEVELOPMENT REQUIREMENTS AND RESTRICTIONS**

On behalf of Locke Lord LLP and not any particular client of our firm, please find comments to draft Chapter 10, Texas Administrative Code ("**TAC**"), Subchapter B.

Section 10.101(a)(2) Undesirable Site Features

Comment: The following sentence is unclear:

"The minimum distances noted assume that the land between the proposed Development Site and the particular undesirable feature has no significant intervening barriers or obstacles such as waterways or bodies of water, major high speed roads, park land, or walls, such as noise suppression walls adjacent to railways or highways."

What if there are intervening barriers? For instance, what if a site is across a river from a nuclear plant? Does the fact that there is an intervening barrier mean that there is no undesirable site feature? If there is a noise suppression wall between a railroad track and a development site, does that mean there is no undesirable site feature, even if the railroad track is within the applicable distance from the development site?

Section 10.101(a)(3) Undesirable Neighborhood Features

Comment: The requirement for a high probability that the undesirable item will be cured or mitigated by the time of placement in service is too rigid. Communities that are undergoing revitalization take time to change. Completion of the construction or rehabilitation of the Development can promote other positive changes. We concur with the TAAHP recommendation for change on this point.

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MEMORANDUM

TO: Texas Department of Housing and Community Affairs

FROM: Cynthia Bast

DATE: October 14, 2016

RE: PUBLIC COMMENTS ON RULES – **CHAPTER 10, SUBCHAPTER C**

On behalf of Locke Lord LLP and not any particular client of our firm, please find comments to draft Chapter 10, Texas Administrative Code ("**TAC**"), Subchapter C.

General Comment: Throughout the Rules, TDHCA has various ways to refer to Persons who are involved with an Application – Applicant, Affiliate, Principal, Development Team. These different terms are used in different locations. Sometimes, their usage creates unintended burdens or infeasibility for Applicants. The goal should be uniformity and consistency in the Rules. Ultimately, each Application contains organizational charts to identify the proposed Development Owner, the entities that will be part of the ownership structure, and the individuals that will own or Control those entities. Those organizational charts need to be the hub of the wheel hosting the various spokes (ineligibility, previous participation, etc.).

Certain kinds of organizations, such as non-profit organizations, governmental bodies, and public corporations, require different treatment because Control and governance of these entities is so different than private, closely-held organizations. These organizations tend to have larger boards of directors. Unlike private, closely-held organizations, non-profits, governmental bodies and public corporations are not generally run by those who own the entity or serve on the board. They are operated on a day-to-day basis by a few officers and/or employees. The board of directors is responsible for policy directives, and the officers and/or employees are responsible for implementation. Thus, we have had multiple experiences where board members of non-profits, governmental bodies, and public companies are uncomfortable with signing certifications required by TDHCA. In one instance, a highly experienced and valued board member of a governmental body chose to resign from the board, rather than sign

the TDHCA certification required, because the certifications required went beyond his personal knowledge. I recognize TDHCA is aware of this issue and has tried to revise forms and procedures to accommodate the concerns. The concerns remain, nonetheless.

Section 10.201(5) Evaluation Process

Comment: If TDHCA is going to cease giving scoring notices and the Applicants must rely upon the scoring logs to know their score, we respectfully request that TDHCA publish the scoring notifications more often. In 2016, only 6 total scoring logs were posted. Nothing was posted between the period of March 16 and May 20. Then, nothing was posted again until July 7. As a result, Applicants were not always aware of their competitive position, which made it difficult for them to make decisions. By contrast, in 2015, 15 total scoring logs were published consistently throughout the cycle.

Section 10.201(7)(B) Administrative Deficiency Process

Comment: This indicates that Administrative Deficiencies must be addressed within three business days (to avoid a loss of points). However, Section 10.4(4) indicates that the deadline is five business days. This discrepancy should be resolved. Moreover, the deadline should remain at five business days. Often, the response to an Administrative Deficiency is not within the control of an Applicant. The Applicant may need information from a third party. A three business day turnaround time is simply too short in many instances.

Section 10.202 Ineligible Applicants

Comment: With regard to the new language, permitting a third party to question an Applicant's eligibility, we request that you reinstitute the language that allows the Applicant to address the matter. In other words, if a third party makes a written request for investigation to the Executive Director, the Applicant should be given the specific chance to respond. This may be inherent in the language that "staff will make enquiry as it deems appropriate." However, the removal of the language that the Applicant will have "the opportunity to explain how they believe they or their Application is eligible" gives me pause. I recommend language to this effect be re-inserted.

Section 10.202(1) Ineligible Applicants

Comment: The opening paragraph applies this standard to any party on the Development Team. Development Team is defined broadly to include any Person with any role in the Development. That includes not only the Developer and Guarantor but also minor players like lawyers, architects, or even construction subcontractor. All of those parties technically play a role in the Development and, by the rule, would be held to this standard. It is unconscionable to ask an Applicant, Developer, or Guarantor to make representations and certifications as to every single member of the Development Team.

Recommendation:

Going back to the comment above as to the organizational charts, the Ineligibility should apply solely to the Persons shown on the charts for the Applicant, Developer, and Guarantor.

Section 10.202(1)(M) Ineligible Applicants

Comment: I would like to understand why the considerations for eligibility, previously listed in clauses (i) through (v), were removed? Were they determined to be inappropriate for the inquiry? Does staff need more flexibility? With this deletion, it leaves room for question as to what the staff will consider when decided whether an Applicant is eligible to proceed.

Comment: With more and more ownership of LIHTC properties changing hands, I expect disclosure will be increasing. Some Applicants may like to know, up front, whether past activities will cause them to be ineligible. Would it be possible to provide that disclosure made during the pre-application process will be addressed before final application so that an Applicant can know whether it wants to continue? Similarly, would it be possible to have a pre-determination for an applicant that wants to submit a Tax-Exempt Bond application?

Section 10.202(1)(N) Ineligible Applicants

Comment: I object to the deletion of this provision. This language was inserted into our rules after an ugly episode where an Applicant blatantly fomented opposition to a competitor. While the remedies available in this provision may not have been utilized by TDHCA in recent years, I believe it is still important for the statement to be made. In Texas, it is our policy and culture to engage in LIHTC competition in a fair and professional manner

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Cynthia L. Bast
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cbast@lockelord.com

MEMORANDUM

TO: Texas Department of Housing and Community Affairs

FROM: Cynthia Bast

DATE: October 14, 2016

RE: PUBLIC COMMENTS ON RULES – **CHAPTER 10, SUBCHAPTER G, FEE SCHEDULE, APPEALS AND OTHER PROVISIONS**

On behalf of Locke Lord LLP and not any particular client of our firm, please find comments to draft Chapter 10, Texas Administrative Code ("**TAC**"), Subchapter G.

Section 10.901(3) Application Fee

Comment: Given the confusion this year about the payment of a fee when the number of Units changes between pre-application and final application, I think the language remains a bit unclear.

Recommendation: Revise the provision as set forth below for additional clarity.

> ~~The fee will be $30 per Unit based on the total number of Units.~~ For Applicants having submitted a competitive housing tax credit pre-application which met the pre-application threshold requirements, and for which a pre-application fee was paid, the Application fee will be $20 per Unit based on the total number of Units in the full Application. Otherwise, the Application fee will be $30 per Unit based on the total number of Units in the full Application.

Section 10.901(12) and (13) Extension and Amendment Fees

Comment: I do not think the calculation of subsequent fees is totally clear as to the "increase by $500". Is the intention as follows:

First Request: $2500 fee

Second Request: $3000 fee

Third Request: $3500 fee

Or is the intention:

First Request: $2500 fee

Second Request: $500 fee

Third Request: $500 fee

Perhaps some clarification can be provided here.

Thank you.

(31) TexEnergy Solutions

From:	Megan Lasch
To:	Tim Irvine
Cc:	Brad Bray; Sharon Gamble; Brent Stewart; Marni Holloway; Teresa Morales
Subject:	QAP Comments- TexEnergy
Date:	Friday, October 14, 2016 11:27:18 AM

Tim,

Please accept the below comments on behalf of Brad Bray of TexEnergy Solutions.

Thank you,

Megan Lasch
421 West 3rd Street #1504
Austin, TX 78701
830.330.0762

Begin forwarded message:

From: Brad Bray <brad.bray@texenergy.org>
Date: October 13, 2016 at 10:22:43 AM CDT
Subject: RE: TDHCA proposal

This sounds like a bit of misdirected greenwashing, or perhaps simply misguided good intentions. As addressed by our nationally and local recognized green consultant, the proposed revision is (we assume) suggested as a perceived cheaper alternative, but the better solution to address the problem of energy use and heat infiltration, is simply better quality windows. We would request the research that TDHCA used to come up with the requirement for solar screens in addition to internal blinds. What was their reference window and how much did it help SHGC (solar heat gain coefficient) and in turn energy use? How would it help a tenant with energy use that now needs to turn on their lights earlier in the evening or perhaps all day due to the reduced natural light? This also creates ongoing maintenance for the screens or risk of outright removal.
At what point do you hit the level of diminished returns? Where could that money be better spent to help the tenant? Better, higher quality windows, is definitely the more effective, longer-lasting solution.
If these screens are attached to the window frames it may also void the manufacturers warranty.
What is the forecasted cost of repairing or replacing them after a storm with high winds.
A better, more effective solution to consider would instead be mandating a specific window value (SHGC) minimum, appropriate per climate zone; and/or further still, mandating compliance with an above-code third party green certification program --or at the very least, exempting an entity who already includes delivery of a green cert program, as window & shading values are inherently included with a minimum standard window within these programs for

higher level energy compliance.

Brad Bray
LEED AP Homes – NGBS Verifier – HERS Rater – IECC Commercial & Residential
Project Manager – US-Ecologic | TexEnergy Solutions
214-529-2291(c) 972-579-2069(o)

(33) Anderson Development and Construction, LLC

From:	TERRI ANDERSON
To:	Brent Stewart; Tim Irvine; Marni Holloway; Sharon Gamble; Andrew Sinnott
Subject:	Comments to the 2017 Proposed Rules
Date:	Friday, October 14, 2016 4:56:48 PM
Attachments:	ADC 2017 Rules - Comments.pdf

Good evening,

Please see the attached document containing my public comments to the proposed rules. It is my hope the Department will consider modification to the proposed rules to ensure fair and equitable distribution of our affordable housing resources, and not engage in policies that perpetuate racial inequality across the State of Texas.

Have a great weekend!

Sincerely,
Terri

Terri L. Anderson, President
Anderson Development & Construction, LLC
347 Walnut Grove Ln
Coppell, TX 75019
Phone: (972) 567-4630
Fax: (972) 462-8715

10 TAC Chapter 10

Subchapter A

10.4(6) – Resolution Delivery Date – The new language regarding Direct Loan Applications "not layered with Housing Tax Credits" implies resolutions will be required in the future. As they are not currently required by statue, this additional requirement makes development more difficult, which works in contradiction to Affirmatively Furthering Fair Housing.

Subchapter B

10.101(a)(2) – Undesirable Site Features – The new language requiring documentation "such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application" is unduly burdensome and creates opportunities for capricious challenges if a developer is unaware of a particular ordinance after reasonable due diligence on the matter. Additionally, TDHCA should adopt HUD's acceptable distances for applicable hazards as the distance requirements appear to be arbitrary without reason.

10.101(a)(3)(B)(i) – Undesirable Neighborhood Characteristics - The poverty rate should be set at 40% to allow inclusion of Revitalization areas worthy of redevelopment and reinvestment and to prevent unlawful redlining of certain neighborhoods.

10.101(a)(3)(B)(iii) – Blight should be expected in revitalization areas.

10.101(a)(3)(C) &(D) – The mitigation of undesirable neighborhood characteristic s is highly subjective and creates an undue burden on the development community and TDHCA for review, with the likelihood of inconsistency on application of opinions.

10.101(b)(4)(D) – Mandatory Development Amenities – Solar Screens are very unattractive and may not be allowed on commercial buildings in many jurisdictions; this item should remain as a Green Building Features as an amenity option and not be mandatory.

10.101(b)(7) 0 Tenant Supportive Serivces – Requiring the intent that services are "to be provided by a qualified and reputable provider in the specified industry...on-site leasing staff or property maintenance staff would not be considered a qualified provider…" adds undue cost to every development escalating operating costs by $30,000 or more a year. Affordable operating margins will become unduly burdened by this requirement.

Subchapter C

10.201 – Procedural Requirements for Application Submission – Restricting only one application for assistance relating to a specific Development Site across all programs is arbitrary and capricious, and does not allow for maximizing the likelihood of successful development on proposed sites. This rule appears to be directly targeting the successful application of a Direct Loan while a non-competitive 9% application was pending. There should be no restriction on applying for different types of funding if the goal of the Department is to develop high quality affordable housing in high opportunity areas.

10.201(5) – Evaluation Process – Posting of a scoring log should not trigger appeal rights. There must be a formal notification process by the Department in order to ensure fair and equitable distribution of program funds. Additionally, the posted scoring logs are untimely and often wrong.

10.201(6)(B) – General Review Priority – Disallowing approval of 4% Bond transactions during May, June or July is not good practice and shuts down many opportunities for development and economic growth in the State of Texas. The Department should maintain an open application calendar as this valuable resource remains grossly under-subscribed.

10.201(7)(B) – Administrative Deficiencies must remain at a five business day response time without penalty, due to other business obligations, travel, vacations, etc. It is unfair to expect every developer to wait for the phone to ring in the office for seven months out of the year. Revert to prior years five day rule.

10.202(1)(K) – Applicant - removing the term knowingly does not allow for due process for the burden placed on an applicant for information submitted as the developer does not fabricate the majority of the documentation required in the application. Please add knowingly back to the requirement.

10.203 – Public Notifications – the 14 day timeframe is too short as the developer may be unaware of any change in public office. Notice should be required within 30 days of the applicant becomes aware of a newly elected (or appointed) official.

10.204(11) – Zoning – Requiring the applicant to provide a release to hold a jurisdiction harmless for zoning change requests is not the burden of a developer if the Political Subdivision is in violation of the Fair Housing Act. Individuals cannot exempt anyone from accountability to the Department of Justice. All applicable language should be removed and revert to the previous language.

10.204(16) – Section 811 Project Rental Assistance Program – This should not be a threshold requirement and should be a point scoring item.

Subchapter D

10.302(d)(4)(D)(i)(I) – Transactions with zero developer fee are more risky and the threshold should be a 50% deferred developer fee to provide for reductions to the interest rate and an increase in amortization.

10.302(e)(7) – Developer Fee – The maximum allowable deferred developer fee should be 50% before an application in deemed infeasible.

10.307(a)(2) – Direct Loan terms should not exceed the loan amortizations and both the term and amortization must be greater than the first lien debt term not to exceed 40 years and 6 months.

10 TAC Chapter 11

11.8(b) – Pre-Application Threshold Criteria – Disclosure of Undesirable Neighborhood Characteristics was provided in the past and TDHCA staff was unable to respond to the voluminous request for waivers

and review. Unless adequate time can be dedicated by TDHCA Staff to provide meaningful feedback and timely presentation to the Board if necessary, this threshold requirement adds undue burden to the developer should the Department disagree with the disclosure or lack thereof, which could subsequently result in inconsistency and subjective termination of applications.

11.9(c)(4)(A)(i) &(ii) – A 20% poverty rate limitation unfairly limits financing in certain neighborhoods.

11.9(c)(4)(A)(ii) - Including "without physical barriers…and the Development Site is no more than 2 miles from the boundary…" is the prime definition of the unlawful Redlining that blatantly violates the Fair Housing Act. Either a census tract is eligible or it isn't. Refusing the same financing across the highway or railroad tracks where minorities historically live is perpetuating racial discrimination. The physical barrier and distance language must be removed.

11.9(c)(8) – Proximity to Urban Core should be located within seven (7) miles to allow more site availability with reasonably priced land that is more feasible for responsible use of the limited tax credit and program resources.

11.9(d)(5) – Community Support from State Representative – Allowing rescission of a letter after submission provides for NIMBYism, which is a violation of the Fair Housing Act. Once a letter of support is submitted, it should not be allowed for removal.

11.9(d)(7)(A)(II) – Concerted Revitalization Plan – Requiring the plan to "include the limited availability of safe, decent, affordable housing" prevents real plans that has been duly adopted from being considered. The goal of the Department should be to seek real plans with real investment and not those procured strictly for the proposed application. Furthermore, the QAP rules may change next year and a city or county should not be required to revise this plan according to TDHCA's narrow prescription for what acceptable on an annual basis.

11.9(e)(4) – Leveraging of Private, State and Federal Resources – The language should revert to prior years percentages. TDHCA Staff admitted in the past the lower percentages caused developments to be too thin and raised them accordingly. Costs have not decreased, so it is unclear why the percentages would. It should be the Department's goal to have well capitalized applications that are able to sustain rises in interest rates and costs.

(34) BETCO Consulting, LLC

October 11, 2016

Mr. Tim Irvine, Executive Director
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, Texas 78701

Re: 2017 Draft Qualified Allocation Plan (QAP) and Uniform Multifamily Rules

Dear Mr. Irvine,

We appreciate the opportunity to provide comments to the Draft 2017 QAP and Multifamily Rules. After attending all the roundtables and reviewing the latest draft of the rules, as published in the Texas Register on September 23, 2016, there are items that we do not agree with and we offer the following comments for staff consideration.

Subchapter B – Site and Development Requirements and Restrictions

Section 10.101(a)(3) – Undesirable Neighborhood Characteristics

We recommend that this section be stricken in its entirety. With the recent dismissal of the ICP lawsuit, the state is not longer bound by the requirements of the remedial plan. These requirements have had a negative impact to areas that need and want new housing opportunities. We have heard that people should have choice on where they live. We agree. We further believe that we should help those who choose to stay in their neighborhoods where many of these requirements tell them that their neighborhoods are not fit for new investments in housing. They chose to stay because this is their home and community. This is their neighborhood where these families have their roots and support systems. In addition, the newly added requirement of an applicant submitting a report that outlines a myriad of disclosures and in-depth research of the area for staff review is a laborious exercise for both the applicant and Department staff. Finally, these requirements, added report and mitigation can interfere with transactional timelines that may jeopardize a housing development unnecessarily.

Subchapter C – Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules or Pre-Clearance for Applications

Section 10.201(7)(B) – Administrative Deficiencies for Competitive HTC Applications

We recommend the five-day timeframe for responding to Administrative Deficiencies issued by Department staff be restored. In the current draft, the response timeframe for an applicant has been shortened to three days. It unclear as to why there is this reduction in response time, as this was not discussed during the numerous roundtables.

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lora@betcohousinglab.com | 2201 Northland Drive Austin, Texas 78756 | 120 Joe Wimberley Blvd, Suite 104 Wimberley TX 78676

Section 10.201(16)(A) – Section 811 Project Rental Program.

We recommend that this criterion be removed from this section of the Uniform Multifamily Rules and re-inserted into the QAP, since the QAP discusses the 811 Program. In the event that it can not be moved, we would ask that the requirement for a specific number of units to be set aside for the 811 program be modified to be a percentage of units. In smaller developments, 49 units or less, it is very difficult to set aside 10 units, as this really equals 20 percent of the development, which is significant and can greatly impact a new construction development that is working to meet lease up timelines and requirements for equity partners. We would recommend 10% rather than 10 units.

Qualified Allocation Plan

Section 11.7 – Tie Breaker Factors

We recommend removing (1), (4), and (6) and re-adjusting the tie breakers as follows:

(1) Applications scoring higher on the Opportunity Index Score under 11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.
(2) Applications having achieved the maximum Opportunity Index Score and the highest number of point items on the Opportunity Index menu that they were unable to claim because of the 7 point cap on that item.
(3) Applications with the highest average rating for the elementary, middle school and high school designated for the attendance by the Development Site.
(4) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development awarded Housing Credits but do not have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Development for the purposes of this paragraph. The linear measurement will be performed from the closest boundary to closest boundary.

Section 11.8 – Pre-Application Requirements (Competitive HTC Only)

We recommend the Disclosure of any Undesirable Neighborhood Characteristics requirement for the Pre-Application be removed. First, it is in line with our earlier recommendation to remove the aforementioned section of the rule in its entirety. Second, due to the conflicting nature of the language in Section 10.101(a)(3)(A) and Section 11.9(e)(3)(G) regarding the disclosure of such characteristics, it is unclear as to whether an applicant will be penalized if disclosures are not made a Pre-Application rather than choosing to disclose at full Application.

Section 11.9 (c)(4) – Opportunity Index

We concur with TAAHP recommendation of excluding rural developments from (i) and (ii) in (A) of this section. Due to the manner in which the quartiles are assigned, rural communities would be at a significant disadvantage in meeting this criteria and providing needed new housing opportunities for the community. Staying in the same rural vein, we

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also recommend expanding the distance requirements to the menu items offered in Opp Index for stacking points. Because rural areas do not have the transportation infrastructure in place that an urban/metro place has, residents in a rural community depend on personal transportation to reach amenities and services. Rural residents travel between 3-5 miles to reach such amenities and services. Therefore, we recommend the following modifications:

- 3 miles from a full service grocery store or pharmacy;
- 15 miles from a university or community college;
- 20 percentage of persons 25 years and older having an associates degree or higher;
- at least three retail establishments in the community rather than the retail being tied to square footage;
- 3 miles from an indoor and outdoor recreational facilities of the development site;
- 3 miles from a community, civic, or service organization that provide regularly scheduled and reoccurring services to the public.
- 3 miles of a non-profit sponsored museum rather than a government sponsored facility.

Section 11.9(c)(5) - Educational Quality

We recommend removing this section in its entirety. Education has been the driving force for site selection the past four cycles and highly likely to be the winning applications, and it has had significant impact and not always to the benefit of the residents we are serving. This category alone has prevented more communities from having the ability to provide new housing opportunities to its citizens. While we believe that education is an important factor that should be considered in the placement of housing, we do not believe that it should dwarf other factors that are just as important to residents. Education has a place and it is in the menu of items that are being considered when determining a "good real estate transaction". There are a myriad of factors that make a good real estate transaction, not just one. Which leads into a second point. Development sites that are placed in high income and low poverty rate areas will, more than likely, already benefit from good schools. Education is tied to opportunity, so let's include it in Opportunity Index.

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

As mentioned earlier under our comments to Subpart B of the Uniform Multifamily Rules, we recommend Section 811 be restored to this section of the QAP as a scoring item.

Section 11.9 (c)(8) – Proximity to Urban Core

Should Educational Quality be removed, we would recommend this section be removed in its entirety, as this would give an advantage to Urban Core applications. While we want there to be room for developments to be successful in the urban core, we also want there to be opportunities outside the urban core. We believe that with the Educational Quality and Proximity to Urban Core categories being removed together, urban core and outside the urban core can compete equally.

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Section 11.9 (d)(5) – Community Support from State Representative

The new added language to this section is very problematic. To allow representatives to pull their letter of support will just make it easier for the NIMBYs in the area to pressure representatives to pull their support with any little rumor or mischaracterization about the development or the developer to jeopardize the development. Typically, the "inaccurate and misleading" statement and characterizations come from the NIMBY groups and they should not be allowed to benefit from this additional barrier to the developer. We recommend revising the following language in this section as follows:

"Once a letter is submitted to the Department it may not be changed or withdrawn. ~~*except in the instance where a representative who has provided a letter provides an additional letter to the Department, on or before April 3, 2017, stating that in their estimation the factual representations made to them to secure their original letter have proven to have been inaccurate, misleading, or otherwise insufficient to form a basis for their support, neutrality, or opposition and, accordingly, their letter is withdrawn.*~~

We thank you for the consideration of these recommendations. We look forward to our continued partnership and collaboration with the Department. Should you have any questions on our recommendations, please do not hesitate to contact me any time.

Sincerely,

Lora Myrick

Lora Myrick, Principal
BETCO Consulting, LLC.

cc: Marni Holloway, Multifamily Director
Sharon Gamble, 9% Competitive Housing Tax Credit Administrator

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(38) Dharma Development, LLC

Dharma Development, LLC

11312 Conchos River Tr., Austin, TX 78717

October 14, 2016

Marni Holloway – MF Finance Director
Sharon Gamble – HTC Program Administrator
Texas Departments of Housing and Community Affairs
211 East 11th Street
Austin, Texas 78701

RE: Comment Period for the 2017 QAP and Rules

Dear Marni and Sharon,

Thank you for the opportunity to comment on the upcoming 2017 QAP and Rules. I would like to comment on just a few items which are as follows:

Subchapter C

- **§10.203. Public Notifications – Notifying a newly elected official within fourteen (14) days of when they take office. –** This should be state this way: "Applicants are required to notify the newly elected (or appointed) official **by the time the full Application is submitted**.". The reason for this is sometimes Applicants are not aware of a change in office or that a newly elected (or appointed) official has occurred.

Qualified Allocation Plan

- **§11.2 Program Calendar –** The Application Acceptance Period Begins on 1/05/2017 which is a Thursday and the Pre-Application Final Delivery Date is on 01/09/2017 which is the following Monday. Did you mean for this time period to fall over a weekend? Shouldn't this time period fall within the work week? Developers should have the work week available to work on their pre-applications and make sure everything is in order for the pre-app deadline.
- **§11.9 (c)(4)(B) Opportunity Index –** Please clarify the definition of an "accessible playground". An accessible route should be leading to the playground area but not necessarily have to go directly to the playground equipment. Also, the Development should be able to install an accessible route from the development to the existing accessible route.
- **§11.9 (c)(6)(C) Underserved Area** – Please clarify the statement "A census tract within the boundaries of an incorporated area…". Some areas will have a census tract large enough that it will fall within the boundaries of an incorporated area and also outside the boundaries of an incorporated area.
- **§11.9 (c)(6)(C, D & E) Underserved Area** – Please add the language "serving the same Target Population" to all of the rulings. This was used in the past and it makes sense.
- **§11.9 (e)(4)(A) Leveraging of Private, State, and Federal Resources** – Keep the threshold for scoring for this section at 8 percent for 3 points, 9 percent for 2 points and 10 percent for 1 points. This will allow developments to be feasible in more areas of the State. Good developments that were successfully underwritten for the 2016 round, would not be financially feasible if the proposed changes were in place last year.

Thank you for your consideration and iff you have any questions or need additional information, please contact me at (512) 257-0054 or dru@dharmadevelop.com.

Sincerely,

Dru Childre
Dharma Development, LLC

(39) DMA Companies

DMA COMPANIES

October 14, 2016

Marni Holloway
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, TX 78701

Re: 2017 Qualified Allocation Plan and Uniform Multifamily Rules Comments

Dear Ms. Holloway,

The comments below are presented on behalf of DMA Development Company, LLC (DMA). Overall, we believe the draft QAP and multifamily rules are greatly improved from last year's rules, and we appreciate your time and efforts working with the development community through the rule making process.

DMA supports the new Proximity to Urban Core scoring category and its rank as the first tie breaker.

DMA supports TAAHP's recommendation to remove educational quality as a separate scoring item and incorporate school quality into the High Opportunity menu.

DMA supports TAAHP's revised language for Concerted Revitalization Plan.

DMA supports TAAHP's proposed changes to Undesirable Site Features and Undesirable Neighborhood Features.

DMA supports TAAHP's proposed change to the Cost of Development per Square foot, and specifically adding the concept of "costs voluntarily included in eligible basis" to both Building Costs and Hard Costs.

DMA supports TAAHP's proposed changes to mandatory unit amenities, and specifically allowing PTAC units in Rehabilitation developments.

Again, we thank you for your time and consideration.

DMA DEVELOPMENT COMPANY, LLC

Diana McIver
President

(40) Dominium

DOMINIUM SM

To: TDHCA, Sharon Gamble

From: Dominium

Date: October 14, 2016

Re: Dominium's Comments to Proposed 2017 Rules

Dominium has carefully reviewed the proposed 2017 rules and requests the Department consider the following comments. These comments are in addition to the comments of TAAHP, which we fully support. It should be noted that Dominium has representatives serving on the TAAHP Board and also on their QAP Committee, which provided input to help inform TAAHP's comments.

The below comments of Dominium are generally created through the lens of tax-exempt bond financed transactions, and in particular preservation of existing affordable housing (either Section 42 or project based Section 8). Dominium operates in 23 different states and is primarily a 4% bond shop that does very little 9% work, so we submit these comments with the goal of helping to efficiently preserve and rehab, or construct, affordable housing, utilizing tax-exempt bond and 4% low-income housing tax credits. We believe our broad work with affordable housing financed with tax-exempt bonds provides valuable input to the rules proposed by TDHCA.

New Proposed Rule at 10 Texas Administrative Code ("TAC"), Chapter 11

- 11.4(c) Increase in Eligible Basis—the existing language is ambiguous as it pertains to tax exempt bond financed transactions. We suggest that changes be made to make it clear that 11.4(c)(1) does not apply to 4% bond deals, particularly 4% bond deals that are preservation of existing affordable housing (project based S8 or existing S42).
    - If a 4% bond deals is otherwise eligible for a 30% basis boost under Section 42 of the code there should not be further restrictions on the ability of those transactions to qualify for the basis boost.

- Proposed change:
  (1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20 percent Housing Tax Credit Units per total households in the tract as established by the U.S. Census Bureau for the 5-year American Community Survey. New Construction or Adaptive Reuse Developments **seeking Competitive Housing Tax Credits** located in a QCT that has in excess of 20 percent Housing Tax Credit Units per total households in the tract are not eligible to qualify for a 30 percent increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code. For Tax-Exempt Bond Developments, as a general rule, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. For New Construction or Adaptive Reuse Developments **seeking Competitive Housing Tax Credits that are** located in a QCT with 20 percent or greater Housing Tax Credit Units per total households, the Development is eligible for the boost if the Application includes a resolution stating that the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and referencing this rule. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable. Applicants must submit a copy of the census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT. **For Tax-Exempt Bond Developments of existing affordable housing, either Section 42 or HUD-assisted, located in a Q CT the 30 percent increase in Eligible Basis would still apply even if the QCT had in excess of 20 percent Housing Tax Credits Units per total houseold.**

New Proposed Rule at 10 Texas Administrative Code ("TAC"), Chapter 10, Subchapter A

- Subchapter A -- Definitions
  - (10) Bedroom— 'has at least one window that provides exterior access.' Per the international building code a bedroom in a new construction building that is fully sprinkled with a NFPA 13 sprinkler system does not require a window by code.
    - This is especially problematic in new construction mid-rise buildings that are served by an elevator and double-loaded corridor as many times an 'internal' bedroom is built.
    - This is also problematic in Adaptive-Reuse Developments where the existing building does not necessarily allow for a feasible redevelopment if all bedrooms had to be located on an exterior wall with a window. Buried bedrooms are not only allowed under the code but are well accepted in the market.
    - This reduces the feasibility of certain new construction and historic Adaptive-Reuse developments.

New Proposed Rule at 10 Texas Administrative Code ("TAC"), Chapter 10, Subchapter B

- We support TAAHP's comments as well, but if those are not accepted we believe the following comments would be beneficial to be made in order to facilitate tax-exempt bond financed transactions of existing affordable housing (either Section 42 or project-based Section 8).
- (a)(2) Undesirable Site Features: Suggest 4% bond deals for Existing Residential Developments that are also affordable housing should be exempted; like existing HUD project based S8 and existing Section 42 developments.
    - Preservation and rehabilitation of existing affordable housing utilizing tax-exempt bonds should be encouraged, especially considering it is not feasible or practical to relocate existing affordable housing.
    - This is certainly appropriate for Competitive Housing Tax Credits, but should not apply to 4% bond deals.
- (a)(3) Undesirable Neighborhood Characteristics:
    - In general, this should not apply to HUD assisted project based S8 deals financed with 4% bonds and recommend adding language that would make it not apply to those developments. We further believe that existing Section 42 developments financed with tax-exempt bonds be exempted from this requirement as well. Preservation of existing affordable housing stock utilizing 4% bonds should be encouraged.
    - (A) Strike "where the Department is the Issuer" in the first paragraph. Where using a local issuer still need the same determination that for 4% credits the department will allow the development to proceed on a preliminary basis.
        - Tax-Exempt Bond Developments utilizing local issuers should not have to wait to find out if the deal will be approved or not. This puts local issuers and Department staff at a disadvantage as it would not provide local issuers, developers and the Department the ability to properly evaluate any Tax-Exempt Bond Development regardless of who the issuer is.
    - Further, this section shouldn't apply to deals that are HUD project based S8; or existing S42 deals being rehabbed. Preservation of existing affordable housing utilizing tax-exempt bonds should be exempted.
    - (D)(i): "Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility." This comment is particularly concerning as it makes it seems like preservation of existing affordable housing is not a priority of the Department.
- (b)(3) Rehab Costs: This should be changed to a minimum of $15k/unit regardless of age.
    - This effectively will encourage long-term owners of affordable housing to not maintain their property at high levels.
    - This also will encourage a waste of scarce resources (9% credits and/or 4% bonds) for developments that don't need more than $15k to $20k/unit of rehab.
    - Let the lender and investors who are the long-term partners determine. The existing lenders and investors already adequately scrutinize the level of rehab needed to move forward on proposed transactions and owners/developers are providing sufficient

financial incentive, or risk, should the level of rehab not be adequate throughout the 15-year compliance period.
    - Think minimums for 9% deals has merit; but should encourage preservation through the use of more readily available tax-exempt bonds and 4% low-income housing tax credits.
    - Would likely encourage existing Section 42 deals that have completed their initial 15-year compliance period to go market, versus preservation through re-syndication. This would make existing affordable housing that is well-maintained not financially feasible at that level of rehabilitation.
- (b)(4) Mandatory Development Amenities
    - (D) Solar Screens:
        - This should be defined with more detail.
        - This should not be required on existing affordable housing, especially where windows are in good condition and are not being replaced.
    - (I) Ceilings fans: Suggest this not be required on existing affordable housing where ceilings fans never existed.
- (b)(5) Common Amenities
    - There is no differentiation for "Rehabilitation" of existing affordable housing. Suggest that rehabilitation of existing affordable housing be treated differently with lower required amenities or provide more points for rehabilitation deals of existing affordable housing utilizing tax-exempt bonds. Further, deals utilizing Competitive Housing Tax Credits are treated the same as Tax-Exempt Bond Developments.
    - If no changes are made to rehab deals, suggest some of the point categories be reconsidered.
        - (xii) Furnished Community Room should be 2 points or more.
            - For example; Community Theater Room (xxvi) is worth 3 points, but yet a Community Room is only 1 point—will dissuade from developments having a Furnished Community Room. A Furnished Community Room receives the same points as a Horseshoe Pit or Bicycle Parking.
        - (xxi) Community Dining Room not defined, it's not clear if this is a separate room or could be included in the community room. Is this as simple as a few tables people could eat dinner at?
        - (xxxiii) Green Building Features
            - (I)(f): individually metered water and electric—suggest that rehabilitation deals be eligible for these points. If the deal was built with individual meters, or is changing to individual meters, rehabilitation deals should be treated to the same points as new construction.
            - (I)(o): radiant barrier—suggest this be modified to allow rehabilitation deals to be eligible for these same points. This can effectively be added to the underside of roof sheathing in renovation deals or where roofs are being replaced.

- (b)(6)(B) Unit and Development Construction Features
    - 7 points for rehabs may be hard to meet. Suggest this be lowered for rehabilitation deals utilizing 4% bonds.
    - (xii) "High Speed Internet" not defined. Is this able to be charged for? Or does the owner have to just provide the ability for the resident to have high-speed internet?
    - (xiv) What about built-up or 4-ply flat roof? Doesn't provide any points for a quality flat roof. Suggest points be added for flat roof developments to make even with shingles.

New Proposed Rule at 10 Texas Administrative Code ("TAC"), Chapter 10, Subchapter C

- Section 10.201(3)(A)—consider adding the word "material" before "development costs" or make this sentence read "as long as the financing structure and terms remain unchanged**, or such changes are not material.**"
    - This will help avoid an administrative burden to staff and the developer for something that is truly not material.
- Section 10.202—consider a fee payment by the 'challenger' to help dissuade bogus or disingenuous challenges. We would recommend that any 'challenge' be treated as Administrative Deficiency with a fee of $500. This would not only offset the time the Department staff spend on the challenge, but would hopefully dissuade challenges without merit.
- Section 10.204(17) Section 811—Why would this apply to 4% bond deals; seems this should apply to competitive 9% housing tax credits only. Also, project based S8 should be exempt. We further agree with TAAHP comments that this should apply only to 9% deals and not threshold for tax-exempt bond financed transactions.
- Section 10.205—We recommend that this be exempt on project based S8 deals or existing Section 42 deals that are 95% or greater occupied at the time of application from completing a market study—it is an inefficient use of time and money to provide when it has no meaningful value. This would also relieve department staff of some administrative burden in reviewing applications that are proposing to renovate existing affordable housing.
    - Dominium understands this might be to substantive to modify now, but would like the Department to consider this in the future should it be unable to be modified now. Further, we understand that by statute a market analysis is required, but think a full market study is too much, where a less intense version of a market analysis could suffice.

New Proposed Rule at 10 Texas Administrative Code ("TAC"), Chapter 10, Subchapter D

- Section 10.302(d)(4)(D) <p. 5>—DSCR, we suggest the Department consider adding language for tax-exempt bond deals that are 80% or greater project based S8 as many lenders and investors may require a higher DSCR than 1.35, or even 1.50, if there are contract rents above S42 limits, etc.

    - There is a different risk profile on HUD project based Section 8 developments that many investors and lenders underwrite more conservatively, so this is really to allow flexibility to make it easier to preserve HUD-assisted developments.
    - Dominium understands this might be to substantive to modify now, but would like the Department to consider this in the future.
- Section 10.303—market study. Suggest this not be required on existing S42 and S8 deals that are not moving rents more than 5% and that are 90% occupied or greater over the past 12-months. It is an inefficient use of time, Department staff, and money on project based S8 deals and S42 re-syndications that are not significantly moving NOI and are not displacing tenants.
    - Dominium understands this might be to substantive to modify now, but would like the Department to consider this in the future.

(41) Endeavor Real Estate Group

ENDEAVOR

October 14, 2016

Marni Holloway
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, TX 78701

Re: 2017 Qualified Allocation Plan and Uniform Multifamily Rules Comments

Dear Ms. Holloway:

The comments below are presented on behalf of the Endeavor Real Estate Group ("Endeavor"). The proposed language changes are relative to the Draft 2017 Qualified Allocation Plan (QAP).

Qualified Allocation Plan

Section 11.7 Tie Breaker Factors

Endeavor supports TAAHP's comments and supports TDHCA placing Proximity to the Urban Core as the first tie breaker factor. Endeavor supports eliminating tie breaker factors #4 related educational quality and #6 related to census tracts with lowest poverty rate.

Section 11.9(c)(5) Educational Quality

Endeavor supports the deletion of this scoring category.

Section 11.9 (c)(8) Proximity to the Urban Core

Endeavor supports the new Proximity to Urban Core scoring item.

Section 11.9(d)(7) Concerted Revitalization Plan.

Endeavor support TAAHP's revised language to this scoring item.

Section 10.1.0(a)(2) Undesirable Site Features

Endeavor supports TAAHP's comments, and specifically with regard following HUD's guidelines on proximity to active railroad tracks.

Endeavor Real Estate Group T 512-682-5500
500 West 5th Street, Suite 700 | Austin, TX 78701
endeavor-re.com

Thank you for your consideration of our comments. Please contact me at jasont@endeavor-re.com or (512) 682-5523 with any questions.

Sincerely,

Jason Thumlert

Endeavor Real Estate Group

(42) Evolie Housing Partners

EVOLIE HOUSING PARTNERS
404 E WORTH STREET
GRAPEVINE, TEXAS 76051
(817) 424-3908

October 14, 2016

Via email htc.public-comment@tdhca.state.tx.us

Ms. Sharon Gamble
9% Competitive Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

Re: Public Comment on QAP and MF Rules

Dear Sharon:

Attached is our comment on the proposed 2017 QAP and Multifamily Rules, submitted in accordance with the notice published in the September 23, 2016, edition of the Texas Register.

If you have any questions or need additional information, please feel free to contact me at (817) 424-3908 or evon@holleman-associates.com.

Sincerely,

Evon Harris
Manager

enclosures

11.1(b) Due Diligence and Applicant Responsibility

New language has been added to the end of this section (as well as to 10.201(5)), which raises a number of procedural questions. The language states "appeal rights are triggered by the publication on the Department's website of the results of the evaluation process. Individual Scoring notices or similar communications are a courtesy only." In the 2016 Round, there were only 6 logs published from the date of Application submission through date the awards were made by the Board in late July. This is less than half the number of logs that were published in the previous two years (2015: 15 logs, 2014: 13 logs). Furthermore, of the 6 logs that were published, only 3 were announced via Department listserv. Does this new language mean the Department intends to move away from issuing scoring notices? If a courtesy scoring notice is issued, but a log is not published until two weeks later, is an Applicant able to submit an appeal prior to the official "trigger date?" If no scoring notice is issued, and a log is published but not announced, how would the Department hand an Applicant who then misses their appeal window? We recommend striking this language, as it adds ambiguity to a process, which up until this point has been very clear. Furthermore, this language is unnecessary as there is an entire section related to Appeal rights in Subchapter G.

11.6(2) Credit Returned and National Pool

"if sufficient credits are available to meet the requirement of the Application after underwriting review."

The addition of this new language limits the Department's ability to allocate the entire credit ceiling in any given year. There was a sizable amount of credit left over in 2015, which if not allocated in the current round, will go into the 2017 National Pool, and will make Texas ineligible for a National Pool allocation. We recommend striking this language.

11.6(3)(C)(ii) – statutory reference missing (2306.6711(g))

11.7 Tie Break Factors

We agree with the TAAHP recommendation to remove the 4th tie break factor, related to Educational Quality score, which is concurrent with the TAAHP recommendation that the Education Quality scoring item be removed from the QAP.

Additionally, we make the following recommendation to the 3rd tie break factor, related to the Opportunity Index menu items above the maximum Opportunity Index Score. We believe that great strides have been made in the 2017 QAP to deconcentrate the allocation of tax credits by allow more ways to achieve a maximum score, and we commend these efforts. However, this progress is undone with the 3rd tie break factor, and could likely have the effect of creating another Alton or Whitehouse. There are a limited number of sites that have the necessary demographics and proximity to achieve all of the menu items, so with the current language, this tie break factor perpetuates the problem of developers going after the same sites, driving up land prices and further concentrating the allocation of tax credits. It is the confluence of factors from the menu that equate to High Opportunity, not any one individual menu item. Therefore, breaking a tie based on one item, when another site might have a different positive attribute which is not part of the menu, seems myopic (for example a senior center, which would likely not count as "an indoor recreation facility available to the public" because use of the facilities is age restricted). We recommend limiting the number of above the point cap menu items that can be claimed on this tie break factor to no more than 4 (suggested language below). This still incentivizes finding High Opportunity sites, but follows the general trend in the QAP to expand the idea of what High Opportunity means.

Furthermore, there is a procedural problem with the construct of this tie break factor. The Statutory purpose of the Pre-Application is to give Applicants the ability to judge their potential competition in order "to prevent unnecessary filing cost." At the September Board meeting, public comment was made that Opportunity Index menu items above the point cap should be disclosed at Pre-Application; however, this comment was not incorporated into the QAP that was publish in the Texas Register and consequently, there is no enforcement mechanism by which to require disclosure. Creating such an enforcement mechanism at this point in time would seem be beyond the scope of changes allowed under the Administrative Procedures Act. If such a mechanism could be incorporated into the QAP, we would recommend that it function in a similar fashion to the Pre-Application scoring item, specifically, an Applicant must disclose their menu items at Pre-App, and those menu items cannot swing more than 4 items up or down at Full Application.

(3) Applications having achieved the maximum Opportunity Index Score and ~~the highest number of~~ have at least four (4) additional point items on the Opportunity index menu that they were unable to claim because of the 7 point cap on that item.

11.9(c)(3)(B) Tenant Services

"The Applicant certifies that the Development will contact local service providers, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. (1 point)"

There is a lot of ambiguity with this language. What is the point for, the certification? What constitutes a service provider? How is local defined? How will compliance be verified? What if no service providers are available or interested? Also, there is nothing precluding an Applicant from using one or more of the items under 10.101(7) to meet this requirement. If the area Planned Parenthood does an annual health fair at the Development, under the current language, that one event would count for 2 points: 1 point for a health fair under 10.101(7), plus the point under this scoring item (space made available to a local service provider on an annual basis, meaning "regularly-scheduled"). We recommend striking this language from 11.9(c)(3) and adding it as an option under 10.101(7) in more clearly defined terms.

11.9(c)(4) Opportunity Index

We commend TDHCA on its efforts to expand the definition of High Opportunity, and believe these changes help to deconcentrate the allocation of tax credits. We offer the following recommendations to this section, some of which are self-explanatory. A more detailed explanation of some of these recommendations is offered below the blackline of this section.

(A) A ~~P~~proposed Development is eligible for a maximum of seven (7) opportunity index points if it is located in a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and ~~meets the requirements in (i) or (ii) below.~~ has:

(i) ~~The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and~~ an income rate in the two highest quartiles within the uniform service region~~.~~; (2 points)

(ii) ~~The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with~~ an income rate in the third quartile within the region, ~~and~~ is contiguous to a census tract in the first or second quartile~~,~~ without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the first or second quartile census tract~~s~~. and, (1 point)

(B) An application that meets the foregoing criteria may qualify for additional points up ~~to seven (7) points~~ for any one or more of the following factors. Each facility or amenity may be used only

once for scoring purposes, regardless of the number of categories it fits~~:~~.

(i) For Developments located in an Urban Area:~~, an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIV) of this subparagraph.~~

(I) The Development site is located less than 1/2 mile on an ~~accessible route~~ from a public park with an ~~accessible~~ playground (1 point);

(II) The Development Site is located less than ½ mile ~~on an accessible route~~ from Public Transportation with a route schedule that provides regular service to employment and basic services (1 point);

(III) The Development site is located within 1 mile of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items~~.~~ (1 point);

(IV) The Development is located within 3 miles of either an emergency room or an urgent care facility (1 point);

(V) The Development Site is within 2 miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten (1 point);

(VI) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less, as defined by neighborhoodscout.com (1 point);

(VII) The development site is located within 1 mile of a public library (1 point);

(VIII) The Development Site is located within 5 miles of a University or Community College campus (1 point);

(IX) The Development Site is located within 3 miles of a concentrated retail shopping center ~~of at least 1 million square feet or~~ that includes at least 4 ~~big box~~ national retail stores (1 point);

(X) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher exceeds that of the State-wide average ~~is 27% or higher.~~ (1 point);

(XI) Development site is within 2 miles of a ~~government-sponsored~~ non-profit museum (1 point);

(XII) Development site is within 1 mile of an indoor recreation facility available to the public (1 point);

(XIII) Development site is within 1 mile of an outdoor recreation facility available to the public (1 point); and

(XIV) Development site is within 1 mile of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point).

(ii) For Developments located in a Rural Area:~~, an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIII) of this subparagraph.~~

(I) The Development site is located within ~~2~~5 miles of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide

variety of household goods, paper goods and toiletry items~~.~~ (1 point);
(II) The Development is located within 4 miles of health~~—~~related facility, such a full service hospital, community health center, or minor emergency center. Physician specialty offices are not considered in this category~~.~~ (1 point);
(III) The Development Site is within 3 miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten (1 point);
(IV) The Development Site is located in a census tract with a property crime rate 26 per 1,000 or less, as defined by neighborhoodscout.com (1 point);
(V) The development site is located within 3 miles of a public library (1 point);
(VI) The development site is located within 3 miles of a public park (1 point);
(VII) The Development Site is located within ~~7~~15 miles of a University or Community College campus (1 point);
(VIII) The Development Site is located within 5 miles of a retail shopping center with ~~XX square feet of stores~~ at least 3 retail stores (1point);
(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher exceeds that of the State-wide average ~~is 27% or higher.~~ (1 point);
(X) Development site is within 2 miles of a ~~government sponsored~~ non-profit museum (1 point);
(XI) Development site is within ~~1~~3 mile of an indoor recreation facility available to the public (1 point);
(XII) Development site is within ~~1~~3 mile of an outdoor recreation facility available to the public (1 point); and
(XIII) Development site is within ~~1~~3 mile of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point).

For item (B)(i)(I) & (II), we recommend removing the accessible route language because the accessibility of a public path is difficult to prove and will be very hard for the Department to administer. The term "accessible" is not specific and could mean compliance with a variety of laws dealing with accessibility. We have included an informational guide published by the Federal Highway Administration on accessible sidewalks and street crossings which goes into great detail about all the factors that need to be taken into account when designing an accessible path. Even paths that have been carefully designed as accessible can overtime create barriers to accessibility (shifting soil, tree roots, etc.). This language also invites Third Party Requests for Administrative Deficiencies, creating a further administrative burden for the Department. Given the vague language, if an Applicant takes the point for this item, a Third Party could hire an engineer to find one defect with the route based on a specific set of standards. The Applicant could then hire their own engineer to certify that the route is accessible based on a different set of standards, creating dueling professional opinions. The same argument can be made for an accessible playground. Furthermore, if an Application proposes a family deal, they will in all likelihood include a playground on the development site, which must be accessible.

For items (B)(i)(VI) & (ii)(IV), we recommend clarifying that the property crime rate must be based on neighborhoodscout.com data, so as to compare apples to apples.

For item (B)(i)(IX), we recommend striking the square footage requirement (also on the Rural side for item (ii)(VIII)). One million square feet limits this point item to only the largest shopping malls. Of the 23 Simon brand malls in the State of Texas almost half wouldn't qualify for this point (see attached list).

Notably, neither of the Simon shopping complexes in Fort Worth would qualify for the point. Furthermore, given that shopping malls encourage spending money as a form of recreation, perhaps this is not the best thing to incentivize for an affordable housing development. We also recommend striking "big-box" as this is not a defined term.

For items (B)(i)(X) &(ii)(IX), the language we have proposed above ties the point to exceeding the State-wide average of adults 25 and older with associates degrees or higher, which according to the 2014 American Community Survey is 24.5%.

For items (B)(i)(XI) & (ii)(X), the phrase "government-sponsored" is vague and would require an examination of a museum's IRS Forms 990 for information on its funding sources. What constitutes sponsorship and how much would be required? If a museum received a single government grant ten years ago, would that count? What about an annual contribution of $1? We believe substituting the word "non-profit" achieves the intended goal, while using objective data point.

11.9(c)(5) Educational Quality

We agree with the TAAHP recommendation that the Educational Quality scoring item should be removed from the QAP, and further recommend that each school with a Met Standard (elementary, middle, and high) should be worth one point on the Opportunity Index menu.

11.9(c)(8) Proximity to the Urban Core

We recommend that this scoring item not apply to the At-Risk/USDA set-asides, as those are State-wide competitions and this item is only available in 5 cities.

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

This section is missing a statutory citation (2306.6725(e)). We question why terms would be necessary on a de minimis contribution.

11.9(d)(5) Community Support from State Representative

We agree with TAAHP's recommendations on this section.

11.9(d)(7) Concerted Revitalization Plan

For Urban areas, we recommend striking the language "and in a city with a population of 100,000 or more." With this population limitation, all of Region 4 would be ineligible for points under this scoring criteria. Sherman, which is in its own MSA, would also be ineligible. The attached list shows all of the Urban cities with populations of less than 100K. Many, like Texarkana, have existing plans in place which would likely qualify for points but for this population limitation. If a limitation must be included, we recommend 25,000 or more.

For Rural areas, we are supportive of the recommendations made by Rural Rental Housing.

11.9(e)(2) Cost of Development per Square Foot

We agree with the recommendations made by the Texas Coalition of Affordable Housing Developers.

11.9(e)(3) Pre-application Participation

We have concerns with the new language under subparagraph (F). As previously mentioned, the statutory purpose of the pre-application process is to allow Applicants to judge their potential competition in order

"to prevent unnecessary filing cost." If an Applicant submits a Pre-App with one piece of property, but then submits a Full App with an entirely different piece of property, but the two pieces happen to share a boundary, why wouldn't this be considered a completely new application? Why would this type of bait and switch be incentivized? We recommend the following language.

> (F) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number listed at pre-application is the same at Application;

11.9(e)(4) Leveraging of Private, State and Federal Resources

We recommend that the leveraging percentages outlined in clauses (ii) – (iv) should be increased to eight, nine and ten. Lower levels will result in deals with deferred fees in excess of that allowable in Subchapter D, related to Underwriting and Loan Policy.

Subchapter A

10.3 Definitions

We agree with the recommendations made by The Brownstone Group to the definitions of Control and Principal.

The current definition of Elderly Preference Development does not preclude an Application from choosing this type of Elderly Development even if HUD funding (or other federal assistance) is not used; however, the 2016 Application conflicted with this plain language and did not allow for that type of a choice to be made. If the intention of the Elderly Preference Development definition is that it only apply to developments with HUD funding or other types of federal assistance, that should be clearly articulated in the definition.

Subchapter B

10.101(a)(2) Undesirable Site Features

Much of the new language in paragraph (2) is far too subjective. How do does the Department intend to define "high speed roads" which are listed separately from highways? If an "intervening barrier" exists between the development site and a railroad track 490 feet away, does this mean the railroad track is no longer a concern? We offer the following proposed language (with explanatory remarks below).

(2) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph maybe considered ineligible as determined by the Board. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs ("VA") may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application and must include a letter stating the Rehabilitation of the existing units is consistent with achieving at least one or more of the stated goals as outlined in the State of Texas Analysis of Impediments to Fair Housing Choice or, if within the boundaries of a participating jurisdiction or entitlement community, as outlined in the local analysis of impediments to fair housing choice and identified in the participating jurisdiction's Action Plan. The distances are to be measured from the nearest boundary of the Development Site to the ~~nearest boundary of the property or easement containing the~~ undesirable feature. ~~The minimum distances noted assume that the land between the proposed Development Site and the particular undesirable feature has no significant intervening barriers or obstacles such as waterways or bodies of water, major high speed roads, park land, or walls, such as noise suppression walls adjacent to railways or highways.~~ Where there is a local ordinance that ~~regulates the~~ for closer proximity ~~of~~ to such undesirable feature ~~to a multifamily development that differs from~~ than the minimum distances noted below, documentation, such as a copy of the local ordinance identifying such distances relative to the Development Site, must be included in the Application. ~~The distances identified in subparagraphs (A) - (J) of this paragraph are intended primarily to address sensory concerns such as noise or smell, social factors making it inappropriate to locate residential housing in proximity to certain businesses. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes.~~ If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (K) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

(A) Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Transportation Code, §396.001;

(B) Development Sites located within 300 feet of a solid waste or sanitary landfills;

(C) Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local Government Code, §243.002, or as zoned, licensed and regulated as such by the local municipality;

(D) Development Sites in which the buildings are located within 100 feet of the easement of any overhead high voltage transmission line, or support structures for high voltage transmission lines~~, or other similar structures~~. This does not apply to local service electric lines and poles;

(E) Development Sites located within ~~500~~100 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail;

(F) Development Sites located within 500 feet of heavy industrial (i.e. facilities that require extensive capital investment in land and machinery, are not easily relocated and produce high levels of external noise such as manufacturing plants, fuel storage facilities (excluding gas stations) etc.);
(G) Development Sites located within 10 miles of a nuclear plant;
(H) Development Sites in which the buildings are located within one-quarter mile of the accident zones or clear zones of any airport;
(I) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids. Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance ("PIPA");
(J) Development Sites located within 2 miles of refineries capable of refining more than 100,000 barrels of oil daily; or
(K) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated.

Our recommendation to strike the language about the primary purpose of the list is due to the fact that a number of items on the list relate to safety: nuclear power plants, airport accident zones. We support the change in subparagraph (D) because fires burning near high voltage power lines can create electrical arcs or "flashovers" which could endanger near-by residents. In subparagraph (E), we recommend returning to the 100 foot distance of previous years. If sound is the concern, there is significant mitigation that can be done during construction, and would likely be recommended in the Phase I ESA. Anytime the Phase I ESA makes a recommendation, the Department's Real Estate Analysis division places a related condition in the Underwriting Report. We are supportive of the change in subparagraph (G). Ten 10 miles is in line with the Nuclear Regulatory Commission's first (of two) Emergency Planning Zone around nuclear power plants (plume exposure pathway zone).

10.101(a)(3) Undesirable Neighborhood Characteristics

While we believe that this section is largely irrelevant for 9% Tax Credits (due to the competitive nature of the program and QAP's scoring incentives for High Opportunity sites), we believe this section is still necessary as threshold to ensure 4% transactions are not placed in undesirable locations. Therefore, we agree with the language recommendations made by TAAHP.

10.101(b)(4) Mandatory Development Amenities

We agree with TAAHP's recommendation to strike the requirement for solar screens.

10.101(b)(5) Common Amenities

We recommend increasing the point value assigned to a furnished community room to 2 points, as this is a costly item.

10.101(b)(6)(B) Unit and Development ~~Construction~~ Features (not all these features are construction related)

We recommend increasing the point value assigned to in-unit laundry equipment to at least 2 points, if not 3 points. Under Common Amenities, a community laundry room is worth 3 points, when it is far less desirable to tenants than having laundry equipment provided to them in their units. Also, the words "and metal" should be stricken from item (xv) related to stucco and masonry exteriors.

10.101(b)(7) Tenant Supportive Services

We agree with TAAHP's recommendation to this section of the Rule. We also recommend that the point value should be increased for item (K) related to scholastic tutoring, because the requirements have increased. We recommend at least 6 points, given the cost to the Development to provide such a service, and the enormous benefit gained by the tenants.

Subchapter C

10.201 Procedural Requirement for Application Submissions

> "Only one Applicant may have an Application or Applications for assistance related to a specific Development Site at any given time."

Because Site Control is a threshold item, it would not be possible for multiple Applicants to submit Applications for the same Development Site. This second sentence should revert back to its previous construct, which read "only one Application may be submitted for a Development Site in an Application Round."

10.201(1) General Requirements

There has been a provision added to allow for errors in the calculation of applicable fees to be cured via the Administrative Deficiency process. In a highly competitive environment, we believe this is a slippery slope and the language should be removed. The Application fee due is not a difficult calculation to perform. The Department has long standing precedent of terminating Applications that make unfortunate mistakes like this precisely because of the highly competitive nature of the program. How is this different from submitting the wrong electronic Application file/third party report, thereby missing the deadline? The Department has on numerous occasions, terminated Application for that very mistake. Another simple calculation mistake that the Department has never let Applicants correct is exceeding the $3 million cap. Again, on numerous occasions, awards have been lost because an Applicant exceeded the cap by a very small dollar amount. Again, we believe this to be a slippery slope, and goes against years of precedent. In order to maintain the integrity of the Rule, this language should be removed.

10.201(7) Administrative Deficiency Process

The Administrative Deficiency deadline for should be increased to 5 days. This is not an extraordinarily long period of time, and historically not unduly slowed the review process. Often times, Administrative Deficiencies *are* resolved immediately, but there are situations when more time may be needed. Five days is an appropriate amount of time.

10.203 Public Notifications

We agree with TAAHP's recommendation on this section.

10.204(6) Experience Requirement

Because the criteria for an experience certificate in 2014 was exactly the same as the criteria in 2015 and 2016, there is no reason that a 2014 experience certificate should not count. Additionally, we believe that the term "natural Person" used in subparagraph (A) should be changed to "natural person" as the capitalized term Person includes entities.

10.204(8)(E) Financing Narrative

Language has been added requiring that the financing narrative include "(dates and deadlines) for application, approvals and closings, etc. associated with the commitments for all funding sources." We do not see the benefit of requiring this information to be including in the financing narrative. The debt and equity terms submitted at Application are very preliminary in nature and highly dependent on numerous factors (whether an allocation is even made, changes in market conditions, changes to the proposed debt

and equity providers, the Developer's pipeline, etc.). At very best, any dates and deadlines that could be included in the narrative would be an educated guess. We recommend that this language be removed.

10.204(16) Section 811 Project Rental Assistance Program

We agree with TAAHP's recommendations on this item.

Subchapter D

10.302(e)(9) Reserves

New language has been added to the 5th sentence of this section, and we recommend the following changes.

> In no instance at initial underwriting will total reserves exceed twelve (12) months of stabilized operating expenses plus debt service (and only for USDA or HUD financed rehabilitation transactions the initial deposits to replacement reserves, initial deposits to required voucher reserves and transferred replacement reserves ~~for USDA or HUD financed rehabilitation transactions~~).

Subchapter G

10.901(5) Third Party Underwriting Fee

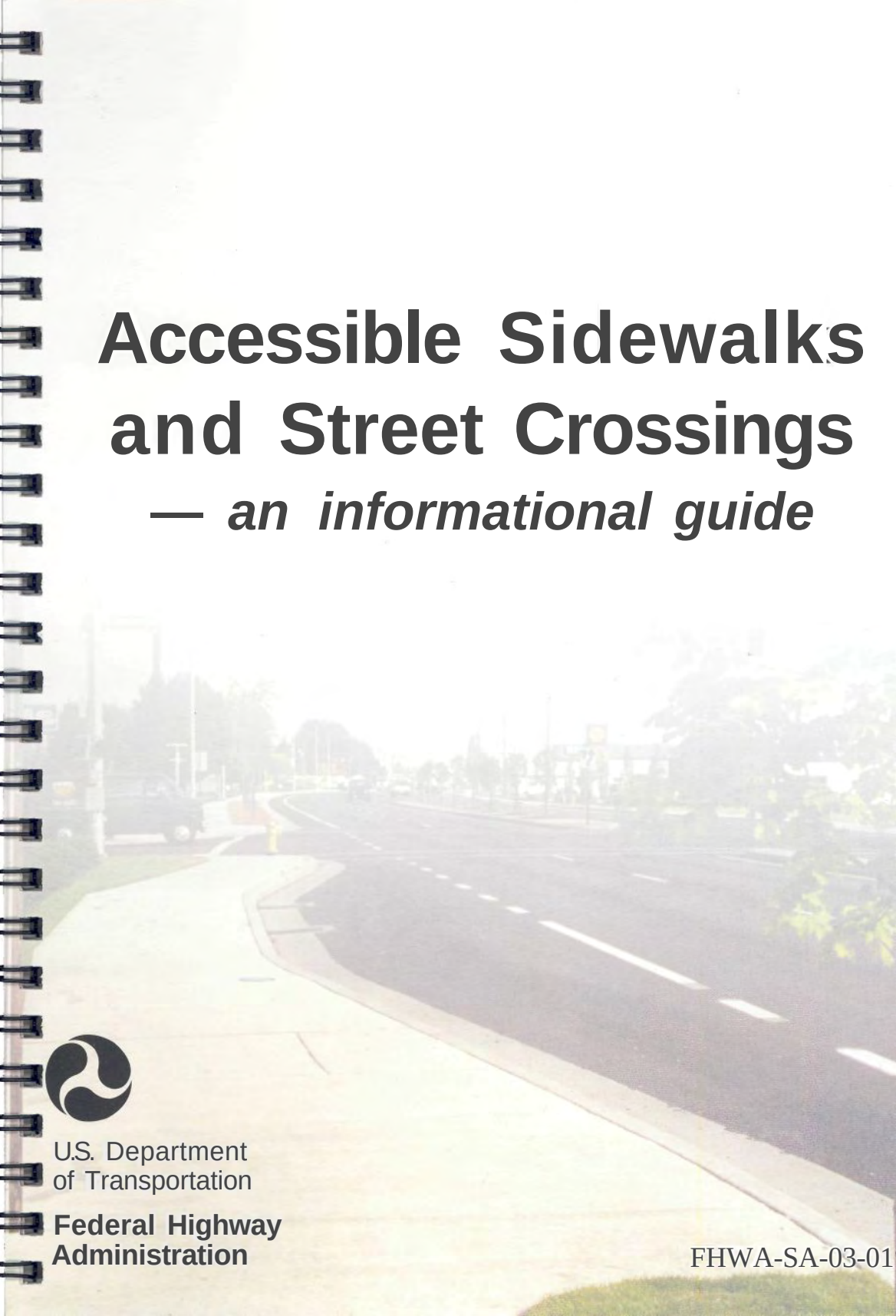
Because the language allowing for a third party underwriter has been removed from 10.201(5), related to Evaluation Process, this associated fee should also be removed.

10.901(12) Extension Fees

We believe the addition of Construction Status Reports to the Extension Fee section is unnecessary and should be removed. The Construction Status Report is simply a report updating the Department on the status of construction progress. We cannot see a reason why an Owner would need an extension on this type of simple reporting. Furthermore, we fear this language may be used to collect $2,500 for submitting a late Construction Status Report. If it is the intension of the Department to find a penalty for late reporting, this is not the appropriate place or method. We recommend removing the reference to Construction Status Reports from this section.

Accessible Sidewalks and Street Crossings

— *an informational guide*



U.S. Department of Transportation

Federal Highway Administration

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Content

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Introduction

Providing Accessible Sidewalks and Street Crossings

In order to meet the needs of all sidewalk users, designers must have a clear understanding of the wide range of abilities that occur within the population. Sidewalks, like roadways, should be designed to serve all users. This includes children, older people, parents with strollers, pedestrians who have vision impairments, and people using wheelchairs and other assistive devices. Just as a roadway will not be designed for one type of vehicle, the design of sidewalks should not be limited to only a single type of pedestrian user. Because the sidewalk is the basic unit of mobility within our overall system of transportation, every route and facility must be usable.

Pedestrian facility design and operation must comply with the accessibility standards in the *Architectural Barriers Act (ABA) of 1968, the Rehabilitation Act of1973 (Section 504), and the Americans with Disabilities Act (ADA) of 1990.* Implementing regulations for Title II of the ADA, which covers State and local governments, also address "communications and information access," requiring 'effective communications' with persons with disabilities. In the sidewalk/street crossing environment, this would include accessible pedestrian signals, markings, and signage. The latest version of the Manual on Uniform Traffic Control Devices (MUTCD) contains standards on Accessible Pedestrian Signals (APS) that have audible, visual, and vibrotactile features. These standards represent the minimum; designers should use more conservative design parameters whenever possible.

Temporary and alternate pedestrian routes where sidewalks are obstructed by work zones must meet accessibility standards, as well. Pedestrians who must cross the street and then cross back again in order to continue on their destination will be exposed to significantly increased risk from vehicles.

The intent of this guide is to focus on some of the emerging accessibility issues and the design parameters that affect sidewalk and street crossing design and operation.

The Legal Framework:

During the 1990s, several key pieces of legislation were passed that impacted transportation planning. The first, the Americans with Disabilities Act (ADA) of 1990, protects the civil rights of people with disabilities. Secondly, the 1991 reauthorization of the Federal transportation legislation, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), specifically called for integrating pedestrian travel into the transportation system. ISTEA increased the Federal-aid funding options for pedestrian facilities and programs. In 1998, the Transportation Equity Act for the 21st Century (TEA-21) extended the opportunities established in ISTEA and increased funding available for pedestrian facilities. These laws complimented more than 40 years of legislation aimed at guaranteeing the rights of people with disabilities. Following is a brief chronological summary of the laws and regulations mandating accessible environments and programs:

Americans National Standards Institute (ANSI A117.1), 1961: The first building standard to address issues of accessibility.

Architectural Barriers Act (ABA) of 1968 (Public Law 90-480): This was the first Federal law requiring new facilities constructed for Federal agencies or with Federal funding to meet accessibility standards (UFAS).

Rehabilitation Act of 1973, Title V, Section 504 (Public Law 93-112, amended by PL 516 and PL 95-602): Section 504 requires federally funded facilities and programs to be accessible to people with disabilities.

Education of All Handicapped Children Act of 1975 (now The Individuals with Disabilities Education Act (IDEA)): This Act greatly expanded educational opportunities by requiring school accommodations for children with disabilities.

Uniform Federal Accessibility Standards (UFAS, Federal Standard 795): The UFAS defined the minimum standards for design, construction, and alteration of buildings to meet the requirements of the ABA. UFAS derived from ANSI A 117.1-1980 and the Access Board's 1982 Minimum Guidelines and Requirements for Accessible Design (MGRAD).

Americans with Disabilities Act of 1990 (ADA): ADA extends the coverage of the ABA, and the Rehabilitation Act, Section 504 to include all public facilities regardless of funding. The Title II implementing regulations for the ADA require all newly constructed and altered facilities to be readily accessible to persons with disabilities. Transportation agencies are responsible for developing a transition plan for removing the structural barriers, including communication barriers, and providing access to existing pedestrian facilities.

State Laws: In some States, codes have been adopted that exceed the requirements set forth in the ADA guidelines. In these States, both the ADA and the State code must be satisfied.

2 Understanding Sidewalk Users:

People have differing abilities: A variety of users need to access the sidewalk system. Their abilities vary in agility, balance, cognition, coordination, endurance, flexibility, hearing, problem solving, strength, vision, and walking speed.

Designing for all abilities: The design of sidewalk environments is important to all pedestrians, but is particularly important to those with disabilities who have limited travel choices and rely most on the pedestrian environment. For example, older adults, persons with vision impairments, and children frequently rely on the sidewalk to travel independently within their community for shopping, recreation, exercise, and walking to school.

Traditionally, design parameters have been based on the "standard pedestrian," an agile person with good vision, hearing, and mobility. These design parameters do not meet the needs of the growing disabled population. The Bureau of Census data indicates that:

- Approximately 20 percent of all Americans have a disability, and that percentage is increasing.
- By the year 2030, one in five Americans will be 65 years or older.

Universal design principles are based on creating an environment that is usable for people of all abilities. Incorporating these principles into all aspects of sidewalk development can eliminate the barriers and create a truly functional sidewalk system.

Movement and Informational barriers may limit an individual's access to the sidewalk environment:

Movement barriers restrict an individual's ability to physically move along or within an environment. They may limit the individual's movement from one side of the intersection to the other, or ability to use the push button to activate the pedestrian signal. Movement barriers within the pedestrian environment include curbs, steep slopes, obstacles within the path (poles, etc.), and widths too narrow to pass through.

Information barriers restrict an individual's use of information contained in the pedestrian environment. These barriers limit the pedestrian's ability to recognize and receive information (e.g., loss of vision prevents the individual from utilizing visual signs), or understand the information received and decide on a course of action. Information barriers within the environment include complex intersections, diverted paths (e.g., in work zones), and lack of street crossing information.

***Conflicting Pedestrian** Needs*

To create a truly accessible sidewalk network that is usable by all pedestrians, designers need to understand how the users' abilities are impacted by their design decisions. Pedestrians have varying needs, therefore, changing a design to enhance access for one group can create additional barriers for other individuals. The goal should be to make all sidewalks accessible to the largest possible number of pedestrian users by incorporating the principles of universal design.

Assistive Technology:

Assistive technologies play a valuable role in enhancing the ability of people with disabilities to travel independently through the environment. These devices may be used to minimize and eliminate the activity limitations and participation restrictions that exist within the sidewalk environment. Technologies may be personal, activity-specific, or environmental. Following are examples of personal technologies:

- A manual wheelchair provides easy mobility on flat, firm, obstacle free surfaces. However, it is difficult to maneuver on steep grades or cross slopes, and across uneven transition points like street to sidewalk.
- A prosthetic leg allows an individual to retain some mobility. However, a prosthetic leg does not provide the sensory feedback that is needed to ensure stable foot placement, detect obstacles, or maintain balance.
- A white cane used by individuals with severe vision loss provides advance warning about obstacles on the path ahead 0.6 m-0.9 m (2 ft—3 ft), but is not effective at detecting obstacles above 0.7 m (2.3 ft).
- Motorized wheelchairs and scooters can maneuver on steeper grades and travel longer distances than manual wheelchairs.
- Service dogs are trained to respond to specific commands and to avoid obstacles. Service dogs require care and maintenance.
- A hearing aid can be used to amplify the traffic sounds. The magnification is not selective, so the sounds of traffic and Audible Pedestrian Signal (APS) are all magnified.

Environmental technologies include APS, and engineering treatments like curb ramps and detectable warnings. **(See Section 9).**

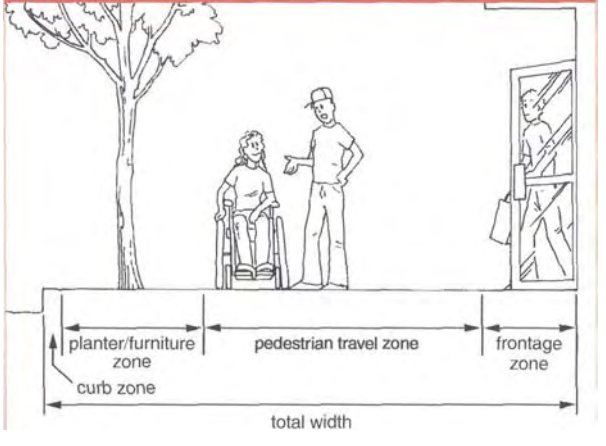
3 Sidewalk Corridors:

The "Sidewalk Corridor" is the portion of the pedestrian system from the edge of the roadway to the edge of the right-of-way (property line or building edge), generally parallel to the street. Attributes of good sidewalk corridor design include:

- Accessibility by ALL users.
- Adequate width.
- Safe to use (sidewalk users should not feel threatened by adjacent traffic or by the environment).
- Continuity and connectivity.
- Landscaping to create a buffer space between pedestrians and traffic and also provide shade.
- Social space (area where pedestrians can safely participate in public life).

The Zone System
(See Figure 1): Sidewalks in central business districts and downtown areas need to be designed to accommodate larger volumes of pedestrian traffic than in residential areas. Streetscapes in these areas often function for multiple purposes, and generally consist of the following zones: the building frontage zone, the pedestrian zone, the planter/furniture zone, and the curb zone.

Figure 1



The zone system divides the sidewalk corridor into four zones to ensure that pedestrians have a sufficient amount of clear space to travel.

Building Frontage Zone: The building frontage zone is the area between the building wall and the pedestrian zone. Pedestrians don't feel comfortable walking directly adjacent to a building wall or fence. At a minimum pedestrians prefer to keep at least 0.6 m (2 ft) of "shy" distance away from the building wall.

Depending on the use of this area, the frontage width should be increased and physically separated from the pedestrian zone (example, allow extra space for a door opening into the frontage area, sidewalk cafes, etc.). People with vision impairments often travel in the frontage zone and use the sound from the adjacent building for orientation. Some use the building edge as a guide for a white cane, traveling between 0.3 m-1.2 m (1 ft-4 ft) from the building. The frontage zone should be free of obstacles and protruding objects. If not,

obstacles in the frontage zone should be detectable by people who use long white canes. Level landings are required at building entrances and around sidewalk furnishings such as drinking fountains, benches, etc.

Pedestrian Travel Zone: The pedestrian zone is the area of the sidewalk corridor that is specifically reserved for pedestrian travel. This area should be free of all obstacles, protruding objects, and any vertical obstructions hazardous to pedestrians, particularly for individuals with vision impairments. The pedestrian zone should be at least 1.8 m-3.0 m (6-10 ft) wide or greater to meet the desired level of service in areas with higher pedestrian volumes. This allows pedestrians to walk side by side or for pedestrians going in the opposite direction to pass each other. The pedestrian zone should never be less than 1.2 m (4 ft), which is the minimum width required for people using a guide dog, crutches, and walkers. Wheelchair users need about 1.5 m (5 ft) to turn around and 1.8 m (6 ft) to pass other wheelchairs.

Planter/Furniture Zone: The planter/furniture zone lies between the curb and the pedestrian travel zone. This area provides a buffer from the street traffic and allows for the consolidation of elements like utilities (poles, hydrants, telephone kiosks, etc), and street furniture (benches, signs, etc). *The intent is to ensure that the pedestrian travel zone is free of ALL obstacles.* On local and collector streets, 1.2 m (4 ft) is preferred and on arterial and major streets 1.8 m (6 ft) is preferred. Additional space will be required for transit stops and bus shelters which may include a boarding pad typically 1.5 m x 2.4 m (5 ft—8 ft). States that have significant accumulations of snow during the winter months will require wider planter/furniture zones. This allows the snow to be stored in the planter/furniture zone and keeps the pedestrian zone obstacle free.

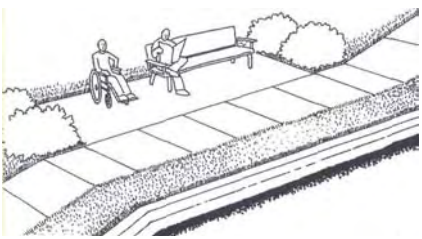
Curb Zone: The curb zone is the first 0.15 m (6 in) of the sidewalk corridor, located adjacent to the roadway. It is an integral part of the road/drainage system and keeps excess water off the sidewalk corridor. The curb zone also discourages motor vehicles from entering/exiting the sidewalk corridor except at designated locations and is a valuable safety and guide cue for pedestrians with vision impairments.

4 Sidewalk Grades and Cross Slopes:

Steep grades and cross slopes should be avoided where possible or integrated with level rest areas. Both powered and manual wheelchairs can become very unstable and/or difficult to control on sloped surfaces. When areas with steep sidewalks and ramps are wet, icy, or covered with snow, they have little or no slip resistance and a slide will usually end in the street.

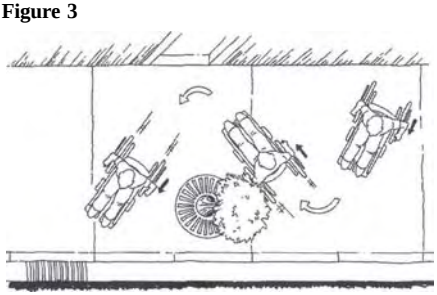
Grade: Grades are often difficult to control in the sidewalk environment because sidewalks follow the path of the street. The sidewalk grade ideally should not exceed 5 percent. Design parameters developed for ramps on buildings and sites, permit a maximum grade of 8.3 percent for a distance of 9.1 m (30 ft) before a level landing must be installed. Where the sidewalk grade approaches or exceeds that of the maximum permitted for a ramp, it is good practice to provide a level rest area. The slope of the level landing should not exceed 2 percent in any direction **(See Figure 2).** The dimensions of the level landing should be at least 1.5 m x 1.5 m (5 ft x 5 ft) to allow wheelchair users to stop and rest without blocking the flow of pedestrians. This area can be greater with the inclusion of other amenities such as benches, hand rails, and drinking fountains. In areas with steep slopes, consider installing wide sidewalk corridors that permit the wheelchair user to travel in a zig-zag motion **(See Figure 3).**

Figure 2



Level landing with benches provide a resting point that will not impede the flow of pedestrian traffic.

Figure 3



In areas of steep terrain, a wide sidewalk allows wheelchair users to travel in a zigzag motion which reduces the grade they must travel, although the overall distance of their trip is increased.

*Cross **Slope:*** The maximum cross slope permitted by ADA Accessibility Guidelines (ADAAG) is 2 percent. Severe cross slopes require wheelchair users and other pedestrians to work against the effects of gravity to maintain their lateral balance. Pedestrians using crutches or canes may be forced to turn sideways in order to keep their base of support at a manageable angle. Severe cross slopes can cause wheelchair users to veer towards the curb and into the street **(See Figure 4).** The impact of cross slopes are compounded when combined with steep grades and uneven surfaces. Designers and those constructing

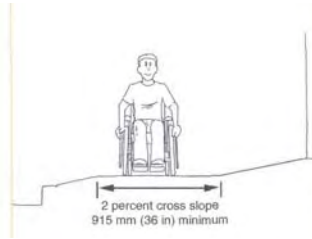
facilities need to understand the impact of grades and cross slopes and take particular care to stay within construction tolerances as well as within design standards. For example, Portland Cement Concrete has a construction tolerance of 1/4 in per 10 ft.

For ***sidewalks with steep cross slopes*** the designer can create a level area of at least 915 mm (3 ft) within the pedestrian zone **(See Figure 5)** or increase the height of the curb **(See Figure 6)** The latter case can create problems for curb ramp design and on-street parking (car doors may not be able to swing over the curb).

Figure 4

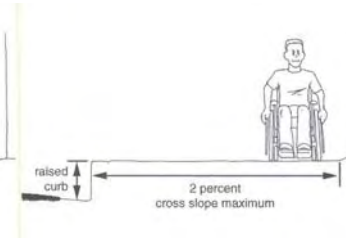
PROBLEM Wheelchair users traveling on a sidewalk with a cross slope greater than 2% use more energy to to offset the force of gravity that directs them towards the curb and into the street

Figure 5



GOOD DESIGN A level area at least 915 mm (36 in) wide improves access when the street elevation is lower than the building elevation

Figure 6



ACCEPTABLE DESIGN Increasing the height of the curb provides a level pathway when the street elevation is lower that the building elevation This solution may not be ideal if sidewalks are not wide enough to install well-designed curb ramps

5 Sidewalk Surfaces:

Factors that affect the usability of the sidewalk surface include:

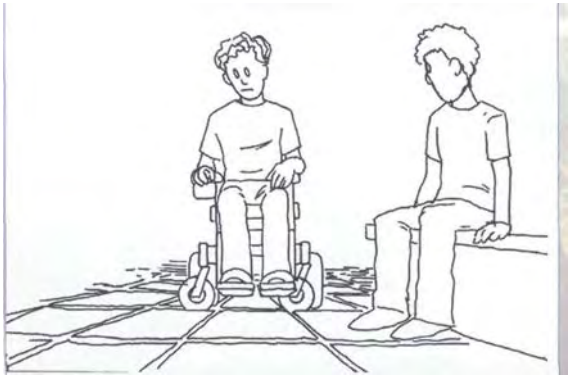
- Surface materials
- Changes in level
- Firmness, stability, and slip resistance
- Dimensions of gaps, grates and openings
- Visual consistency

Surface materials generally consist of concrete or asphalt; however, tile, stone, and brick are also used. Typically, sidewalks of concrete and asphalt are firm, stable, and fairly slip resistant when dry. A broom finish used on concrete sidewalks increases the slip resistance. Surfaces that are not slip resistant are especially difficult for people who use wheelchairs or walking aids to travel across. Crutch users, for example, rely on being able to securely plant their crutch tip to travel effectively on the sidewalk. Surfaces that are not visually consistent (all one color and texture) can make it difficult for pedestrians with vision disabilities to distinguish the difference between a change in color and pattern on the sidewalk and a drop off or change in level.

Decorative surface materials such as paints and surface materials, polished stones or exposed aggregate rock, are not as slip resistant and should be avoided. Paint and thermoplastic materials, commonly used to mark crosswalks, are generally not as slip resistant when wet. Slip resistant contact is more difficult to achieve when the sidewalk material is wet or icy. Texture added to the thermoplastic will improve the slip resistance.

Brick and cobblestone may improve the aesthetic quality of the sidewalk, but may also increase the amount of work required by pedestrians with mobility impairments. For example, tiles that are not tightly spaced together can create grooves that catch wheelchair casters **(See Figure 7).** These decorative surfaces may also create a vibrating bumpy ride that can be uncomfortable and painful for those in wheelchairs. The surface texture should not include more than a 1/4 inch rise every 30 inch. Brick and cobblestone may heave or settle, creating unsafe changes in level or become a tripping hazard for pedestrians, especially those with vision and mobility disabilities. Decorative textured surface materials can make it more difficult for pedestrians with vision impairments to identify

Figure 7



The space between the jointed surface causes wheelchair casters to swivel and catch and greatly increases the rolling resistance.

detectable warnings, which provide critical information about the transition **from** the sidewalk to the street. For these reasons, brick and cobblestone are not recommended. Creative alternatives include smooth walkways with brick trim, and colored concrete.

Changes in level/elevation are vertical rises between adjacent surfaces. Causes of changes in level include:

- Tree roots pushing upwards.
- Uneven transitions from street to gutter to ramp.
- Heaving and settling due to frost.
- Buckling due to improper sub-base preparation.

Changes in level/elevation can cause major problems for:

- Pedestrians with mobility impairments-difficulty lifting feet, or crutches (causing tripping).
- Pedestrians with vision impairments-difficulty detecting elevation changes, (causing tripping).
- Pedestrian using wheelchairs-small front caster wheels swivel sideways and cannot climb over.
- Pedestrian using wheelchairs-difficult time rolling over large changes in elevation.

Changes in level/elevation requirements:

- Up to 6 mm (0.25 in)-can remain without beveling.
- 6-13 mm (0.25 in-0.5 in)-bevel the surface with a maximum grade of 50 percent (1:2).
- Greater than 13 mm (0.5 in)-remove or install a ramp with a maximum grade of 8.3 percent.

Gaps, grates and other openings occur at railroad tracks, drainage inlets, air vents, tree grates, etc. Wheelchair casters, inline skating wheels, as well as bicycle wheels often get caught in openings and gaps wider than 1/2 inch or which are incorrectly aligned. In these cases there is potential for the person to be suddenly pitched forward. Walking aids such as canes and crutches can also get caught in grates and gaps. When the cane tip slips through an opening, the pedestrian can become unstable and risk falling. Grates should be placed within the planter/furniture zone **(See Figure 1)** away from the pedestrian travel area, **and** also away from the bottom of crosswalks and curb ramps.

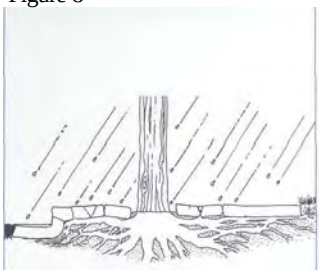
Gaps and grates should be designed so that:

- Openings do not allow the passage of a 13 mm (0.5 in) sphere.
- The long dimension of the opening is perpendicular or diagonal to the dominant direction of travel.

The impact of trees on the sidewalk corridor-- trees are generally planted because they improve the pedestrian experience, improve the aesthetic appearance of the streetscape, serve as a visual and auditory buffer between pedestrians and traffic, provide shade, and may have a traffic calming effect. Trees need a minimum of 1.2 m x 1.2 m (4 ft x 4 ft). They are also one of the

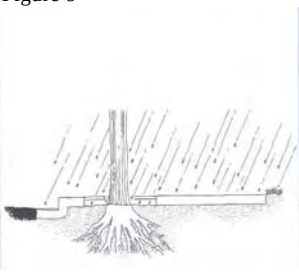
most common causes of sidewalk cracks and changes in level. When water is limited, tree roots tend to push through the surface **(See Figure 8)** and spread out rather than down **(See Figure 9)** to look for new water sources. Tree branches should be maintained to hang no lower than 2.0 m (6.7 ft) (See **Figure 10).** Low hanging branches can be a safety hazard, especially for pedestrians with vision impairments who may not detect them. Other pedestrians with mobility impairments may have difficulty bending under them. Careful selections of tree type, their placement and maintenance can provide a comfortable and safer environment for all road users including pedestrians.

Figure 8



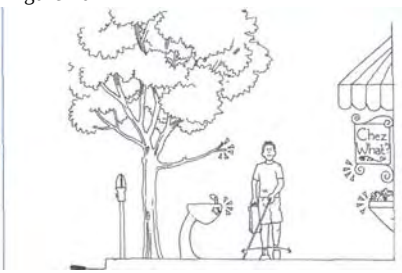
When trees do not get enough water they tend to spread their roots out, which can break up the surface of the sidewalk.

Figure 9



Trees planted with grates are less likely to cause sidewalk cracks than trees planted without grates because the grate allows a sufficient amount of water to reach the tree roots.

Figure 10



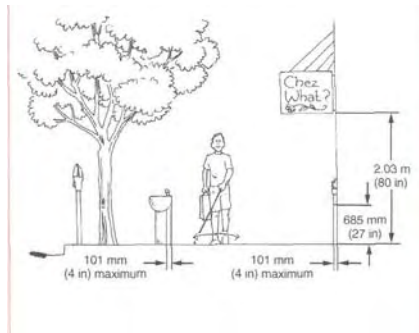
This pedestrian, who is blind is walking down a sidewalk that contains a number of obstacles that are difficult to detect using a long white cane, because they protrude into the path of travel between 685 mm (2.3 ft) up from ground level and below 2.03 m (6.7 ft) in height.

6 Protruding Objects:

Objects that protrude into the sidewalk corridor above 2 m (6.7 ft) are not generally a problem for pedestrians with vision impairments (See **Figure** 11). Pedestrians who use long canes will usually detect and avoid objects on the sidewalk that extend below 0.69 m (2.3 ft). However, obstacles that protrude into the sidewalk corridor between 0.69 m-2 m (2.3 ft—6.7 ft) and do not extend to the ground **(See Figure 10)** are more difficult to detect and avoid.

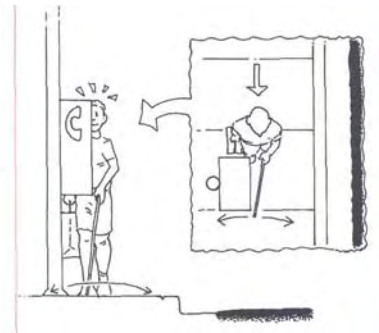
Pedestrians with vision impairments often travel using the edge of the building line. Objects mounted on the wall, post, or side of a building, should therefore not protrude more than 0.1 m (4 in) into the sidewalk corridor (See **Figure** 12).

Figure 11



This pedestrian. who is blind, will have a much easier time traveling on this sidewalk because there are no walls or post-mounted obstacles that protrude more than 101 mm (4 in)

Figure 12

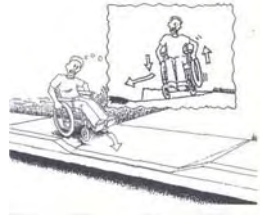


POTENTIAL PROBLEM:
When obstacles mounted on posts can be approached from the side they should not protrude more than 101mm (4 in). This pedestrian who is blind does not detect the pole, which could cause him to collide with the obstacle.

7 Driveway Crossings:

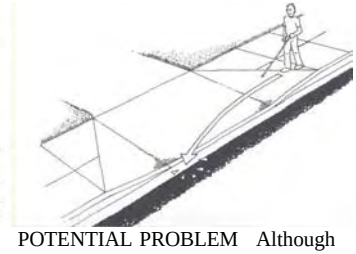
Driveway crossings serve the same purpose for cars as curb ramps serve for pedestrians. They consist of many of the same components found in curb ramps. Designers need to remember that as they change the grade to allow cars to effectively negotiate the elevation change between the street and the sidewalk, they **must not** compromise good pedestrian design practice. Unfortunately, this happens quite often and pedestrians using wheelchairs and other walking aids are sometimes put at risk of becoming unstable and falling. ADAAG does not permit the cross slope of the sidewalk to exceed 2 percent. Driveway crossings are often built with grade changes in the sidewalk corridor that have cross slopes greater than 2 percent. Driveway crossings without level landings force users to travel over the sidewalk flare. This design results in rapid changes in grade and cross slope **(See Figure 13),** wheelchair users can lose control and possibly tip over as the front wheel loses contact with the ground followed by the opposing back wheel. Pedestrians with vision impairments may not detect the difference in slope of the driveway flare and veer towards the street and may enter the street without realizing it **(See Figure 14).**

Figure 13



PROBLEM This driveway design is not allowed by ADAAG Driveway crossings must be level and not force users to travel over the sidewalk flare This design results in rapid changes in cross slope, which compromises balance and stability for people who use wheelchairs The right front wheel loses contact with the ground followed by the opposing back wheel

Figure 14



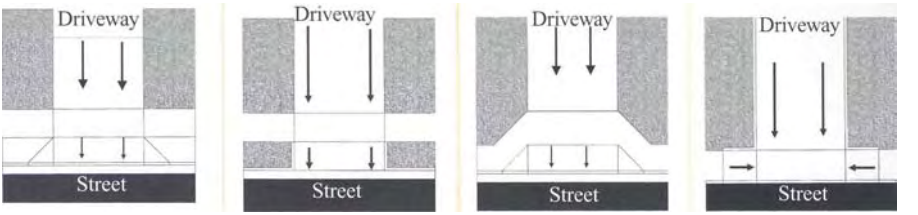
POTENTIAL PROBLEM Although gradually sloped driveway crossings are beneficial to people with mobility impairments, they can be problematic for people with vision impairments unless there is a detectable difference in slope at the edge of the street If a visually impaired person veers toward the street and isn't able to recognize where the driveway ends and the street begins, he or she may enter the street without realizing it

Driveway crossings should be designed with the following guidance:

- Cross slope = 2.0 percent maximum
- Level maneuvering space
- Changes in level = flush (1/4 inch maximum)
- Flare slope =10 percent maximum

Figure 15 illustrates good or acceptable design practice

Figure 15 Driveway Crossings



Good Design
Driveway crossings with wide level sidewalks

Good Design
Driveway crossings with level sidewalk

Acceptable Design
Driveway crossing with a level landing jogged away from the street
see *1

Acceptable Design
Driveway crossing with ramps parallel to the sidewalk and sidewalk at grade with the street
see *2

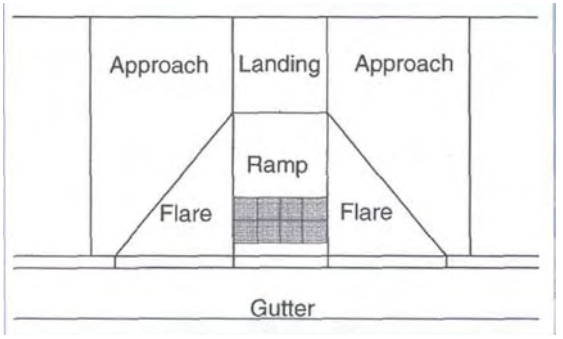
*1 Potential tripping problem for pedestrians traveling over flare

*2 May have drainage problems There needs to be a detectable edge or lip for pedestrians with vision impairments to distinguish the sidewalk and street boundary at the base of the driveway

8 Curb Ramps:

Curb ramps are necessary for access between the sidewalk and the street for people who use wheelchairs **(See Figure 16).** Title II of the ADA specifically requires curb ramps for existing facilities, as well as all new construction or altered facilities. However, curb ramps can create a barrier for people with vision impairments who use the curb to identify the transition point between the sidewalk and the street. Because curb ramps eliminate the vertical edge of the curb used by pedestrians with vision impairments, it is necessary to install detectable warnings **(Section 9)** to mark the boundary between the sidewalk and street. For some pedestrians who use walking aids such as canes, walkers or crutches, curb ramps may be difficult to access. The pedestrian must have strength to lift his or her body up over the supporting device. A wider crosswalk to allow use of curb and curb ramp **(See Figure 17)** will enhance access for all users

Figure 16

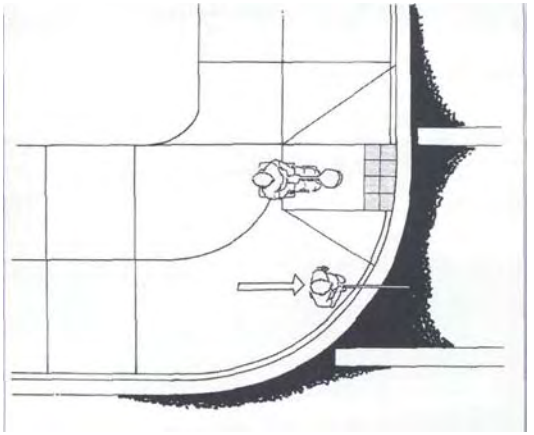


Curb ramp components.

***Curb ramp** types:*

Curb ramp types are usually categorized by their structural design and how they are positioned relative to the sidewalk or street. Selecting a curb ramp design depends on site conditions. Curb ramp types include perpendicular, diagonal, parallel, combination, and depressed corners. Table 1 discussed the advantages and disadvantages of each curb ramp types.

Figure 17

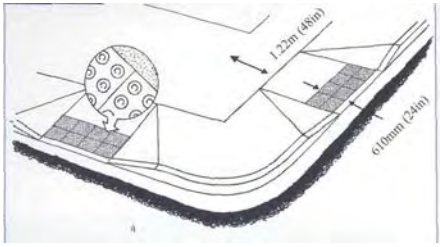


GOOD DESIGN:
When a portion of the curb is included in the crosswalk, it is easier for people with vision impairment to detect the transition between the sidewalk and the street

Table 2: Advantages and disadvantages of curb ramp types

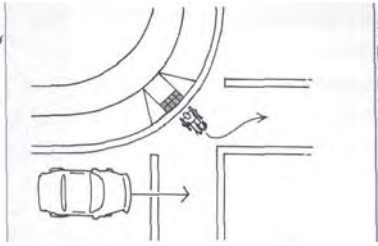
Ramp Type	Advantage to Pedestrian	Disadvantage to Pedestrian
Perpendicular **See Figure 17,18**	1) Ramp aligned with the crosswalk. 2) Straight path of travel on tight radius. 3) Two ramps per corner.	1) May not provide a straight path of travel on larger radius corners.
Diagonal **See Figure 19**	Not recommended	1) Pedestrian with a vision impairment can mistake a diagonal ramp for a perpendicular ramp and unintentionally travel into the intersection because it is not aligned with the crossing direction. 2) May conflict with motorists who are traveling straight or turning if corner radius is small. 3) Directs wheelchair users into the intersections. Requires wheelchair turning at the top and bottom of the ramp. A 1.2 m x 1.2 m (4 ft x 4 ft) bottom landing is required. **(See Figure 19).**
Parallel **See Figure 20, 21, 22**	1) Requires minimal right-of-way. 2) Provides an area to align with the crossing. The bottom landing is contained in the sidewalk and not the street. 3) Allows ramps to be extended to reduce ramp grade. 4) Provides edges on the side of the ramp that are clearly defined for pedestrians with vision impairments.	1) Pedestrians need to negotiate two or more ramp grades (makes it more difficult for wheelchair users). 2) Improper design can result in the accumulation of water or debris on the landing at the bottom of the ramp.
Combined Parallel and Perpendicular **See Figure 23**	1) Does not require turning or maneuvering on the ramp. 2) Ramp aligned perpendicular to the crosswalk. 3) Level maneuvering area at the top and bottom of ramps.	1) Visually impaired pedestrians need to negotiate sidewalk ramps.
Depressed Corners See **Figure** 24, 25	1) Eliminates the need for a curb ramp.	1) Pedestrians with cognitive impairments may have the illusions that the sidewalk and street are unified pedestrian space (i.e., safe). 2) Improper design can allow large vehicles to travel onto the sidewalk to make tight turns which puts the pedestrian at risk. 3) More difficult to detect the boundary between the sidewalk and the street for persons with vision impairments. 4) Service dogs may not distinguish the boundary between the sidewalk and the street and continue walking. 5) The design may encourage motorist to turn faster by traveling onto the sidewalk.

Figure 18



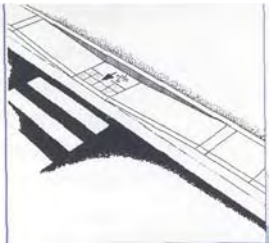
GOOD DESIGN:
A level landing at the top of the ramp of at least 1.2 m (4 ft). A 610 mm (2 ft) strip of detectable warnings must be installed at the bottom of a perpendicular curb ramp.

Figure 19



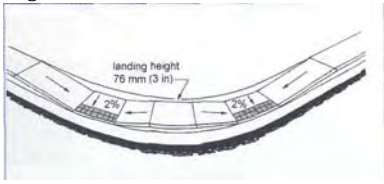
Diagonal curb ramps arc not recommended. However, users must have enough room to maneuver towards the direction of the crosswalk. There must be a 1.2 m x 1.2 m (4 ft x 4 ft) bottom level landing of clear space outside the direction of motor vehicle travel.

Figure 20



Parallel curb ramps won't well on narrow sidewalks but require users continuing on the pathway to negotiate two ramp grades

Figure 21

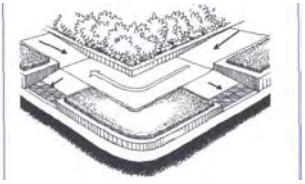


At intersections with narrow sidewalks and wide turning radii, two parallel curb ramps should be considered.

Figure 22

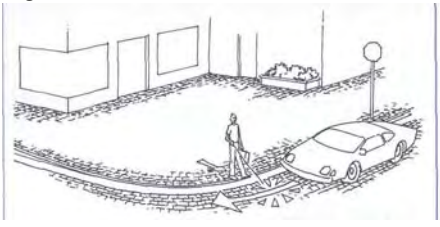
NOT RECOMMENDED

Figure 23



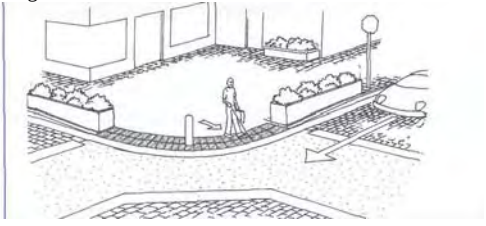
Combined parallel and perpendicular curb ramps lowers the elevation of level landings while bridging the remaining elevation gap.

Figure 24



PROBLEM: Decorative patterns used at depressed corners, such as this brick pattern, create a continuous pathway. People with vision and cognitive impairments have difficulty detecting where the street begins and ends.

Figure 25



Detectable warnings, contracting surface materials, and barrier posts are measures that can be used to convey the transition between the street and sidewalk at depressed corners. This corner would be a good location for accessible signals.

Curb Ramp Specifications:

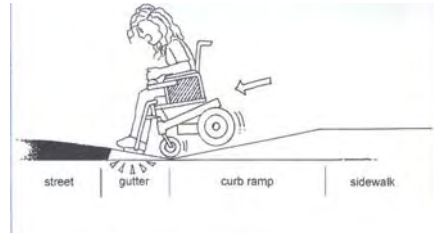
- ***Ramp Grade:*** ADAAG permits a maximum curb ramp slope of 8.3 percent (preferred 7 1 percent to allow for construction tolerance)
- ***Cross slope*** on the ramp may not exceed 2 0 percent.

[1] Minimum ***ramp width*** should be 1.2 m (4 ft) in new construction. In restricted spaces only, the minimum width should not be less than 915 mm (3 ft).

Significant ***changes of grade*** as the pedestrians travel from the down slope of the ramp to the up slope of the gutter can cause wheelchair users to fall forward **(See Figure 26)** and should be 13 percent or less. Counterslope should not exceed 5 percent.

Curb ramp alignment should be perpendicular to the curb face. The ramp needs to be aligned within the crosswalk with a straight path of travel from the top of the ramp to the roadway to the curb ramp on the other side.

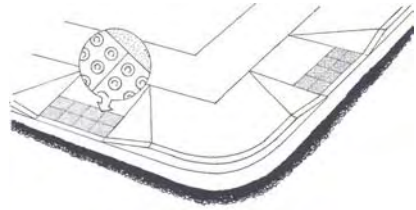
Figure 26



A wheelchair can bottom out at areas of rapid change of grade (greater than 13 percent). The wheelchair can be pitched forward or thrown backwards.

[1] ***Detectable warnings*** **(See Figure 27)** across the lower part of the ramp are required. Ramps make it difficult for pedestrians with vision impairments to detect the transition between the sidewalk and the street. Detectable warnings should have a visual contrast with the adjacent walking surfaces. **(See Section 9)**

Figure 27

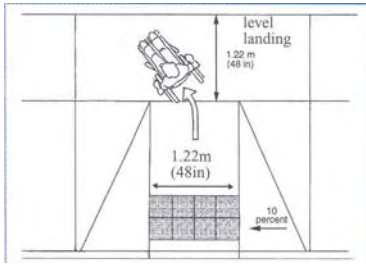


GOOD DESIGN

A 610 mm (2 ft) strip of detectable warnings shall be installed at the bottom of a curb ramp to indicate the transition from the sidewalk to the street.

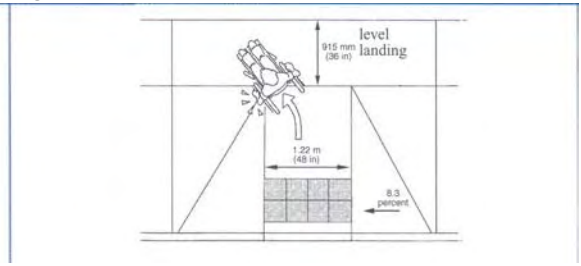
- ***Transition points*** between adjacent curb ramp surfaces should be flush. Even a 13 mm (0.5 in) change in level combined with a change in grade can complicate access for wheelchair users. Curb ramp lips are not allowed by ADAAG.
- ***Sidewalk approach width*** should have a minimum of 1.2 m (4 ft). (See previous discussion in Section 3, Sidewalk Corridors.)
- ***Level landing*** at the top and bottom of the curb ramp should be 1.2 m x 1.2 m (4 ft x 4 ft) and the cross slope should not exceed 2 percent in any direction. This is necessary to allow wheelchair users to maneuver off the ramp

Figure 28



The 1.2 m (4 ft) width of this curb ramp provides sufficient turning space for this wheelchair user. The maximum slope of the flares at this curb ramp should be 10 percent. Measured at the face of the curb.

Figure 29



The 915 mm (3 ft) width of this landing forces this wheelchair user to travel over a portion of the flare to maneuver onto the narrow landing. For this reason, the maximum slope of the flare should not exceed 8.3 percent and should be blended at the top appex. The ramp width should be widened up to 1.2 m (4 ft) to allow for a tighter turn onto the landing.

and onto the path of travel within the pedestrian zone. **(See Figure 28).** If space is limited, the absolute minimum level landing width should not be less than 915 mm (3 ft). **(See Figure 29).** However, in such a case, wheelchair users may have to travel over a portion of the flare in order to move off the ramp onto the path of travel. To compensate, the warping of the slope at the top area of the *flare* should be blended for easier travel across, and the ramp width should not be less than 1.2 m (4 ft). The maximum slope of the flare should not exceed 8.3 percent if the landing is between 0.9m-1.2m(3 ft-4 ft).

Table 2. Ramp length for perpendicular curb ramps based on ramp slope

Change in Elevation	Ramp Length for 7.1 Percent Slope	Ramp Length for 8.3 Percent Slope
203 mm (8 m)	**4.0 m (13.1 ft)**	**3.2 m (10.7 ft)**
178 mm (7 in)	**3.5 m (11.4 ft)**	**2.8 m (9.3 ft)**
152 mm (6 m)	**3.0 m (9.8 ft)**	**2.4 m (7.9 ft)**
127 mm (5 in)	**2.5 m (8.2 ft)**	**2.0 m (6.6 ft)**
101 mm (4 in)	**2.0m (6.5 ft)**	**1.6 m (5.3 ft)**

This table assumes that the sidewalk corridor has a 2 percent slope and that the corner is level. The length is for the ramp only and does not include sidewalk width required for level landing.

Curb ramp length is determined by the vertical height of the curb between the roadway and the sidewalk. Assuming the cross slope of the corridor is constant at 2 percent, the formula for determining ramp length is:

$$\text{ramp length} = \frac{\text{curb height}}{(\text{ramp slope/percent} - \text{sidewalk corridor cross slope/percent})}$$

Table 2 calculates the minimum ramp length required for a 7.1 percent ramp and an 8.3 percent ramp, based on the height of the required vertical change.

Additional good practice curb ramp *design:*

- Align the curb ramp within the marked crosswalk, so there is a straight path of travel to the curb ramp on the other side.
- Provide adequate drainage to prevent the accumulation of water and debris on or at the bottom of the ramp.
- Minimize ramp length by lowering the sidewalk to reduce the curb height. Applicable in areas with narrow sidewalks.

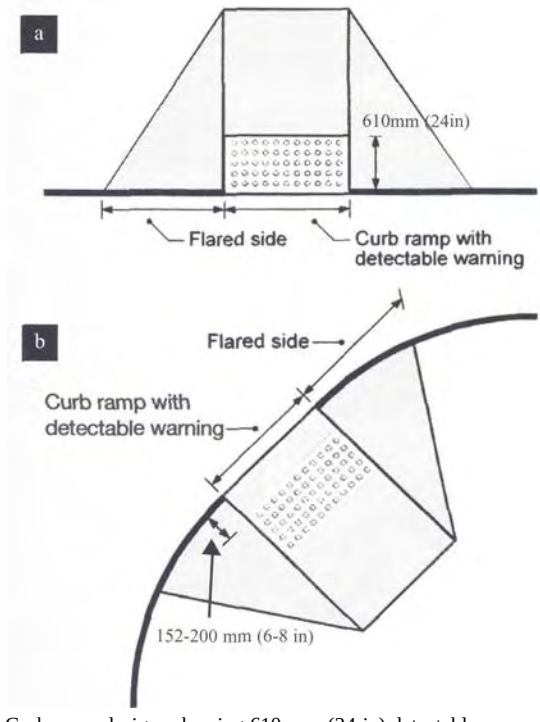
9 Providing Information to Pedestrians:

Pedestrians with vision impairments rely on nonvisual audible and tactile cues to travel. Cues in the environment include the sound of traffic, presence of curb ramps, verbal messages and audible tones in pedestrian signals, and detectable warnings.

To accommodate the information needs of all pedestrians, it is important to provide information in formats that can be assimilated using more than one sense. Pedestrian information includes pedestrian signage, Accessible Pedestrian Signals (APS) - audible tones, verbal messages, and vibrotactile information, and detectable warnings.

Detectable warnings **(See Figure 30)** are a standardized surface feature built in or applied to walking surfaces or other elements to warn visually impaired people of potential hazards.

Figure 30



Curb ramp designs showing 610 mm (24 in) detectable warning (U.S. Access Board-Detectable Warnings: Synthesis).

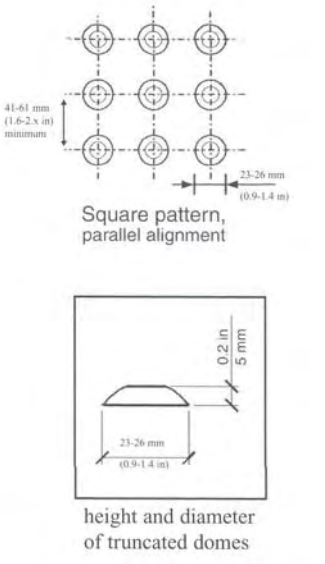
Detectable warnings shall consist of a surface of truncated domes aligned in a square grid pattern **(See Figure 31):**

- Base diameter of 23mm-26 mm (0.9in-1.4in).
- Top diameter of 50-60 percent of base diameter.
- Height of 5 mm (0.2 in).
- Center-to-center spacing of 41 mm-61 mm (1.6 in-2.4 in).
- Visual contrast of light-on-dark or dark-on-light with adjacent walking surfaces.

ADAAG Appendix, Section A, 29.2 recommends that the materials used provide a contrast of at least 70 percent.

Contrast = [(Bl- B 2) / Bl] x 100
B1 = light reflectance value of lighter area (LRV)
B2 = light reflectance value of darker area (LRV)

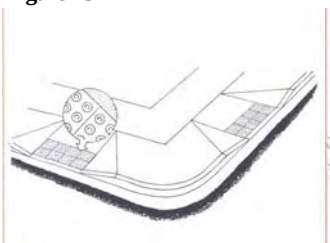
Figure 31



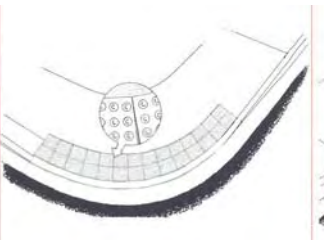
Truncated domes aligned so that wheels may pass between them arc easier for some wheelchair users to negotiate (Bentzen, Barlow, & Tabor, 2000.)

Detectable Warning Design Applications

Figure 32

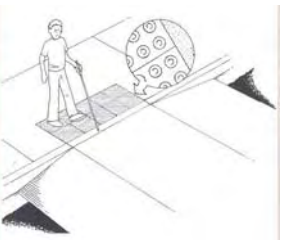


A 610 mm (2 ft) strip of detectable warnings shall be installed at the bottom of a curb ramp to indicate the transition from the sidewalk to the street.



A 610 mm (2 ft) strip of warnings shall be installed at the border of a depressed corner to identify the transition between the sidewalk and the street.

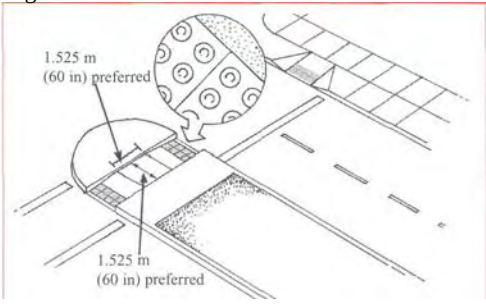
Figure 34



A 610 mm (2 ft) strip of warnings shall be installed at the edge of a raised crosswalk to identify the transition between the sidewalk and street.

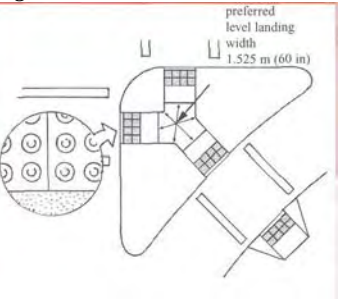
Detectable warnings shall be placed at the bottom of curb ramps **(See Figure 32)** and other locations such as depressed corners **(See Figure 33),** raised crosswalks and raised intersections **(See Figure 34),** borders of medians and islands **(See Figures 35 and 36),** and at the edge of transit platforms and where railroad tracks cross the sidewalk to warn people with visual impairments of potential hazards. Detectable warnings must be installed across the full width of ramps, and 610 mm (2 ft) in length up the ramp. The detectable warning

Figure 35



A ramped median should have a level landing that is 1.5 m (5 ft) level landing.

Figure 36

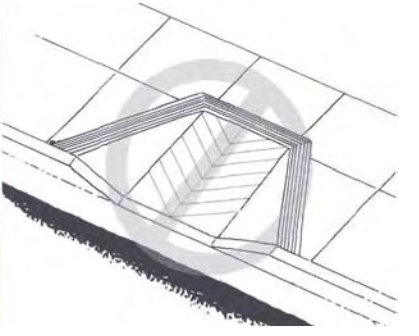


Ramped islands shall include detectable warnings and have a level landing.

should be set back 152 mm-200 mm (6 in-8 in) from the bottom of the curb **(refer to Figure 30 b above).** This allows wheelchair users to gain momentum before traveling over the truncated domes. It provides pedestrians with vision impairments additional time to react to the detectable warning or advanced warning before they reach the street. Smooth surfaces should be provided adjoining the detectable warning to maximize contrast. Bricks and other textured surfaces affect the ability of the pedestrian to detect the truncated dome warnings.

Grooves do not provide a detectable warning and pedestrians can easily confuse them with sidewalk expansion joints or cracks in the sidewalk **(See Figure 37).** They are not allowed as a detectable warning by ADAAG.

Figure 37



Potential Problem:
Grooves are not the equivalent of a detectable warning because they are not detectable underfoot.

Accessible Pedestrian Signals:

The implementing regulation under Title II of the ADA requires that all facilities constructed or altered after January 1992 be designed and constructed to be accessible to people with disabilities.

Audible tones and speech messages can provide standard information about the status of the signal cycle (WALK, DON'T WALK). Information on the location, direction of travel, and the name of the street to be crossed can also be included. Infrared or Light Emitting Diodes (LED) transmitters can send speech messages to personal receivers. In addition to providing information in multiple formats, the physical design, placement, and location of the pedestrian signal device need to be accessible to pedestrians with vision and mobility impairments.

Accessible Pedestrian Signal (APS)

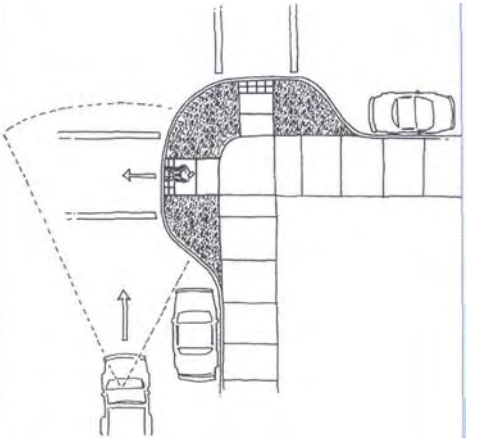
- Locate the push button as close as possible to the curb ramp without interfering with clear space.
- The device should be operated from a level landing.
- Mount the device no higher than 1.0 m (3.5 ft) above the sidewalk.
- The control face of the button shall be parallel to the direction of the marked crosswalk.
- One button per pole, each separated by 3 m (10 ft) is preferred.
- Place the device no closer than 760 mm (2.5 ft) to the curb, and no more than 1.5 m (5 ft) from the crosswalk.
- The button should be a minimum of 50 mm (2 in) in diameter to be easily operated by pedestrians with limited hand function. Avoid activation buttons that require conductivity (unusable by pedestrians with prosthetic hands).
- The force to actuate the button should require a minimum amount of force no greater than 15.5 N or 3 lbf to activate.

(For more information on Accessible Pedestrian Signals visit the Web sites at http://www.mutcd.gov, www.access-board.gov and www.accessforblind.org)

Pedestrian Crossings:

Designing an effective pedestrian crossing involves the correct layout of pedestrian elements including: information (signs, accessible pedestrian/traffic signals, markings), turning radius, visible crosswalks (including raised crosswalks), adequate crossing times, medians **(See Figure 35),** refuge islands, corner island (See **Figure 36),** curb ramps with detectable warnings, and curb extensions **(See Figure 38).** It also involves careful consideration of adequate sight lines, traffic patterns, and traffic signal phasing. Other techniques such as restrictions on right turns, pedestrian lead times, and traffic calming measures will benefit all pedestrians. Regulations that prohibit parking at the corner can also improve blocked sight lines.

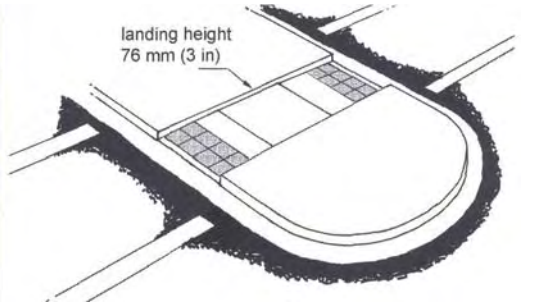
Figure 38



Curb extensions improve visibility between pedestrians and motorists and make it easier to install perpendicular curb ramps with level landing. Regulations that prohibit parking at the corner can also improve blocked sight lines

Medians: Medians generally reduce crossing exposure and allow pedestrians to negotiate vehicle traffic one direction at a time. Medians should be curbed or barrier medians to physically separate pedestrians and motorists rather than painted flush. Furthermore, all medians should be accessible to pedestrians. The nose of the median should be extended beyond the crosswalk (See **Figure** 39). If a cut through **(See Figure 40)** is provided, it should be at least 1.8 m (6 ft) long and 1.5 m (5 ft) wide. This allows 2 wheelchair users to pass each other. In addition the edges of the cut through must be perpendicular to the street being crossed.

Figure 39



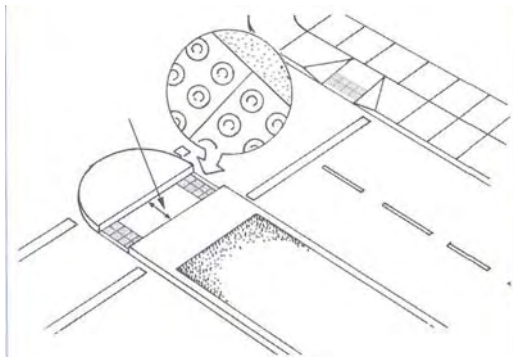
GOOD DESIGN: The height of this median does not exceed 76 mm (3 in). This design allows for the construction of shorter curb ramps and a longer level landing.

Ramped medians **(See Figure 35),** should have a curb ramp at either end and a level landing at least 1.5 m x 1.5 m (5 ft x 5 ft). For all medians, cut through or ramped, a 0.6 m (2 ft) strip of detectable warnings should be located at the entrance and exit.

Corner Island: The design guidance for the island itself is similar to those of the median. The island should be raised and designed with curb ramps **(See Figure 36)** or a pedestrian cut-through **(See Figure 41).** If a cut-through design is selected, it should provide at least 1.5 m (5 ft) of clear space in all directions. In addition, a 0.6 m (2 ft) strip of detectable warning should be included at every exit point on the island.

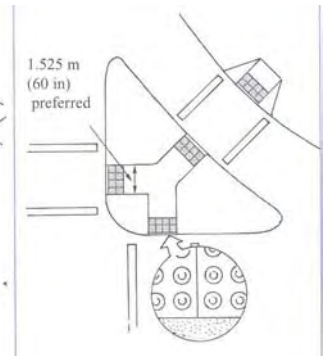
Ramped Corner Island **(See Figure 36):** The design should include curb ramps that are at least 1.5 m (5 ft) wide (preferred), 1.5 m x 1.5 m (5 ft x 5 ft) level landing and detectable warnings.

Figure 40



Cut-through medians should be at least 1.525 m (60 in) wide and should include 610 mm (24 in) strips of detectable warnings at both ends.

Figure 41



Corner islands with cut-throughs should be at least 1.525 m (60 in) wide at all locations and include 610 mm (24 in) strips of detectable warnings

CITIES INELIGIBLE FOR CRP DUE TO POPULATION LIMITATION

Tyler	98335	Tyler, TX	Urban	4
Lewisville	97462	Dallas-Fort Worth-Arlington, TX	Urban	3
College Station	96000	College Station-Bryan, TX	Urban	8
San Angelo	94812	San Angelo, TX	Urban	12
Pearland	94098	Land, TX	Urban	6
Allen	87213	Dallas-Fort Worth-Arlington, TX	Urban	3
League City	86136	Land, TX	Urban	6
Longview	81435	Longview, TX	Urban	4
Sugar Land	80755	Land, TX	Urban	6
Mission	78707	McAllen-Edinburg-Mission, TX	Urban	11
Edinburg	77415	McAllen-Edinburg-Mission, TX	Urban	11
Bryan	77139	College Station-Bryan, TX	Urban	8
Baytown	73043	Land, TX	Urban	6
Pharr	71634	McAllen-Edinburg-Mission, TX	Urban	11
Missouri City	68244	Land, TX	Urban	6
Temple	67669	Killeen-Temple, TX	Urban	8
Atascocita	66879	Land, TX	Urban	6
Flower Mound	66523	Dallas-Fort Worth-Arlington, TX	Urban	3
Harlingen	65296	Brownsville-Harlingen, TX	Urban	11
North Richland Hills	64677	Fort Worth-Arlington, TX	Urban	3
Victoria	63571	Victoria, TX	Urban	10
New Braunfels	59620	San Antonio-New Braunfels, TX	Urban	9
Conroe	59429	Land, TX	Urban	6
Mansfield	57529	Fort Worth-Arlington, TX	Urban	3
Rowlett	56856	Dallas-Fort Worth-Arlington, TX	Urban	3
Spring	55458	Land, TX	Urban	6
Cedar Park	54874	Austin-Round Rock, TX	Urban	7
Port Arthur	54193	Beaumont-Port Arthur, TX	Urban	5
Euless	52127	Fort Worth-Arlington, TX	Urban	3
Georgetown	50380	Austin-Round Rock, TX	Urban	7
Pflugerville	50127	Austin-Round Rock, TX	Urban	7
DeSoto	50014	Dallas-Fort Worth-Arlington, TX	Urban	3
San Marcos	48291	Austin-Round Rock, TX	Urban	7
Galveston	48178	Land, TX	Urban	6
Bedford	47727	Fort Worth-Arlington, TX	Urban	3
Grapevine	47688	Dallas-Fort Worth-Arlington, TX	Urban	3
Cedar Hill	45505	Dallas-Fort Worth-Arlington, TX	Urban	3
Texas City	45363	Land, TX	Urban	6
Haltom City	42906	Fort Worth-Arlington, TX	Urban	3
Wylie	42384	Dallas-Fort Worth-Arlington, TX	Urban	3
Keller	40872	Fort Worth-Arlington, TX	Urban	3
Coppell	39551	Dallas-Fort Worth-Arlington, TX	Urban	3
Duncanville	39000	Dallas-Fort Worth-Arlington, TX	Urban	3
Rockwall	38958	Dallas-Fort Worth-Arlington, TX	Urban	3
Channelview	38919	Land, TX	Urban	6
Sherman	38805	Sherman-Denison, TX	Urban	3

Burleson	38165	Fort Worth-Arlington, TX	Urban	3
Hurst	37822	Fort Worth-Arlington, TX	Urban	3
The Colony	37614	Dallas-Fort Worth-Arlington, TX	Urban	3
Lancaster	37087	Dallas-Fort Worth-Arlington, TX	Urban	3
Texarkana	36851	Texarkana, TX-AR	Urban	4
Friendswood	36375	Land, TX	Urban	6
Weslaco	36273	McAllen-Edinburg-Mission, TX	Urban	11
Mission Bend	36072	Land, TX	Urban	6
San Juan	34556	McAllen-Edinburg-Mission, TX	Urban	11
La Porte	34127	Land, TX	Urban	6
Schertz	33758	San Antonio-New Braunfels, TX	Urban	9
Fort Hood	32902	Killeen-Temple, TX	Urban	8
Copperas Cove	32869	Killeen-Temple, TX	Urban	8
Deer Park	32517	Land, TX	Urban	6
Socorro	32227	El Paso, TX	Urban	13
Rosenberg	31908	Land, TX	Urban	6
Waxahachie	30412	Dallas-Fort Worth-Arlington, TX	Urban	3
Cleburne	29677	Fort Worth-Arlington, TX	Urban	3
Farmers Branch	29405	Dallas-Fort Worth-Arlington, TX	Urban	3
Kyle	29396	Austin-Round Rock, TX	Urban	7
Leander	28281	Austin-Round Rock, TX	Urban	7
Little Elm	27966	Dallas-Fort Worth-Arlington, TX	Urban	3
Harker Heights	27163	Killeen-Temple, TX	Urban	8
Lake Jackson	27107	Land, TX	Urban	6
Southlake	27006	Fort Worth-Arlington, TX	Urban	3
Weatherford	25971	Fort Worth-Arlington, TX	Urban	3
Seguin	25848	San Antonio-New Braunfels, TX	Urban	9
Greenville	25729	Dallas-Fort Worth-Arlington, TX	Urban	3
Alvin	24708	Land, TX	Urban	6
San Benito	24347	Brownsville-Harlingen, TX	Urban	11
Balch Springs	24294	Dallas-Fort Worth-Arlington, TX	Urban	3
Cloverleaf	24150	Land, TX	Urban	6
Timberwood Park	23952	San Antonio-New Braunfels, TX	Urban	9
Brushy Creek	23908	Austin-Round Rock, TX	Urban	7
Watauga	23798	Fort Worth-Arlington, TX	Urban	3
Colleyville	23465	Fort Worth-Arlington, TX	Urban	3
University Park	23460	Dallas-Fort Worth-Arlington, TX	Urban	3
Denison	22697	Sherman-Denison, TX	Urban	3
West Odessa	22156	Odessa, TX	Urban	12
Benbrook	21655	Fort Worth-Arlington, TX	Urban	3
Sachse	20930	Dallas-Fort Worth-Arlington, TX	Urban	3
Cibolo	20564	San Antonio-New Braunfels, TX	Urban	9
Saginaw	20347	Fort Worth-Arlington, TX	Urban	3
Corinth	20126	Dallas-Fort Worth-Arlington, TX	Urban	3
Fresno	19467	Land, TX	Urban	6
Converse	19023	San Antonio-New Braunfels, TX	Urban	9
Dickinson	18879	Land, TX	Urban	6

Belton	18855	Killeen-Temple, TX	Urban	8
Universal	18844	San Antonio-New Braunfels, TX	Urban	9
Midlothian	18666	Dallas-Fort Worth-Arlington, TX	Urban	3
Alamo	18658	McAllen-Edinburg-Mission, TX	Urban	11
Murphy	18412	Dallas-Fort Worth-Arlington, TX	Urban	3
Cinco Ranch	17863	Land, TX	Urban	6
Stafford	17840	Land, TX	Urban	6
Horizon City	17736	El Paso, TX	Urban	13
Nederland	17530	Beaumont-Port Arthur, TX	Urban	5
Bellaire	17223	Land, TX	Urban	6
South Houston	17157	Land, TX	Urban	6
White Settlement	16372	Fort Worth-Arlington, TX	Urban	3
New Territory	16188	Land, TX	Urban	6
Donna	16010	McAllen-Edinburg-Mission, TX	Urban	11
Mercedes	15999	McAllen-Edinburg-Mission, TX	Urban	11
Groves	15954	Beaumont-Port Arthur, TX	Urban	5
Pecan Grove	15769	Land, TX	Urban	6
Highland Village	15364	Dallas-Fort Worth-Arlington, TX	Urban	3
Portland	15289	Corpus Christi, TX	Urban	10
Humble	15286	Land, TX	Urban	6
Seagoville	15099	Dallas-Fort Worth-Arlington, TX	Urban	3
West University Place	15033	Land, TX	Urban	6

Simon Malls in Texas

Name of Mall	Location	Gross Leasable Square Feet
The Galleria	Houston	2,237,000
Grapevine Mills	Grapevine	1,777,000
North East Mall	Hurst	1,669,736
Barton Creek Square	Austin	1,430,000
Galleria Dallas	Dallas	1,425,000
Cielo Vista	El Paso	1,242,000
La Plaza Mall	McAllen	1,215,000
The Domain	Austin	1,209,000
Katy Mills	Katy	1,201,104
Ingram Park Mall	San Antonio	1,125,000
Lakeline Mall	Cedar Park	1,098,000
Firewheel Town Center	Garland	1,000,000
San Marcos Premium Outlets	San Marcos	731,000
Brodway Square	Tyler	628,000
Midland Park Mall	Midland	615,000
Rio Grande Valley Premium Outl	Mercedes	604,000
Houston Premium Outlets	Cypress	542,000
Round Rock Premium Outlets	Round Rock	488,689
The Shops at Clearfork	Fort Worth	473,769
Allen Premium Outlets	Allen	442,000
Grand Prairie Premium Outlets	Grand Prairie	417,415
Tanger Outlets Houston	Texas City	352,705
University Park Village	Fort Worth	173,358

data from http://business.simon.com/

(43) Flores Residential, LLC

APOLONIO (Nono) FLORES
FLORES RESIDENTIAL, L.C.
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Cell Telephone 210-289-5952
Facsimile 210-494-0853
e-mail: nono62@swbell.net

October 14, 2016

Via email htc.public-comment@tdhca.state.tx.us

Ms. Sharon Gamble
9% Competitive Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

Re: Public Comment on QAP and MF Rules

Dear Sharon:

Attached is our comment on the proposed 2017 QAP and Multifamily Rules, submitted in accordance with the notice published in the September 23, 2016, edition of the Texas Register. Please let me know if you have any questions.

Sincerely,

Apolonio Flores

enclosures

Subchapter A

10.3 Definitions

We do not believe that Special Limited Partners generally possess factors or attributes that give them Control, although some may. Therefore, we offer the following recommendation to the definition of Control.

(29) Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. Controlling entities of a partnership include the general partners, may include special limited partners when applicable, but not investor limited partners or special limited partners who do not possess other factors or attributes that give them Control. Controlling entities of a limited liability company include but are not limited to the managers, managing members, any members with 10 percent or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership, but not investor members who do not possess other factors or attributes that give them Control. Controlling individuals or entities of a corporation, including non-profit corporations, include voting members of the corporation's board, whether or not any one member did not participate in a particular decision due to recusal or absence. Multiple Persons may be deemed to have Control simultaneously.

The current definition of Elderly Preference Development does not preclude an Application from choosing this type of Elderly Development even if HUD funding (or other federal assistance) is not used; however, the 2016 Application conflicted with this plain language and did not allow for that type of a choice to be made. If the intention of the Elderly Preference Development definition is that it only apply to developments with HUD funding or other types of federal assistance, that should be clearly articulated in the definition.

We offer the following recommendation for the definition of Principal. The first relates to the unclear nature of whether "Persons" is capitalized because it refers to the defined term, or simply because it is the first word in the sentence. The context leads us to believe that it is the generalized term, which informs our recommendation. The second relates to our earlier comment on the definition of Control.

(98) Principal--Any ~~P~~persons~~s~~ that will exercise Control (which includes voting board members pursuant to §10.3(a)(29) of this chapter) over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) partnerships, Principals include all General Partners, ~~special limited partners,~~ and Principals with ownership interest, and special limited partners with ownership interest who also possess factors or attributes that give them Control;

(B) corporations, Principals include any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation, and any individual who has Control with respect to such stock holder; and

(C) limited liability companies, Principals include all managers, managing members, members having a 10 percent or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.

Subchapter B

10.101(a)(2) Undesirable Site Features

We make the following recommendations to this section.

(2) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph maybe considered ineligible as determined by the Board. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs ("VA") may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application and must include a letter stating the Rehabilitation of the existing units is consistent with achieving at least one or more of the stated goals as outlined in the State of Texas Analysis of Impediments to Fair Housing Choice or, if within the boundaries of a participating jurisdiction or entitlement community, as outlined in the local analysis of impediments to fair housing choice and identified in the participating jurisdiction's Action Plan. The distances are to be measured from the nearest boundary of the Development Site to the ~~nearest boundary of the property or easement containing the~~ undesirable feature. ~~The minimum distances noted assume that the land between the proposed Development Site and the particular undesirable feature has no significant intervening barriers or obstacles such as waterways or bodies of water, major high speed roads, park land, or walls, such as noise suppression walls adjacent to railways or highways.~~ Where there is a local ordinance that ~~regulates the~~ for closer proximity ~~of~~ to such undesirable feature ~~to a multifamily development that differs from~~ than the minimum distances noted below, documentation, such as a copy of the local ordinance identifying such distances relative to the Development Site, must be included in the Application. ~~The distances identified in subparagraphs (A) - (J) of this paragraph are intended primarily to address sensory concerns such as noise or smell, social factors making it inappropriate to locate residential housing in proximity to certain businesses. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes.~~ If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (K) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

(A) Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Transportation Code, §396.001;

(B) Development Sites located within 300 feet of a solid waste or sanitary landfills;

(C) Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local Government Code, §243.002, or as zoned, licensed and regulated as such by the local municipality;

(D) Development Sites in which the buildings are located within 100 feet of the easement of any overhead high voltage transmission line, or support structures for high voltage transmission lines~~, or other similar structures~~. This does not apply to local service electric lines and poles;

(E) Development Sites located within ~~500~~100 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail;

(F) Development Sites located within 500 feet of heavy industrial (i.e. facilities that require extensive capital investment in land and machinery, are not easily relocated and produce high levels of external noise such as manufacturing plants, fuel storage facilities (excluding gas stations) etc.);

(G) Development Sites located within 10 miles of a nuclear plant;

(H) Development Sites in which the buildings are located within one-quarter mile of the accident zones or clear zones of any airport;

(I) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids. Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance ("PIPA");
(J) Development Sites located within 2 miles of refineries capable of refining more than 100,000 barrels of oil daily; or
(K) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated.

10.101(a)(3) Undesirable Neighborhood Characteristics

We agree with the language recommendations made by TAAHP.

10.101(b)(4) Mandatory Development Amenities

We agree with TAAHP's recommendation to strike the requirement for solar screens.

10.101(b)(5) Common Amenities

We recommend leaving furnished community room as a 2 points.

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

In-unit laundry equipment should be a 3 point item.

10.101(b)(7) Tenant Supportive Services

We agree with TAAHP's recommendation to this section of the Rule. We also recommend increasing scholastic tutoring 5 points.

Subchapter C

10.201(7) Administrative Deficiency Process

The Administrative Deficiency deadline should remain 5 days.

10.203 Public Notifications

We agree with TAAHP's recommendation on this section.

10.204(6) Experience Requirement

The 2014 criteria for experience certificates is exactly the same in 2015 and 2016, so 2014 certificates should still count.

10.204(16) Section 811 Project Rental Assistance Program

We agree with TAAHP's recommendations on this item.

Subchapter D

10.302(e)(1)(C) Acquisition from Seller without current Title

We agree with Oryx Compliance, LLC's comment on this section.

10.302(e)(9) Reserves

New language has been added to the 5th sentence of this section, and we recommend the following changes.

> In no instance at initial underwriting will total reserves exceed twelve (12) months of stabilized operating expenses plus debt service (and only for USDA or HUD financed rehabilitation transactions the initial deposits to replacement reserves, initial deposits to required voucher reserves and transferred replacement reserves ~~for USDA or HUD financed rehabilitation transactions~~).

Subchapter G

10.901(5) Third Party Underwriting Fee

The third party underwriter language has been removed from 10.201(5), so this fee is no longer applicable and should be removed.

10.901(12) Extension Fees

Construction Status Reports should not need to be extended. We recommend removing this reference from the Extension Fee section.

11.5 Competitive HTC Set-Asides

In the at-risk set aside, TDHCA limits the # of tax credits units for property where affordable units are being relocated to those being relocated. However, for an at-risk development on same site, TDHCA does not limit the # of tax credits units. For example, an Applicant could demolish 50 units and reconstruct 150 tax credit units. We believe the tax credit units should be limited to the same # of affordable units on the site, or perhaps not more than a minimum % of additional units.

11.7 Tie Break Factors

We agree with TAAHP that the tie break factor related to Educational Quality should be removed.

Additionally, we make the following recommendation to the 3rd tie break factor.

> (3) Applications having achieved the maximum Opportunity Index Score and ~~the highest number of~~ have at least four (4) additional point items on the Opportunity index menu that they were unable to claim because of the 7 point cap on that item.

11.9(c)(3)(B) Tenant Services

> "The Applicant certifies that the Development will contact local service providers, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. (1 point)"

We recommend striking this language from the QAP due to its ambiguity. We would be supportive of adding this item to as an option under 10.101(7) in more clearly defined terms.

11.9(c)(4) Opportunity Index

We offer the following recommendations to Opportunity Index

> (A) A ~~P~~proposed Development is eligible for a maximum of seven (7) opportunity index points if it is located in a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and ~~meets the requirements in (i) or (ii) below.~~ has:
>
> > (i) ~~The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and~~ an income rate in the two highest quartiles within the uniform service region~~.~~; (2 points)
> > (ii) ~~The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with~~ an income rate in the third quartile within the region, ~~and~~ is contiguous to a census tract in the first or second quartile~~,~~ without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the first or second quartile census tract~~s~~. and, (1 point)
>
> (B) An application that meets the foregoing criteria may qualify for additional points up ~~to seven (7) points~~ for any one or more of the following factors. Each facility or amenity may be used only once for scoring purposes, regardless of the number of categories it fits~~:~~.
>
> > (i) For Developments located in an Urban Area~~:, an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIV) of this subparagraph.~~
> >
> > > (I) The Development site is located less than 1/2 mile on an ~~accessible route~~ from a public park with an ~~accessible~~ playground (1 point);
> > >
> > > (II) The Development Site is located less than ½ mile ~~on an accessible route~~ from Public Transportation with a route schedule that provides regular service to employment and basic services (1 point);

(III) The Development site is located within 1 mile of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items~~.~~ (1 point);

(IV) The Development is located within 3 miles of either an emergency room or an urgent care facility (1 point);

(V) The Development Site is within 2 miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten (1 point);

(VI) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less, as defined by neighborhoodscout.com (1 point);

(VII) The development site is located within 1 mile of a public library (1 point);

(VIII) The Development Site is located within 5 miles of a University or Community College campus (1 point);

(IX) The Development Site is located within 3 miles of a concentrated retail shopping center ~~of at least 1 million square feet or~~ that includes at least 4 ~~big box~~ national retail stores (1 point);

(X) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher exceeds that of the State-wide average ~~is 27% or higher.~~ (1 point);

(XI) Development site is within 2 miles of a ~~government-sponsored~~ non-profit museum (1 point);

(XII) Development site is within 1 mile of an indoor recreation facility available to the public (1 point);

(XIII) Development site is within 1 mile of an outdoor recreation facility available to the public (1 point); and

(XIV) Development site is within 1 mile of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point).

(ii) For Developments located in a Rural Area:~~, an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIII) of this subparagraph.~~

(I) The Development site is located within ~~2~~5 miles of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items~~.~~ (1 point);

(II) The Development is located within 4 miles of health~~-~~related facility, such a full service hospital, community health center, or minor emergency center. Physician specialty offices are not considered in this category~~.~~ (1 point);

(III) The Development Site is within 3 miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten (1 point);

(IV) The Development Site is located in a census tract with a property crime rate 26 per

1,000 or less, as defined by neighborhoodscout.com (1 point);
(V) The development site is located within 3 miles of a public library (1 point);
(VI) The development site is located within 3 miles of a public park (1 point);
(VII) The Development Site is located within ~~7~~15 miles of a University or Community College campus (1 point);
(VIII) The Development Site is located within 5 miles of a retail shopping center with ~~XX square feet of stores~~ at least 3 retail stores (1point);
(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher exceeds that of the State-wide average ~~is 27% or higher.~~ (1 point);
(X) Development site is within 2 miles of a ~~government-sponsored~~ non-profit museum (1 point);
(XI) Development site is within ~~1~~3 mile of an indoor recreation facility available to the public (1 point);
(XII) Development site is within ~~1~~3 mile of an outdoor recreation facility available to the public (1 point); and
(XIII) Development site is within ~~1~~3 mile of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point).

11.9(c)(5) Educational Quality

We concur with the TAAHP recommendation to remove the scoring item, and add the schools to the Opportunity Index menu.

11.9(c)(8) Proximity to the Urban Core

We recommend that this scoring item not apply to the At-Risk.

11.9(d)(5) Community Support from State Representative

We concur with the TAAHP's recommendation on this section.

11.9(d)(7) Concerted Revitalization Plan

We recommend removing the population limitation of 100,000 in Urban areas.

11.9(e)(2) Cost of Development per Square Foot

We concur with the TAAHP recommendations on this section.

11.9(e)(3) Pre-application Participation

We recommend the flowing language under subparagraph (F).

(F) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number listed at pre-application is the same at Application;

11.9(e)(4) Leveraging of Private, State and Federal Resources

We recommend that the leveraging percentages be returned to the 2016 levels.

(44) Foundation Communities

FOUNDATION COMMUNITIES
creating housing where families succeed

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October 12, 2016

Marni Holloway
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941

Dear Marni,

Thank you for the opportunity to comment on the DRAFT 2017 Housing Tax Credit Draft Qualified Allocation Plan and Multifamily Rules. We very much appreciate the TDHCA staff for their careful thought and collaboration regarding potential changes to the QAP and Rules. We would also like to commend the TDHCA staff for the creative, as well as balanced, expansion of programs and systems that promote developments located in urban areas and targeted to those most in need.

Please find attached our comments on the 2017 DRAFT QAP and Multifamily Rules.

Sincerely,
Jennifer Hicks
Director of Housing Finance
Foundation Communities
3036 S. 1st Street
Austin, TX 78704
Office: 512.610.4025
Mobile: 512.203.4417
Email: jennifer.hicks@foundcom.org

QUALIFIED ALLOCATION PLAN

11.2 Program Calendar for Competitive Housing Tax Credits.

We strongly urge the Department to reconsider changing the Administrative Deficiency Response Deadline from 5 days to 3 days. While we can understand the importance of speeding up the deficiency process to get through the review of so many applications, we feel that cutting the response deadline and assigning point deductions for going over that deadline is overkill. Some very good applications by extremely competent and capable developers are bound to get caught by this change. If a deficiency requires getting numerous signatures, then accessing those persons might take longer than 3 days. If a deficiency requires information from a third party, then nailing down that third party and getting the required information may take longer than 3 days. We understand that extensions can be granted. As currently written, staff WILL be processing numerous extensions. Why not just leave the response deadline at 5 days and save that staff time?

11.7 Tiebreaker Factors

We are very supportive of the additions TDHCA made in the 2017 Draft QAP for tiebreaker factors. Specifically, "Proximity to Urban Core" as first tie breaker. We would encourage TDHCA to please consider adding proximity to public transportation versus one of the two current Educational Quality tie breakers. The property that is most accessible to public transportation is the project that will align with responsible development and broader appeal to the State's affordable housing residents living in urban areas.

11.9(c)(3) Tenant Services

We encourage TDHCA to add details to the following requirement in order to ensure value for the tenants.

(B) The Applicant certifies that the Development will have a dedicated Service Coordinator or Case Manager to contact local service providers, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. The Service Coordinator will pro-actively engage and assess residents' needs through direct communication and tailor services appropriately. A Development selecting these points will also provide:

- **Minimum of 1 monthly program on-site provided by a local service provider; AND**
- **Minimum of 3 local service providers engaged to provide services to residents; OR**
- **The applicant is a non-profit and is a self-providing services to residents of the Development.**

11.9(c)(4) Opportunity Index.

We strongly support TDHCA increasing the poverty rate to 20% and allowing second and third quartile census tracts to score on the Opportunity Index. These changes alone open up new areas that are excellent places to locate housing while also avoiding the consequence of all developers going for the few highest income and lowest poverty census tracts in the Region and driving up land prices.

We also commend the TDHCA staff for the creation of the "facility or amenity" list which further defines areas for the most advantageous location of housing which are areas accessible to a wide array of amenities and facilities. We just have the following comments on the Facility or Amenity for Developments located in an Urban Area

(I) The Development site is located less than ½ mile on an accessible route from a public park with an *accessible playground* (1 point)

We are concerned about the term "accessible playground." Does this mean the equipment itself has to be accessible or access to the playground? What accessibility standards will be used? We are concerned that if using 2010 ADA (which is relatively new), older playgrounds won't count. In the urban core, a majority of the parks and playgrounds will be older and may not meet this requirement. The accessible route makes good sense and easy and uniform to document. However, the playground equipment itself and access on the playground, might put urban parks and playgrounds at a disadvantage.

(II) The Development site is located less than ½ mile on an accessible route from Public Transportation with a route schedule that provides *regular service* to employment and basic services (1 point).

We urge TDHCA to define "regular." The FHLB San Francisco defines "regular" as service at least every 30 minutes between 7 and 9 a.m. and between 4 and 6 p.m., Monday through Friday.

(XII) Development site is within 1 mile of an *indoor recreation facility* available to the public (1 point.)

This point item seems too vague. What will TDHCA count as an "indoor recreation facility"? We suggest adding specific examples such as a City- or County-Operated Indoor Recreational Center", and/or specific features such as sport court, pool, running track. Also, please clarify whether these facilities must be free. Many facilities charge small entry and/or membership fees, but are still very affordable.

(XIII) Development site is within 1 mile of an *outdoor recreation facility* available to the public (1 point.)

This point item also seems vague. What will TDHCA count as an "outdoor recreation facility"? We suggest adding specific examples such as a City- or County-Operated Outdoor Recreational Center, and/or specific features such as sport court, pool, running track. Also, please clarify whether these facilities must be free. Many facilities charge small entry and/or membership fees, but are still very affordable.

(XIV) Development site is within 1 mile of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary) (1 point.)

We feel this point item is also too vague and not very meaningful. Services are already covered under Tenant Services. This section should strictly be access to amenities. Some suggestions for replacement are:

- Public Community Garden or Farmer's Market
- Proximity to full banking services (used by FHLB San Francisco)
- Proximity to Fire, Police or Post Office (used by FHLB San Francisco)

11.9(c)(5) Educational Quality

"….Schools with an application process for admittance*, limited enrollment* or other requirements that may prevent a tenant from attending will not be considered as the closest school or the school which attendance contains the site"

We urge TDHCA to include "*gender specific"* schools or *"optional attendance*" schools in this sentence. There are areas of Austin that feed into two gender specific schools with no application process; however, if the child chooses so, they can opt to attend another designated school which is of improved educational quality. In essence, the child has a choice.

11.9(c)(8) Proximity to Urban Core.

We strongly support the creation of Proximity to Urban Core as a scoring item in the 2017 Draft QAP. We feel that this point category will provide an opportunity to balance exurban and suburban housing siting with housing located in the Urban Core. One question we have is whether it was the intent of staff to exclude smaller municipalities that are in the urban core, but not part of the city. Examples for Austin Urban Core would be Rollingwood and Westlake.

11.9(d)(5) Community Support from State Representative.

"…..State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site."

If a state rep seat is vacated, allow developers an extension to request a letter after the seat is filled.

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

We are very supportive of the re-write of this section allowing excess development costs to be taken out of basis and essentially be fundraised for by other sources. TDHCA is still able to manage the credit ask and be resourceful with their distribution of credits. This method will also save underwriting countless hours of documenting increased costs during the Cost Certification process.

(iv) the Development Site qualifies for a minimum of five (5) points under subsection (c)(4) of this section, related to Opportunity Index, and is located in an Urban Area Or qualifies for points under subsection 11.9(c)(8) Proximity to Urban Core

One suggestion is to *include all projects that score on 11.9(c)(8) Proximity to Urban Core* in the definition of "high cost development" as those projects will experience the increased construction costs whether they score on the Opportunity Index or not.

UNIFORM MULTIFAMILY RULES: SUBCHAPTER B

10.101(a)(2) Undesirable Site Features

We support the inclusion of the following language that was added to the 2017 Draft that was posted for public comment: "Sites within the applicable distance of any undesirable features identified in subparagraphs (A) – (K) *may be* considered ineligible….."We like that the addition of "maybe considered ineligible as determined by the Board." We think it is paramount that Staff and Board have the flexibility to waive the presence of Undesirable Site Features if the Developer can prove that the feature would not negatively impact residents.

10.101(a)(3) Undesirable Neighborhood Characteristics

10.101(a)(3)(B)(i) The Development Site is located within a census tract that has a poverty rate of ~~30~~ 40 percent for individuals.

We urge TDHCA to change the poverty trigger from 30 to *40 percent*. We feel there are areas of Austin that are redeveloping where poverty may not have decreased below 30 percent just yet, but is very close. We imagine this is the same for other urban areas of the state. If the 30 percent threshold stays in, we imagine staff will spend an inordinate amount of time researching this characteristic as there will be quite a few apps that will trigger it.

10.101(a)(3)(B)(iv) "Development Sites subject to an Elderly Limitation or Single Room Occupancy are considered exempt and do not have to disclose the presence of this characteristic.

Single Room Occupancy developments have similar, if not more restrictive, occupancy standards as Elderly Limitation projects.

10.101(a)(3)(C) "Should ~~any~~ 3 or more of the undesirable neighborhood characteristics described in subparagraph (B) of this paragraph exist, the Applicant must submit the Undesirable Neighborhood Characteristics Report…."

We believe this required report is overkill and should not be required if just one characteristic is triggered. This report will not only take Applicants a very long time to compile, but will also take Staff a very long time to review. We understand that mitigation documentation needs to be included, but that documentation should be specific to the characteristic triggered. For example, if a site triggers the Educational Quality characteristics then information on the schools should be provided (i.e. the information contained in 10.101(a)(3)(D)(vii) and (iv).

10.101(b)(5) Common Amenities

~~(i) Full perimeter fencing that includes parking areas and all amenities (excludes guest or general public parking areas); (2 points);~~

Full perimeter fencing alone is not an amenity. If the goal of this point is security, we would suggest *combining* (i) fencing with (ii) controlled gate access for (2 points) rather than giving 2 points for both points.

(xi) Equipped and functioning business center or equipped computer learning center. Must be equipped with 1 computer for every 40 Units loaded with basic programs (maximum of 5 computers needed), 1 laser printer ~~for every 3 computers (minimum of one printer)~~ and at least one scanner which may be integrated with printer (2 points).

In our experience, 1 printer for every 3 computers is excessive and unnecessary. We suggest requiring 1 printer per computer lab.

(xxii) One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot (2 points). Must be covered with a shade from trees, canopy, or awning, intended to keep equipment cool, provide shade and ultraviolet protection. Can only select this item if clause (xxii) of this subparagraph is not selected; or

Please include shade from trees as a shade option. It would be counterproductive to install an awning when playground is adequately shaded by trees.

(xxiii) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each (4 points). Must be covered with a shade from trees, a canopy, or awning, intended to keep equipment cool, provide shade and ultraviolet protection. Can only select this item if clause (xxi) of this subparagraph is not selected.

Please include shade from trees as a shade option. It would be counterproductive to install an awning when playground is adequately shaded by trees.

(xxx) Bicycle parking within reasonable proximity to each residential building that allows for 1 bicycle per 5 units to be secured with lock (lock not required to be provided to tenant) (1 point).

More clarification should be provided regarding the amount of bicycle parking. We suggest 1 bicycle per 5 units.

(xxxiii) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Points may be selected from only one

of four categories: Limited Green Amenities, Enterprise Green Communities, Leadership in Energy and Environmental Design (LEED), and ICC 700 National Green Building Standard. A Development may qualify for no more than ~~four~~ (6) points total under this clause.

Green Building Features benefit everyone – the residents and the owners. We feel this point category should allow more than four points. We suggest 6 points. *We also suggest adding Solar Arrays as its own green category for 2 points.*

(I) Limited Green Amenities (~~2~~ 4 points). The items listed in subclauses (I) - (IV) of this clause constitute the minimum requirements for demonstrating green building of multifamily Developments. Six (6) of the twelve ~~twenty-two~~ (12 ~~22~~) items listed under items (-a-) - (-v-) of this subclause must be met in order to qualify for the maximum number of two (2) points under this subclause;

We are concerned that several of the items in this section are difficult to verify as constructed without a 3rd party consultant such as those used for Enterprise Green Communities and LEED. This is definitely beyond the means of TDHCA Construction Inspection Staff. We suggest limiting these options to items that are high impact and verifiable. We included some comments based on recent experience

~~**(a) a rain water harvesting/collection system and/or locally approved greywater collection system;**~~

Difficult to verify

~~**(b) newly installed native trees and plants that minimize irrigation requirements and are appropriate to the Development Site's soil and microclimate to allow for shading in the summer and heat gain in the winter. For Rehabilitation Developments this would be applicable to new landscaping planned as part of the scope of work;**~~

Difficult to verify

~~**(d) all of the HVAC condenser units located so they are fully shaded 75 percent of the time during summer months (i.e. May through August) as certified by the design team at cost certification;**~~

Difficult to verify

~~**(f) install individual or sub-metered utility meters for electric and water. Rehabilitation Developments may claim sub-meter only if not already sub-metered at the time of Application;**~~

This is already Texas code.

~~**(g) healthy finish materials including the use of paints, stains, and sealants consistent with the Green Seal 11 standard or other applicable Green Seal standard;**~~

This is too vague, how much finish materials should be used. This item is difficult to verify.

~~**(j) construction waste management system provided by contractor that meets LEEDs minimum standards;**~~

Per LEED Version 4, this is extremely difficult to achieve now.

~~**(l) for Developments with 41 units or less, at least 25% by cost FSC certified salvaged wood products.**~~

This is very expensive and there is no real benefit to the tenant or building.

~~**(m) locate water fixtures within 20 feet of water heater.**~~

Difficult to verify.

(-n-) drip irrigate at non-turf areas and sprinkler system with rain sensors.

This should be a combined category in order to truly achieve water savings

(-o-) radiant barrier decking for New Construction Developments or other "cool" roofing materials;

TPO roofs are "cool" roofing and should be counted in this section.

(-p-) permanent shading devices for windows with solar orientation (does not include solar screens, but may include permanent awnings, ~~black-out shades,~~ fixed overhangs, etc.).

Black out shades are easy to remove and not as efficient as exterior shading devices.

~~**(q) Energy Star certified insulation products (For Rehabilitation Developments, this would require installation in all places where insulation could be installed, regardless of whether the area is part of the scope of work);**~~

Energy Star does not certify insulation products.

(-t-) FloorScore certified vinyl flooring, Green Label certified carpet, or resilient flooring;

Floor score only certifies vinyl flooring, please include other certifications and more flooring options

~~**(u) sprinkler system with rain sensors;**~~

This should be a combined category (n) drip -irrigate in order to truly achieve water savings.

(II) Enterprise Green Communities (~~four~~ six points).

(III) LEED (~~four~~ six points).

(IV) ICC 700 National Green Building Standard (~~four~~ six points).

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

We feel that the past and currently proposed list of features is *too restrictive* and should be expanded to allow for greater design options. Below are some *additional amenities* that provide value to tenants and improve the quality of developments

- Pantry (0.5 point)
- Breakfast bar (0.5 point)
- Walk-in closet in master bedroom (0.5 point)
- Low Flow Water Fixtures (0.5 point)
- Durable Flooring (1 point)
- Solar panels that directly offset the tenant's electricity bill. (2 points)

Below are some *additional comments* on existing features

(vii) Energy-Star qualified laundry equipment (washers ~~and dryers)~~ for each individual Unit; must be front loading washer ~~and dryer~~ in required accessible Units (1.5 points);

Energy Star Dryers are cost prohibitive, please consider awarding points for Energy Star washers only.

(x) Meet current R-value requirements (rating of wall/ceiling/slab system) of current IECC for the Development's climate zone (1.5 points)

R-values of slabs will be important in north Texas

(xi) ~~14 SEER HVAC~~ Energy Star Rated HVAC equipment (or greater) for New Construction, Adaptive Reuse, and Reconstruction or radiant barrier in the attic for Rehabilitation (excluding Reconstruction) where such systems are not being replaced as part of the scope of work, a radiant barrier in the attic is provided (1.5 points);

We suggest incentivizing Energy Star appliances

(xii) Free High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);

TDHCA requires the high-speed internet service to be free of charge, so need to indicate as such.

~~(xii) Floor to ceiling kitchen cabinetry (1 point);~~

This item presents an accessibility conflict with 2010 ADA.

~~(xiii) Recessed or track LED lighting in kitchen and living areas (1 point);~~

Recessed lighting can add complications to ceiling assemblies due to fire rating, and, in our opinion, do not add value for the tenant. In addition, track LED lighting is difficult to source.

(xiv) Thirty (30) year shingle or metal roofing (~~excludes~~ including Thermoplastic Polyolefin (TPO) roofing material) (0.5 point); We would like to lay out the following argument for why TPO roofing should be included as a valuable feature.

80 mil TPO is a popular high-grade commercial roofing material with long term heat and UV resistance and a highly reflective, emissive white material that helps reduce energy costs and urban heat island effect. Many TPO roofing systems come with 30 year warranties, and are arguably more durable and energy efficient than the commonly used 30 year shingle. TPO also allows developers the option to pursue the more modern look of a flat roof design. A flat roof can provide the following practical benefits for developments.

- Maximizes space for smaller urban sites or sites with strict impervious cover limits
- Allows projects to mount HVAC on the roof, which frees up valuable space on the ground
- provides more space and greater flexibility for placement of solar panels
- easier to provide significant continuous roofing insulation which is more effective than batts or loose fill typical in a pitched roof design, and
- Allows for more strategic placement of downspouts and rainwater collection.
- Allows projects to take full advantage of max height restrictions without using valuable vertical space for attics.

(xv) Greater than 30 percent stucco or masonry (includes stone, cultured stone, hardi and brick ~~but excludes cementitious and~~ metal siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points).

We urge TDHCA to include Hardi as an option. Stone and brick are cost prohibitive and do not provide enough of a benefit to the resident to justify the cost. Hardi is a durable, aesthetically pleasing, and popular Texas façade.

10.101(b)(7) Tenant Supportive Services.

"These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be

providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider, with the exception of services specified in subparagraphs C,D,L,P,Q,and Y in developments of less than 40 units. Where applicable, the services must be documented by a written agreement with the provider."

We support the intent of this added language and feel strongly that these services are more effective when provided by a qualified and experienced individual or provider. However, in smaller developments in which a dedicated service coordinated is not feasible, we believe that property management staff can provide the following services.

(C) daily transportation such as bus passes, cab vouchers, specialized van on-site (4 points);
(D) Food pantry consisting of an assortment of non-perishable food items and common household items (i.e. laundry detergent, toiletries, etc.) accessible to residents at least on a monthly basis or upon request by a tenant (1 point);
(L) Notary Services during regular business hours (§2306.6710(b)(3)) (1 point);
(P) monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point);
(Q) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, etc.) (1 point);
(Y) a resident-run community garden with annual soil preparation and mulch provided by the Owner and access to water (1 point);

(A) partnership with local law enforcement to provide *regular* on-site social and interactive activities intended to foster relationships with residents (such activities could include playing sports, having a cook-out, swimming, card games, etc.) (3 points);

Please clarify regular. We suggest quarterly.

(D) Food pantry consisting of an assortment of non-perishable food items and ~~common household items (i.e. laundry detergent, toiletries, etc.)~~ accessible to residents at least on a monthly basis or upon request by a tenant (1 point);

Household items are not commonly available through nonprofit food banks. Maybe replace this with fruits/vegetables.

(O) annual *income tax preparation* (offered by an in-come tax prep service) (1 point);

Add "or IRS-certified VITA program"

(R) specific case management services offered by a qualified Owner or Developer or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (~~1~~ 3 points);

This should be worth 3 points as it is of utmost importance, time consuming, and expensive.

(X) a full-time resident services coordinator with a dedicated office space at the Development (~~2~~ 3 points);

This should be worth 3 points as it is of utmost importance, time consuming, and expensive.

UNIFORM MULTIFAMILY RULES: SUBCHAPTER C

10.201(7)(B) Administrative Deficiencies for Competitive Applications

We recommend returning to a 5-day deficiency timeframe.

10.201(16) Section 811

We recommend returning this section to the scoring criteria and delete from threshold. Foundation Communities has leased the first Section 811 unit with TDHCA. It is a very time intensive and multi-detailed program that should be awarded with points for undertaking.

UNIFORM MULTIFAMILY RULES: SUBCHAPTER G

10.901 (12) Extension Fees.

"All extension requests for deadlines relating to the Carryover, 10 Percent Test (submission and expenditure), ~~Construction Status Reports,~~ or Cost Certification requirements submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee."

We recommend striking Construction Status Reports from a required deadline on an extension with monetary repercussions. Construction Status Reports are a relatively new requirement and are not followed up on or enforced by TDHCA staff. The status reports are by no means as important or time critical as the Carryover, 10 Percent Test or Cost Certification and should not be treated as such.

From:	Jennifer Hicks
To:	Marni Holloway; Sharon Gamble; Tim Irvine
Cc:	Walter Moreau; Tillie Croxdale
Subject:	2017 Draft Rules Comment - 10.101(a)(3)(E)
Date:	Thursday, October 13, 2016 9:45:14 AM

Good morning –

We have on additional comment on the 2017 DRAFT QAP. Please accept this email as formal comment.

We are very concerned about the below section of the Multifamily Rules related to Undesirable Neighborhood Characteristics. It seems this section is saying that a project has to be preservation or federally-sourced in order for the Board to have the ability to approve a project despite the existence of Neighborhood Characteristics? As the Undesirable Neighborhood Characteristics is written, it is very certain that many of Foundation Communities' most successful projects would have triggered at least one of the Undesirable Neighborhood Characteristics. We feel that staff did an amazing job of adding scoring items to the QAP that allow Urban Core projects to compete in the process. The section below directly impedes those projects that might score competitively under the new scoring priorities to compete. We do not feel this is the intent of the staff. We ask TDHCA to make the following change to the section below. Also, TDHCA might consider adding further clarification as to what is meant by "subject to federal rent or income restrictions."

Subchapter B, Site and Development Requirements and Restrictions – 10.101(a)(3)

(E) In order for the Development Site to be found eligible by the Board, despite the existence of undesirable neighborhood characteristics, the Board must find that the use of Department funds at the Development Site must be consistent with achieving at least one of the goals in clauses (i) – (iii) of this subparagraph.

(i) Preservation of existing occupied affordable housing units to ensure they are safe and suitable or development of new high quality affordable housing units that are subject to federal rent or income restrictions; ~~and~~ Or

(ii) Factual determination that the undesirable characteristic(s) that has been disclosed are not of such a nature or severity that they should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph. Such information sufficiently supports a conclusion that the characteristic(s) will be remedied by the time the Development places into service.

Much appreciation,
Jenn Hicks

Jennifer Hicks
Director of Housing Finance
Foundation Communities
st

3036 S. 1st Street
Austin, TX 78704
Office: 512.610.4025
Mobile: 512.203.4417
Email: jennifer.hicks@foundcom.org

(47) GroundFloor

From:	Clyde Mackey
To:	HTC Public Comment
Subject:	QAP comments
Date:	Friday, October 14, 2016 4:55:37 PM
Attachments:	image002.png

To whom it may concern,

I think the rules related to the 500 foot barrier from a major railroad are excessive and should be relaxed to 200 to 300 feet.

Thank you for your consideration.

Clyde Mackey

Clyde Mackey
GroundFloor
Preston Commons, West Tower
8117 Preston Road, Suite 300
Dallas, Texas 75225
214.762.6165 - direct
gfholdings.co <http://www.gfholdings.co/>

(48) Hamilton Valley Management, Inc.

Hamilton Valley Management, Inc.

October 13th, 2016

Sharon Gamble
Multifamily Finance Division
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941
sharon.gamble@tdhca.state.tx.us

Re: New Proposed Rule at 10 Texas Administrative Code ("TAC") - Public Comment

Dear Ms. Gamble,

Included below is relevant comment and opinion on behalf of Hamilton Valley Management, in response to the above-referenced Request for Public Comment on the proposed changes to the 10 TAC. While retaining some concern and potential comment towards many of the other minor changes drafted for the 2017 rules, we are submitting input on only those items we feel are most relevant and will have the most profound overall effect on preservation of affordable housing in rural areas.

Chapter 10 - Subchapter C

RULE: **§10.204 – Required Documentation for Application Submission**
(7)(A)(iii) For Developments proposing to refinance an existing USDA Section 515 loan, a letter from the USDA confirming that it has been provided with a complete loan transfer application."

COMMENT: This was a previous requirement in years past, and resulted in USDA personnel being overwhelmed with dozens of Transfer Applications, most of which would not be awarded Tax Credits and eventually get withdrawn, as USDA is required to review every transfer application they receive, in the order received, regardless of potential HTC award. This also resulted in the post-award USDA underwriting process being bogged down, as most of the low-scoring applicants wait to withdraw until all HTC awards have trickled down through the credit allocation formula. In 2015 this rule was changed to allow for complete USDA loan transfer applications to be submitted after an HTC award is received. This significantly lightened the burden on USDA staff and stakeholders, but

inadvertently created a late and slow start to the USDA loan transfer, underwriting and closing, and too many applicants in the USDA set-Aside requested Carryover and 10% Tests extensions. We recognize the importance of jump-starting the USDA process, but not at the expense of reverting back to overburdening the lien-holding Agency.

REQUEST: **Modify the proposed rule change to allow "For developments proposing refinancing an existing USDA Section 515 loan must provide a letter from the USDA confirming that it has been notified of the Tax Credit application and then provide a complete loan transfer application no later than 60 days from the date of HTC Commitment if awarded.**

CHAPTER 11

RULE: **§11.9(c)(4) Opportunity Index:**

(A)Threshold: A Proposed Development is eligible for a maximum of seven (7) opportunity index points if it is located in a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and meets the requirements in (i) or (ii) below.

(i)The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and an income rate in the two highest quartiles within the uniform service region. (2 points)

(ii) The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile, without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. and, (1 point)"

COMMENT: With this proposed change, developments competing in Rural, which were not previously affected by quartiles, now will be – and excludes any 4th quartile possibility. There is much concern as to why non-MSA rural areas are affected by poverty ratings and quartile rankings of any kind due to the **"Donut-Hole" Issue, whereby in non-MSA rural areas, the ranking of quartiles and poverty rate for any given census tract is indirectly proportionate to the density of population within the county. Outside of rural city limits lie sparsely populated ranch lands, farm lands and wealthier home owners. In order to develop inside a top-two quartile with low poverty, applicants are forced to target developments too far from all the required amenities.** We recognize that quartile and poverty ranking can be an effective tool within urban areas, where population density is spread throughout the affected county, more accurately differentiating high

poverty areas from low ones. However the ranking system appears to have a much unintended reverse affect in rural areas.

REQUEST: **Since there are many areas of the rules currently affected by this policy, a temporary streamline solution might be to modify some language to exempt developments competing in the Rural Set Aside from poverty rates or quartile rankings, and just default to the already existing criteria where presence of and proximity to certain amenities and services helps to define Rural high opportunity.** *For example: For Developments located in a Rural Area, an Application may qualify to receive points through a combination of requirements in subclauses (i) - (xiii) of this subparagraph if the Development Site is located within a census tract that has a poverty rate below 20 percent.*

RULE: **11.9(d)(7) – Concerted Revitalization Plan**

An Application may qualify for points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.

(B) For Developments located in a Rural Area:

(i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction in a location meeting the threshold requirements of the Opportunity Index, §11.9(c)(4)(A) of a development in a rural area…"

COMMENT: This goes back to the "donut-hole" issue stated above in regards to High Opportunity and how it affects Rural. But more so than that, stipulating an "either/or, but not both" and then require that substantial achievement of one item be a stipulation of the other – is nonsensical, and circular rulemaking.

REQUEST: **Completely remove the Opportunity Index threshold requirement for the CRP Rural 4-point item.**

I truly appreciate your time and consideration. Should you have any questions or concerns regarding this or any other matter, please feel free to contact me at your earliest convenience.

Sincerely,

Dennis Hoover

Dennis Hoover
President-Hamilton Valley Management, Inc.

cc: Development Team at Hamilton Valley Management, Inc.
Marni Holloway
Tim Irvine
Ginger McGuire

(50) Hoke Development Services, LLC

From:	Tim Smith
To:	Marni Holloway
Cc:	Teresa Morales; Sharon Gamble
Subject:	Public Comment on 2017 Uniform Multifamily Rules and QAP
Date:	Friday, October 14, 2016 4:53:02 PM

Marni Holloway,
Director of Multifamily Finance
TDHCA
221 East 11th Street
Austin, Texas 78701

Re: 2017 Uniform Multifamily Rules and QAP

Please accept these comments on the draft Uniform Multifamily Rule and Qualified Allocation Plan for 2017.

1. I am in agreement and support the comments made by TAAHP and submitted to the Department, especially that TDHCA should remove the Undesirable Neighborhood Characteristics from the Multifamily Rule now that the ICP lawsuit has been dismissed. In the event that this section is not removed see comments below.

2. I am concerned that the department is abandoning existing low-income residents in existing affordable housing which is located in an area with Undesirable Neighborhood Characteristics by requiring mitigation of these undesirable characteristics. Preservation of existing affordable housing is a priority. If these undesirable characteristics are not able to be mitigated, the residents will still reside at the property, but without the benefit of rehabilitation of their residence. All mitigation requirements for Undesirable Neighborhood Characteristics should be removed from the rule for existing occupied affordable housing that is subject to state or federal income restrictions.

3. Please add the following language to Section 10.101(a)(3)(E) Undesirable Neighborhood Characteristics

    a. (iii) The Development satisfies HUD Site and Neighborhood Standards or is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order.

4. Subchapter B §10.101 Site and Development Requirements and Restrictions – Rehabilitation Costs *(Page 12 of 23 in Subchapter B).* These cost should not be increased, it is an arbitrary cost considering the great diversity of developments throughout the state of Texas. Additionally, I recommend including exception language allowing TDHCA to approve a lessor amount of rehab per unit if a third party PCA, which meets TDHCA requirements, supports the lower per unit rehab amount, and a letter from the investor/syndicator stating they have reviewed the PCA and support its conclusions that the rehab budget and scope of work is sufficient to extend the useful life of the development throughout the initial compliance period.

5. Regarding requirement of 811 units--- 4% tax credit/ tax-exempt bonds should be exempt from this requirement.

Sincerely,

Tim Smith
Hoke Development Services, LLC
tsmith@hokeservices.com
832.443.0333 cell
713.490.3143 fax

(51) Investment Builders, Inc.

INVESTMENT IBI BUILDERS INC.

October 14, 2016

Sharon Gamble
Competitive Housing Tax Credit Program Administrator
Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

Re: 2017 Uniform Multifamily Rules and QAP

Dear Sharon,

Below please find our comments to the 2017 Uniform Multifamily Rules and QAP:

Subchapter B – Site and Development Requirements and Restrictions

Section 10.101 (a)(2)(E) – Development Sites located within 500 feet of active railroad tracks...

Comment: The 500 feet should be measured from the centerline of the railroad tracks to the nearest property boundaries.

Qualified Allocation Plan

Section 11.9(c)(8) – Proximity to the Urban Core

Comment: This should not apply to the At-Risk Set-Aside.

If you have any questions or need additional information, please contact me at ibihousing@ibitoday.com or Maria Espinoza at mespinoza@ibitoday.com.

Sincerely,

Ike J. Monty
President

(52) ITEX Group

From: Clark Colvin
To: Sharon Gamble
Cc: Chris Akbari
Subject: Comments to SubChapter B
Date: Friday, October 14, 2016 11:19:12 AM
Attachments: image001.png

Sharon,

10.101(a)(2)(D) - At one of our meetings the TDHCA staff stated the purpose for this restriction was health concerns due to the presence of electro-magnetic fields. This issue became a national issue about 20 years ago and considerable research has been done on the possible health effects of EMF from power lines, cell phones and electric razors, etc. The findings have been inconclusive and no connection has been proven. The highest EMF levels for power lines is immediately below the line. I would recommend that power lines be removed as an undesirable site feature. However, if TDHCA would feel more comfortable in keeping transmissions lines as an USF, I'd recommend that buildings should not placed within a power company right-of-way. These right-of-ways are sized based on the amount of power carried over the lines. It has been my experience that power lines above 69kV are considered transmission lines and those 69kV and below are defined as sub-transmission.

10.101(a)(2)(K) - I'd prefer that the phrase "may adversely affect" be replaced with "have proven adverse affects on." I have seen uninformed challenges to applications where the challenger made statements or assumptions that were incorrect, e.g., the presence of oil refineries in the area means the air quality is bad. There is considerable air quality data in coastal areas where oil refineries are present which show the air data [for toxics, SO2, and ozone] is below national and state air quality standards with large margins of safety. There is nothing that needs to be mitigated. The burden of proof should be on the challenger.

I'd be happy to discuss if you'd like. Thanks for the opportunity to make comments.

Clark

Clark T. Colvin
Executive Vice President
The ITEX Group, LLC
ITEX
3700 Buffalo Speedway, Suite 1010, Houston, TX 77098
3735 Honeywood Court, Port Arthur, Texas 77642
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From: Chris Akbari
To: Sharon Gamble; Clark Colvin
Subject: Comments to Subchapter D
Date: Friday, October 14, 2016 3:25:02 PM

Sharon, My comments to Subchapter D are as follows:

10.302(7)(C)(i) - Increase of developer fee for RAD transactions:

(i) the allocation of eligible Developer fee in calculating Rehabilitation/New Construction Housing Tax Credits will not exceed 15 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing fifty (50) Units or more and 20 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing either HUD Rental Assistance Demonstration Program or have forty-nine (49) Units or less;

This will allow RAD transactions to become feasible in areas where the rents are lower.

10.302(7)(C)(ii) - Allow for developer fee on Identity of Interest transactions that are utilizing Project-Based Section 8 Rental Assistance or HUD Rental Assistance Demonstration Program

(ii) no Developer fee attributable to an identity of interest acquisition of the Development will be included unless the project is utilizing Project-based Section 8 Rental Assistance or the HUD Rental Assistance Demonstration Program for at least 50 percent of the Units.

Thank you for the opportunity to provide comment.

Chris Akbari, President/CEO
ITEX Group
9 Greenway Plaza, Ste. 1250 Houston, Texas 77046
chris.akbari@itexgrp.com
Direct: 832.941.5343 | Cell: 409.543.4465 | Fax: 866.395.6362

From:	Chris Akbari
To:	Sharon Gamble
Subject:	Multifamily Rules - Subchapter B Comments
Date:	Friday, October 14, 2016 2:52:18 PM

Sharon,

My comments regarding the Multifamily rules are as follows:

Section 10.101(a)(3) - I believe that the section should be removed entirely. In the event that staff requires that it stay, I believe that the following changes are required to allow for Urban renewal and revitalization projects to occur in large urban cities like Houston, Dallas, or Austin.

Section 10.101(a)(3)(B)(i) - Increase the poverty rate to 40 percent.

The Development Site is located within a census tract that has a poverty rate above 40 percent for individuals.

Section 10.101(a)(3)(B)(ii) - Completely remove this Section.

Section 10.101(a)(3)(B)(iii) - Specific the number of vacant structures. For example "at least 20 vacant structures".

The Development Site is located within 1,000 feet (measured from nearest boundary of blighted structure) of at least 20 vacant structures visible from the street, which that have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.

Section 10.101(a)(3)(B)(iv) - This section should be complete stricken from from the rules.

Thank you for the opportunity to give comments to the rules.

Chris Akbari, President/CEO
ITEX Group
9 Greenway Plaza, Ste. 1250 Houston, Texas 77046
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Direct: 832.941.5343 | Cell: 409.543.4465 | Fax: 866.395.6362

(53) Lakewood Property Management, LLC

LAKEWOOD PROPERTY MANAGEMENT, LLC

6333 E. Mockingbird Lane, Suite 147-509
Dallas, Texas 75214
Phone 214-277-4839

October 14, 2016

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410
Via email to Sharon.gamble@tdhca.state.tx.us

Re: 2017 Rules and Qualified Allocation Plan

Dear Mr. Irvine:

I would like to reinforce the comments made by the Rural Rental Housing Association of Texas on the draft 2017 Rules and QAP. Preservation of the existing affordable housing stock should become more of a priority with TDHCA given the age of the first properties constructed with equity from housing tax credits; the age of the USDA financed rural portfolio and the difficultly in retaining properties as affordable rental housing in our explosive rental markets in Texas.

Even with the current USDA set aside provided in the housing tax credit program, the aging portfolio of affordable rural properties financed with USDA 515 funding can't obtain the necessary renovation solely from the competitive 9% housing tax credit program. The renovation process could be accelerated if several properties were included in a single tax exempt bond financing with the resulting automatic housing tax credit allocation as has been accomplished in other states. This process has challenges including some created by these rules. Several suggestions in RRHA's comments address these challenges. In order for a bond financed renovation to be economically feasibility a collection of rural properties must be combined into a single bond transaction so the costs of that transaction can be shared. RRHA's request to waive or adjust some requirements should be instituted. The request to waive or reduce the seven amenities requirements (10.101(6)(B) is needed so a practical rehabilitation can be completed. Similarly the Tenant Support Services requirement (10.101(7)) should be reduced or waived for bond applications with multiple USDA financed properties. Many of these services are not available in rural areas or prohibitively expensive for a small property.

Financing the renovation of a group of rural properties will be challenging even with these rule changes. With no 130% boost available for credits with bond financing unless the property is located in a Qualified Census Tract under Section 42 and with a floating 4% rate for calculating the credit allocation, some source of soft funding is needed. RRHA would like to determine if Housing Trust Funds, TCAP funds or some other source of soft financing could be made available for this specific purpose.

Finally, I would like to reinforce the balance of RRHA's recommendations for changes to the QAP. These changes will not adversely affect the quality of the resulting renovated affordable housing in rural Texas but only clarify and simplify the application process.

Sincerely,

Dan Allgeier
dan@lakewoodmanagement.com

From: Dan Allgeier
To: HTC Public Comment
Subject: comments about 2017 QAP
Date: Monday, September 26, 2016 5:26:22 PM

In the proposed QAP, Paragraph 11.9 Competitive HTC Selection Criteria, Section (c) Criteria to serve and support Texans most in need, (4) Opportunity Index, (B) additional points, (ii) Rural - the distances to a museum, indoor and outdoor recreation facility and community, civic or service organization are the same as in urban areas. **These distance should be increased to at least 5 miles for a museum and 3 miles for indoor and outdoor recreation facility and community, civic or service organizations. The balance of the distances to amenities in rural areas should be doubled. It takes much less time to travel in rural areas than in an urban area.**

For both the Urban and Rural additional points in Section (B) how are we to verify the square footage of a retail shopping center? Tax appraisal districts information doesn't always include square footages of buildings and isn't available everywhere, particularly in rural counties. Are we to measure the buildings? This minimum square footage requirement seems difficult to verify and unnecessary in this day of on line purchases delivered to the front door. Retail stores are getting smaller. For example a Walmart Express can be as small as 10,000 SF. The proposed requirement for an acceptable retail shopping center is a million square feet. This is very large requirement in today's retail environment. How will national big box retail stores be defined? Are Brookshires or HEB national chains? They have stores in "big box" centers. Half Price Books operates in 17 states and REI in 36 states according to Wikipedia. If national means 50 states, they are not national retail stores.

You should define this requirement in both urban and rural areas as a retail center with at least 3 stores that sell goods to the general public and are open at least from 10 am to 5 pm Monday thru Friday. That's verifiable and practical.

(54) Leslie Holleman and Associates, Inc.

Leslie Holleman & Associates, Inc.
Residential Real Estate Development & Consulting

October 14, 2016

Via email htc.public-comment@tdhca.state.tx.us

Ms. Sharon Gamble
9% Competitive Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

Re: Public Comment on QAP and MF Rules

Dear Sharon:

Attached is our comment on the proposed 2017 QAP and Multifamily Rules, submitted in accordance with the notice published in the September 23, 2016, edition of the Texas Register.

If you have any questions or need additional information, please feel free to contact me at (970) 731-9797 or leslie@holleman-associates.com.

Sincerely,

LHolleman

Leslie Holleman
President

enclosures

Subchapter A

10.3 Definitions

We agree with the recommendations made by The Brownstone Group to the definitions of Control and Principal.

The current definition of Elderly Preference Development does not preclude an Application from choosing this type of Elderly Development even if HUD funding (or other federal assistance) is not used; however, the 2016 Application conflicted with this plain language and did not allow for that type of a choice to be made. If the intention of the Elderly Preference Development definition is that it only apply to developments with HUD funding or other types of federal assistance, that should be clearly articulated in the definition.

Subchapter B

10.101(a)(2) Undesirable Site Features

Much of the new language in paragraph (2) is far too subjective. How do does the Department intend to define "high speed roads" which are listed separately from highways? If an "intervening barrier" exists between the development site and a railroad track 490 feet away, does this mean the railroad track is no longer a concern? We offer the following proposed language (with explanatory remarks below).

(2) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph maybe considered ineligible as determined by the Board. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs ("VA") may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application and must include a letter stating the Rehabilitation of the existing units is consistent with achieving at least one or more of the stated goals as outlined in the State of Texas Analysis of Impediments to Fair Housing Choice or, if within the boundaries of a participating jurisdiction or entitlement community, as outlined in the local analysis of impediments to fair housing choice and identified in the participating jurisdiction's Action Plan. The distances are to be measured from the nearest boundary of the Development Site to the ~~nearest boundary of the property or easement containing the~~ undesirable feature. ~~The minimum distances noted assume that the land between the proposed Development Site and the particular undesirable feature has no significant intervening barriers or obstacles such as waterways or bodies of water, major high speed roads, park land, or walls, such as noise suppression walls adjacent to railways or highways.~~ Where there is a local ordinance that ~~regulates the~~ for closer proximity ~~of~~ to such undesirable feature ~~to a multifamily development that differs from~~ than the minimum distances noted below, documentation, such as a copy of the local ordinance identifying such distances relative to the Development Site, must be included in the Application. ~~The distances identified in subparagraphs (A) - (J) of this paragraph are intended primarily to address sensory concerns such as noise or smell, social factors making it inappropriate to locate residential housing in proximity to certain businesses. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes.~~ If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (K) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

(A) Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Transportation Code, §396.001;

(B) Development Sites located within 300 feet of a solid waste or sanitary landfills;

(C) Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local Government Code, §243.002, or as zoned, licensed and regulated as such by the local municipality;

(D) Development Sites in which the buildings are located within 100 feet of the easement of any overhead high voltage transmission line, or support structures for high voltage transmission lines~~, or other similar structures~~. This does not apply to local service electric lines and poles;

(E) Development Sites located within ~~500~~100 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail;

(F) Development Sites located within 500 feet of heavy industrial (i.e. facilities that require extensive capital investment in land and machinery, are not easily relocated and produce high levels of external noise such as manufacturing plants, fuel storage facilities (excluding gas stations) etc.);
(G) Development Sites located within 10 miles of a nuclear plant;
(H) Development Sites in which the buildings are located within one-quarter mile of the accident zones or clear zones of any airport;
(I) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids. Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance ("PIPA");
(J) Development Sites located within 2 miles of refineries capable of refining more than 100,000 barrels of oil daily; or
(K) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated.

Our recommendation to strike the language about the primary purpose of the list is due to the fact that a number of items on the list relate to safety: nuclear power plants, airport accident zones. We support the change in subparagraph (D) because fires burning near high voltage power lines can create electrical arcs or "flashovers" which could endanger near-by residents. In subparagraph (E), we recommend returning to the 100 foot distance of previous years. If sound is the concern, there is significant mitigation that can be done during construction, and would likely be recommended in the Phase I ESA. Anytime the Phase I ESA makes a recommendation, the Department's Real Estate Analysis division places a related condition in the Underwriting Report. We are supportive of the change in subparagraph (G). Ten 10 miles is in line with the Nuclear Regulatory Commission's first (of two) Emergency Planning Zone around nuclear power plants (plume exposure pathway zone).

10.101(a)(3) Undesirable Neighborhood Characteristics

While we believe that this section is largely irrelevant for 9% Tax Credits (due to the competitive nature of the program and QAP's scoring incentives for High Opportunity sites), we believe this section is still necessary as threshold to ensure 4% transactions are not placed in undesirable locations. Therefore, we agree with the language recommendations made by TAAHP.

10.101(b)(4) Mandatory Development Amenities

We agree with TAAHP's recommendation to strike the requirement for solar screens.

10.101(b)(5) Common Amenities

We recommend increasing the point value assigned to a furnished community room to 2 points, as this is a costly item.

10.101(b)(6)(B) Unit and Development ~~Construction~~ Features (not all these features are construction related)

We recommend increasing the point value assigned to in-unit laundry equipment to at least 2 points, if not 3 points. Under Common Amenities, a community laundry room is worth 3 points, when it is far less desirable to tenants than having laundry equipment provided to them in their units. Also, the words "and metal" should be stricken from item (xv) related to stucco and masonry exteriors.

10.101(b)(7) Tenant Supportive Services

We agree with TAAHP's recommendation to this section of the Rule. We also recommend that the point value should be increased for item (K) related to scholastic tutoring, because the requirements have increased. We recommend at least 6 points, given the cost to the Development to provide such a service, and the enormous benefit gained by the tenants.

Subchapter C

10.201 Procedural Requirement for Application Submissions

> "Only one Applicant may have an Application or Applications for assistance related to a specific Development Site at any given time."

Because Site Control is a threshold item, it would not be possible for multiple Applicants to submit Applications for the same Development Site. This second sentence should revert back to its previous construct, which read "only one Application may be submitted for a Development Site in an Application Round."

10.201(1) General Requirements

There has been a provision added to allow for errors in the calculation of applicable fees to be cured via the Administrative Deficiency process. In a highly competitive environment, we believe this is a slippery slope and the language should be removed. The Application fee due is not a difficult calculation to perform. The Department has long standing precedent of terminating Applications that make unfortunate mistakes like this precisely because of the highly competitive nature of the program. How is this different from submitting the wrong electronic Application file/third party report, thereby missing the deadline? The Department has on numerous occasions, terminated Application for that very mistake. Another simple calculation mistake that the Department has never let Applicants correct is exceeding the $3 million cap. Again, on numerous occasions, awards have been lost because an Applicant exceeded the cap by a very small dollar amount. Again, we believe this to be a slippery slope, and goes against years of precedent. In order to maintain the integrity of the Rule, this language should be removed.

10.201(7) Administrative Deficiency Process

The Administrative Deficiency deadline for should be increased to 5 days. This is not an extraordinarily long period of time, and historically not unduly slowed the review process. Often times, Administrative Deficiencies *are* resolved immediately, but there are situations when more time may be needed. Five days is an appropriate amount of time.

10.203 Public Notifications

We agree with TAAHP's recommendation on this section.

10.204(6) Experience Requirement

Because the criteria for an experience certificate in 2014 was exactly the same as the criteria in 2015 and 2016, there is no reason that a 2014 experience certificate should not count. Additionally, we believe that the term "natural Person" used in subparagraph (A) should be changed to "natural person" as the capitalized term Person includes entities.

10.204(8)(E) Financing Narrative

Language has been added requiring that the financing narrative include "(dates and deadlines) for application, approvals and closings, etc. associated with the commitments for all funding sources." We do not see the benefit of requiring this information to be including in the financing narrative. The debt and equity terms submitted at Application are very preliminary in nature and highly dependent on numerous factors (whether an allocation is even made, changes in market conditions, changes to the proposed debt

and equity providers, the Developer's pipeline, etc.). At very best, any dates and deadlines that could be included in the narrative would be an educated guess. We recommend that this language be removed.

10.204(16) Section 811 Project Rental Assistance Program

We agree with TAAHP's recommendations on this item.

Subchapter G

10.901(5) Third Party Underwriting Fee

Because the language allowing for a third party underwriter has been removed from 10.201(5), related to Evaluation Process, this associated fee should also be removed.

10.901(12) Extension Fees

We believe the addition of Construction Status Reports to the Extension Fee section is unnecessary and should be removed. The Construction Status Report is simply a report updating the Department on the status of construction progress. We cannot see a reason why an Owner would need an extension on this type of simple reporting. Furthermore, we fear this language may be used to collect $2,500 for submitting a late Construction Status Report. If it is the intension of the Department to find a penalty for late reporting, this is not the appropriate place or method. We recommend removing the reference to Construction Status Reports from this section.

(58) Mark-Dana Corporation

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October 14, 2016

Texas Department of Housing and
Community Affairs
221 East 11th Street
Austin, Texas 78701-2410
Attn.: TDHCA Board Members
TDHCA Staff

Re: Comments to Proposed 2017 Multifamily Program Rules - Qualified Allocation Plan (collectively the "QAP") Posted in the Board Materials for the Texas Department of Housing and Community Affairs ("TDHCA") September 8, 2016 Board Meeting

Ladies and Gentlemen,

We appreciate the opportunity to provide comments to the proposed 2017 QAP.

We have reviewed the proposed QAP, attended various QAP monthly discussions in Austin, the July 15, 2016 TDHCA QAP round table meeting in Austin, and attended online the September 8, 2016 THDCA Board meeting.

We have participated in developing the TAAHP consensus comments to the QAP and we support those comments.

With respect to the proposed 2017 QAP, we have the following questions / comments that we would like to bring to your attention:

§10.101(a)(2) Undesirable Site Features:
Please see attached mark-up of §10.101(a)(2) Undesirable Site Features. We suggest measuring distances from the nearest residential building of the Development Site to the nearest undesirable feature (rather than from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the undesirable feature) because if the Development site is large, the residential building could actually be farther away from the undesirable feature than residential buildings on a small site that meet the boundary to boundary distances.

We also request that proximity to railroads not be considered an undesirable site feature if the Development will provide adequate noise attenuation inside the residential units. There are many good sites that are near or next to railroads that should not be excluded. Note that there are many High Opportunity neighborhoods that back up to railroads (e.g. West University Place in Houston).

§10.101(a)(3) Undesirable Neighborhood Features:
We request that this entire section be deleted especially in light of the current status of the remediation plan. We also note that data regarding school performance and crime fluctuate significantly from year to year. Because of this fluctuation a site can score well under the school performance and/or crime criteria one year and not well the following year and then well again in the third year and so on. It does not seem reasonable to use criteria such that a site can score well one year but not the next. If Staff and the Board will not agree to delete §10.101(a)(3) Undesirable Neighborhood Features, then we request that you consider the comments noted on TAAHP's mark-up.

§10.101(b)(4)(A) Mandatory Development Amenities:
Item (A) of Mandatory Development Amenities requires RG-6/U COAX or better. The "U" was added a few QAP's ago, but the addition was never explained or defined. Please delete the "U" or let us know your understanding of its meaning as there does not seem to be an industry standard definition.

§10.101(b)(4)(D) Mandatory Development Amenities:
Item (D) of Mandatory Development Amenities requires that all developments have solar screens on all windows. Formerly this subsection required insect screens on all operable windows. The QAP provides points for green initiatives and solar screens should continue to be a point item under the green initiatives point category. Solar screens will add construction costs to a project, limit the amount of ambient light in units, and negatively impact the appearance of developments. Energy efficient windows are a much better design option for appearance, light and energy efficiency. We request that the solar screens be deleted as a mandatory development amenity.

§10.101(b)(5)(C) Common Amenities:
We suggest revising the following subsections to read as follows:
(xv) Service provider office in addition to leasing offices or a desk for service provider in leasing office;
(xxxii) Porte-cochere (1 point) [delete the limitation to just Elderly Developments].
(xxxiii) We also suggest revising / adding the following options to subsection (I) Limited Green Amenities of subsection (xxxiii) Green Building Features:
(-p-) permanent shading devices for windows with solar orientation (may include solar screens, permanent awnings, black-out shades, fixed overhangs, etc.);
(-w-) no carpet in main living area of all units;
(-x-) locate HVAC ducts within thermal envelope:
(-y-) label all storm drains and storm inlets on the development site to discourage dumping of pollutants.

§10.101(b)(7) Tenant Supportive Services:
We request that you delete the following sentence from the introductory paragraph of Tenant Supportive Services: "In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider." On-site personnel can be and are qualified to provide many of the listed tenant supportive services and not allowing existing personnel to provide such services just increases operating costs unnecessarily.

§10.201(1)(A) General Requirements:
The new language in the second to last sentence of §10.201(1)(A) provides that the "deficiency period for curing fee errors will be three business days and may not be extended." We request

that you delete "and may not be extended." Our thought is that it is better to address fees on a case by case basis, rather than provide a complete prohibition.

§10.201(7)(B) Administrative Deficiencies:
We request changing the period to cure a deficiency from three days back to five days. While most deficiencies can be cured quickly, applicants have no idea when a deficiency will appear via email. Applicants may be out their office on business and may not be in a position to respond immediately. Five days is a reasonable amount of time and provides a cushion, if an applicant cannot turn to the response immediately.

§10.202(1)(N) Ineligible Applicants – Dissemination of Misinformation:
The 2016 Multi-Family rules (and prior years) have had a §10.202(1)(N) that prohibited Applicants from disseminating misinformation about affordable housing and the persons it serves or about a competing Applicant. This provision addressed specific problems of this nature that occurred in a prior application cycle. We believe it is a good idea to continue to include this section in the 2017 rules.

§10.203 Public Notifications:
The last sentence of the introductory paragraph of §10.203 Public Notifications has been revised to require that "should a change in elected official occur between the submission of a pre-application and the submission of an Application, Applicants are required to notify the newly elected (or appointed) official within fourteen (14) days of when they take office. We request that this change not be made. It is very difficult to keep track of newly elected or appointed officials, especially with respect to school districts and school superintendents. The 14 day period creates a trap for Applicants that are trying to keep up with many different moving pieces. Under prior rules Applicants have had until the date of full application to notify newly elected / appointed officials.

§10.204(13) Required Documentation for Application Submission – Previous Participation:
As reworded, this provision now seems to require that all Affiliates of a Development Owner complete the previous participation information for each Application. The term Affiliate is broadly defined to include, among other things, every entity that is under common control. Therefore, all entities that are under common control with the Development Owner will need to complete the previous participation information regardless of whether such entities have any interest in the Development Owner. This could require a Developer to provide previous participation information for every single development in which the Developer is involved in Texas and other states. We request that this provision be worded as it was worded in the 2016 rules or limited to Affiliates that have an ownership interest in the Development Owner.

§10.204(16) Required Documentation for Application Submission – Section 811 Project Rental Assistance Program:
We request that this §10.204(13) be deleted in its entirety and that requirements relating to Section 811 be a point category in the QAP as it was in 2016. If you will not delete Section 811 as a threshold requirement, then we request that you make the changes shown on the attached mark-up. It is not appropriate to require Applicants to put Section 811 units in their existing projects as this provision appears to require. Applicants should have the option to add Section 811 units into their existing projects or in the new Development for which the Application is being submitted. Remember that while Developers may control developments through their general partnership interests, Developers have different investors that own the Developments and those investors may not permit adding Section 811 units to existing projects.

§10.901(12) Fee Schedule – Extension Fees:
Adding Construction Status Reports into the category requiring a $2,500 extension fee seems extremely excessive. We request that Construction Status Reports be removed from this category.

§10.901(12) Fee Schedule – Amendment Fees:
A new sentence has been added to this Section that provides "Amendment fees will increase by $500 for each subsequent request, regardless of whether the first request was non-material and did not require a fee." We request that this new fee increase be deleted. If it is not deleted please clarify how it will work. We assume that multiple amendments in one request will only incur one fee.

§11.6(3)(C) Competitive HTC Allocation Process – Award Recommendation Methodology:
Why has the last sentence been deleted from clause (i)? Will the Department continue to calculate the maximum percentage in accordance with Texas Gov't Code, §2306.6711(h) and publish such percentages on its website as provided in the 2016 QAP?
Also, there is a word missing from clause (ii). Should clause (ii) provide "…the Board shall allocate…" in the second line?

§11.7 Tie Breaker Factors:
We request that the tie breakers consist of the following in the following order:
(i) proximity to Urban Core (except At Risk)
(ii) highest score on opportunity index
(iii) most amenities on opportunity index
(iv) average rating for all schools
(v) distance to other tax credit projects

§11.8(b)(1) Pre-Application Threshold Criteria:
We request that you delete new requirement in clause (I) to disclose any Undesirable Neighborhood Characteristics under §10.101(a)(4) in the HTC pre-application. Developers need more time to investigate and identify Undesirable Neighborhood Characteristics than the pre-application deadline will allow.

§11.9(c)(4) Opportunity Index:
We believe that using the uniform service region to determine the highest quartiles could have a negative impact on rural areas. Therefore, we suggest that rural developments not be required to meet the criteria set out in Clause A (i) and (ii).
Clause (B)(i)(I): What is meant by "accessible route" in this context. If you mean drivable rather than as the crow flies, please so clarify.
Clause (B)(i)(II): Same comment re "accessible route." Also we suggest deleting the qualification "to employment and basic services" because we are not sure that the qualification is necessary and more likely will only serve to create debates over whether or not the public transportation provides service to employment and basic services in a direct or sufficient enough method.
Clause (B)(i)(IX): We request that this point category relating to health care facilities be the same for Urban and Rural Areas and be worded in both sections as follows: "The Development is located within ___ miles of a health related facility, such as a full service hospital, community health center, minor emergency center, emergency room or urgent care facility. Also note that the roman numeral numbering in these subclauses is not in numerical order.

Clause (B)(i)(V): provides for retail shopping of at least 1 million square feet or that includes 4 big-box national retail stores. How is the 1 million square feet to be measured and what source / proof information will be acceptable? What do you consider a "big-box national retail store?" Four seems excessive. Even large urban shopping centers rarely have that many big-box national retail stores (depending on how you are using the term).
Clause (B)(i)(VII): we request that you replace the requirement that museums be government sponsored with the requirement that they be open to the public. There very good and reputable privately funded museums such as the Menil in Houston.
Clause (B)(ii)(II): See comment for Clause (B)(i)(IX) above regarding health care facilities.
Clauses (B)(ii)(V)-(VIII): W request that the distances be increased such that they are two miles longer than the corresponding point category for Urban areas.

§11.9(c)(5) Educational Quality:
We request that the Educational Quality point category be deleted as a stand alone point category and, instead, be added as an additional optional point category under Section 11.9(c)(4)(B)(i) and (ii) Opportunity Index. With one point if only one of the elementary, middle, or high school achieves the desired rating, two points if two of such schools achieve the desired rating, and three points if all three of such schools achieve the desired rating.

In the event Educational Quality stays in its proposed format, we request that the rating needed to obtain 1 point for only an elementary school (Section 11.9(c)(5)(D)) use the same criteria for points that the other subcategories use (Sections 11.9(c)(5)(A-C)). It doesn't make sense that an elementary school has to have an Index 1 score within the top quartile of the entire state, while a middle or high school has to have an Index 1 score at the lower of the score for the Education Service Center region or the statewide score in order to qualify for 1 point. All categories for Educational Quality points should use the same criteria for points.

§11.9(c)(7) Tenant Populations with Special Housing Needs:
- As mentioned earlier, we request that the Section 811 Program be deleted as a threshold requirement and put back into §11.9(c)(7) Tenant Populations with Special Housing Needs for the reasons stated earlier in this letter.
- We still think that the Section 811 Program would work better through a separate Request for Proposal (RFP) process and that it should be removed from the scoring criteria in the QAP.
- We also suggest that to be eligible to participate, the Development Sites must be located in an Urban region in one of the areas specified in clause (iv) for the same reasons that the 811 program is only required in certain MSAs.

§11.9(d)(7) Concerted Revitalization Plan:
We request that you delete the population minimum.

§11.9(e)(2) Cost of Development per Square Foot:
We request clarification that items voluntarily excluded from Eligible Basis will not be included in the determination of cost per square foot in the Hard Costs and Building Costs categories.

In addition, we request that you add a Clause (A)(v) providing that the following is a high cost development: (v) the Development qualifies for five (5) points under subsection (c)(8) of this section related to proximity to the Urban Core.

We also request that the cost per square foot limits be increased by ten percent (10%) rather than just 4%. Construction costs have increased by substantially more than the 4% over the last few

years since the existing limits in the QAP were established due not only to material and labor costs over that period but also changes in building codes and increased minimum requirements and point incentives in the QAP.

§11.9(e)(3) Pre-application Participation:
Clause (G): We request that the Clause (G) regarding Undesirable Neighborhood Characteristics be deleted for the reason previously state.

§11.9(e)(4) Leveraging of Private, State, and Federal Resources:
We request that the leveraging percentages be returned to the percentages in the 2016 QAP. Reducing the percentages will drive developments to either claim fewer credits than are needed or to increase development costs unnecessarily in order to achieve maximum points under this category. In either case, reducing the leveraging percentages will result in projects that will be less likely to be feasible for the term of the initial and extended compliance periods.

§11.9(f) Point Adjustments:
There appear to be paragraph numbering references that need to be corrected.

We appreciate the opportunity to provide comments to the proposed QAP and hope that you will consider and make the changes that we have discussed. If you have any questions about our comments, we would appreciate the opportunity to discuss them with you.

Sincerely,

David Mark Koogler
President

SECTION 811 PROJECT RENTAL ASSISTANCE PROGRAM

All Application must participate in the 811 Project Rental Assistance Program in accordance with meet the requirements of subparagraphs (A) or (B) of this paragraph unless an Applicant is unable to meet the requirements of either subparagraphs (A) or (B). Applications that are unable to meet the requirements of subparagraphs (A) or (B) must certify to that effect in the Application.

(A) Applicants that opt to participate under this subparagraph (A) must apply for and obtain a determination by the Department that an Existing Development is approved to participate in the Department's Section 811 Project Rental Assistance Program ("Section 811 PRA Program"). The approved Existing Development must commit at least 10 units to the Section 811 PRA Program unless limited by the Integrated Housing Rule. An approved Existing Development may be used to satisfy the requirements of this paragraph in more than one Housing Tax Credit or other Multifamily Housing program Application, as long as at the time of Carryover, Award Letter or Determination Notice, as applicable, a minimum of 10 Units, unless limited by the Integrated Housing Rule, are provided for each Development awarded housing tax credits or Direct Loan funds. Once an Applicant submits their Application, Applicants may not withdraw their commitment to satisfy the threshold criteria of this subparagraph, although an Applicant may request to utilize a different approved Existing Development than the one submitted in association with the awarded Application to satisfy this criteria. Existing Developments that are included in an Application that does not receive an award are not obligated to participate in the Section 811 PRA Program.

(B) Applicants that opt to participate under this subparagraph (B) ~~cannot meet the requirements of subparagraph (A) of this paragraph must submit evidence of such through a self-certification that the Applicant and any Affiliate do not have an ownership interest in or control of any Existing Development that would meet the criteria outlined in the Section 811 PRA Program Request for Applications, and if applicable, by submitting a copy of any rejection letter(s) that have been provided in response to the Request for Application. In such cases, the Applicant is able to satisfy the threshold requirement of this paragraph through this subparagraph (B). Applications~~ must meet all of the requirements in clauses (i) – (v) of this subparagraph. [The rest of this Section 811 section would continue as TDHCA Staff proposed in the draft.]

UNDESIRABLE SITE FEATURES

(2) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph maybe considered ineligible as determined by the Board. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs ("VA") may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application ~~and must include a letter stating the Rehabilitation of the existing units is consistent with achieving at least one or more of the stated goals as outlined in the State of Texas Analysis of Impediments to Fair Housing Choice or, if within the boundaries of a participating jurisdiction or entitlement community, as outlined in the local analysis of impediments to fair housing choice and identified in the participating jurisdiction's Action Plan.~~ The distances are to be measured from the nearest ~~boundary~~ residential building of the Development Site to the nearest ~~boundary of the property or easement containing the~~ undesirable feature. The minimum distances noted assume that the land between the proposed Development Site and the particular undesirable feature has no significant intervening barriers or obstacles such as waterways or bodies of water, major high speed roads, park land, or walls, such as noise suppression walls adjacent to railways or highways, in which case this section does not apply. Where there is a local ordinance that regulates the proximity of such undesirable feature to a multifamily development that ~~differs from~~ has smaller distances than the minimum distances noted below, then such smaller distances shall be used and documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application. The distances identified in subparagraphs (A) - (J) of this paragraph are intended primarily to address sensory concerns such as noise or smell, social factors making it inappropriate to locate residential housing in proximity to certain businesses. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (K) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

(A)Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Transportation Code, §396.001;

(B)Development Sites located within 300 feet of a solid waste or sanitary landfills;

(C)Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local Government Code, §243.002, or as zoned, licensed and regulated as such by the local municipality;

(D)Development Sites in which the buildings are located within ~~100 feet~~ of the easement of any overhead high voltage transmission line, support structures for high voltage transmission lines, or other

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similar structures. This does not apply to local service electric lines and poles; high voltage transmission are lines that carry 138 Kv of power or greater.

(E)Development Sites located within ~~5~~ 100 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail, or the Applicant submits a noise study with the application and commits at the time of commitment to provide sound attenuation of noise levels in excess of 65 decibels;

(F)Development Sites located within 500 feet of heavy industrial (i.e. facilities that require extensive capital investment in land and machinery, are not easily relocated and produce high levels of external noise such as manufacturing plants, fuel storage facilities (excluding gas stations) etc.);

(G)Development Sites located within 10 miles of a nuclear plant;

(H)Development Sites in which the buildings are located within ~~one-quarter mile~~ of the accident zones or clear zones of any airport;

(I)Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids. Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance ("PIPA");

(J)Development Sites located within 1000 feet ~~2 miles~~ of refineries capable of refining more than 100,000 barrels of oil daily; or

(K)Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated.

(1)Applications having achieved a score on Proximity to the Urban Core

(2)Applications scoring higher on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.

(3)Applications having achieved the maximum Opportunity Index Score and the highest number of point items on the Opportunity Index menu that they were unable to claim because of the 7 point cap on that item.

(4)Applications having achieved the maximum Educational Quality score and the highest number of point items on the Educational Quality menu that they were unable to claim because of the 5 point cap on that item.

(5)The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site.

(6)Applications proposed to be located in a census tract with the lowest poverty rate as compared to another Application with the same score.

(7)Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear measurement will be performed from closest boundary to closest boundary.

(59) Marque Real Estate Consultants

MARQUE REAL ESTATE CONSULTANTS
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October 13, 2016

Via Email – tim.irvine@tdhca.state.tx.us
Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, Texas 78701

Re: Comments - Draft 2017 Qualified Allocation Plan and Multifamily Rule

Dear Mr. Irvine,

Thank you to you and your Staff for your continued efforts to dialogue with the stakeholders relating to the proposed 2017 Qualified Allocation Plan (QAP) and Multifamily Rules (Rules). Please accept the following comments and suggested changes on behalf of Marque Real Estate Consultants (Marque) several of which mirror consensus comments made by TX-CAD and TAAHP. Marque's comments are focused and intended to promote Fair Housing, good choices and the dispersion of housing.

§11.1. General

(b) Due Diligence and Applicant Responsibility. Since a scoring notice will no longer be considered Staff's summary of their assessment of an application, please clarify what Staff intends to publish to the Department's website that represents the *"results of the evaluation process"* given that these results trigger appeal rights pursuant to §2306.6715(c).

§11.4. Tax Credit Request and Award Limits

(a) Credit Amount (Competitive HTC Only). Staff is adding a provision that will allow the Department to select which application(s) should be recommended if it appears that one or more members of a development team would trigger a violation of the $3 million credit cap. We suggest that the Applicant be given the opportunity to select which application(s) to withdraw within a certain time period and before Staff begins their review process. The Applicant would be in the best position to determine which application is more likely to close or is less risky financially.

§11.7. Tie Breaker Factors

Under Staff's current draft, the first tie breaker goes to the applications that achieved a score based on the site's proximity to the Urban Core. Since Urban Core points are only applicable to developments

time of filing the challenge, all briefings, documentation, and other information that the requestor offers in support of the deficiency. ~~A copy of the request and supporting information must be provided directly to the Applicant at the same time it is provided to the Department.~~ Requestors must provide sufficient credible evidence that, if confirmed, would substantiate the deficiency request. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered. The results of a RFAD may not be appealed by the Requestor."

Subchapter B. Site and Development Requirements and Restrictions §10.101. Site Requirements and Restrictions

(2) Undesirable Site Features. A Development Site that is within a certain distance from one or more undesirable **site** features will be deemed ineligible for consideration unless otherwise determined by the Board. We are unsure where many of these changes came from since they were not a topic of discussion at the round tables held throughout the year. Several of the changes add significant barriers to site selection and inner city development and re-development activities.

We request that this provision remain as written in 2016.

(3) Undesirable Neighborhood Characteristics. A Development Site that is within a certain distance from one or more undesirable **area** features described in this provision will be deemed ineligible for consideration unless the Applicant can "*demonstrate satisfactory mitigation for each characteristic disclosed*". Furthermore, as currently drafted if the Development Site is part of a revitalization effort, the Applicant must also prove that there is a *"strong likelihood of a reasonable rapid transformation of the area to a more economically vibrant area"*.

Several of the ineligible features including the performance of the area schools and the proximity of the Development Site to blighted structures are not within the control of an Applicant to solve and therefore it would not be possible for the Applicant to demonstrate "*satisfactory mitigation"* or the likelihood of *"reasonable rapid transformation of the area"*.

Furthermore, deeming a Development Site that is located in a census tract with a poverty rate above 30% as ineligible will significantly impact the production of affordable housing in our inner city neighborhoods that are gentrifying and undergoing active revitalization and in particular those transactions financed with 4% tax credits. Currently bond project are feasible if they are located in QCT census tracts that qualify the proposed development for the QCT basis boost. QCT census tracts are by definition in higher poverty areas.

We suggest deleting this provision in its entirety from the Rules. Alternatively, we suggest going back to the 2016 rules with respect to ineligible poverty rates and our other requested change are as follows:

Paragraph (B) should be revised such that if undesirable neighborhood characteristics exist in order for the proposed development to be found eligible the Applicant should only be required to provide evidence that the Development Site is in an area covered by a concerted plan of revitalization to demonstrate satisfactory mitigation for each characteristic disclosed. This evidence will demonstrate that the city is focused on the area and is targeting the area for investment and improvement.

Paragraph (B) (i) The Development Site is located with a census tract that has a poverty rate above 40 percent ~~30 percent~~ for individuals (or 55 percent for Developments in Region 11 and 13).

Paragraph (B) (iv) The performance of the applicable schools should be striken from consideration of ineligibility since the Applicant has no control over the decision making process regarding school performance. Additionally, as stated in testimony to the Board, stable, quality and affordable housing which the housing tax credit program is designed to provide is a factor in improving school performance.

Subchapter C. Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules or Pre-Clearance for Applications

§10.204. Required Documentation for Application Submission

(16) Section 811 Project Rental Assistance Program. We believe it is premature to make participation in the 811 Program a threshold item. Until the program has been fully implemented and has some history of performance, we believe this should remain a scoring item, where an applicant has the choice of participation.

We respectfully submit these suggested changes for Staff's consideration and inclusion in the final 2017 QAP and Rules. Please do not hesitate to contact me with any questions.

Sincerely,

Donna Rickenbacker

Donna Rickenbacker

Cc: Marni Holloway, TDHCA – marni.holloway@tdhca.state.tx.us
Sharon Gamble, TDHCA – Sharon.gamble@tdhca.state.tx.us

(60) Mears Development

MEARS DEVELOPMENT
1000 LOUISVILLE AVE.
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October 14, 2016

Via email htc.public-comment@tdhca.state.tx.us

Ms. Sharon Gamble
9% Competitive Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

Re: Public Comment on QAP and MF Rules

Dear Sharon:

Attached is our comment on the proposed 2017 QAP and Multifamily Rules, submitted in accordance with the notice published in the September 23, 2016, edition of the Texas Register. Please let me know if you have any questions by calling at 210-669-3081.

Sincerely,

Jeremy Mears
President

enclosures

Subchapter A

10.3 Definitions

We propose the following language for the definition of Control.

(29) Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. Controlling entities of a partnership include the general partners, may include special limited partners when applicable, but not investor limited partners or special limited partners who do not possess other factors or attributes that give them Control. Controlling entities of a limited liability company include but are not limited to the managers, managing members, any members with 10 percent or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership, but not investor members who do not possess other factors or attributes that give them Control. Controlling individuals or entities of a corporation, including non-profit corporations, include voting members of the corporation's board, whether or not any one member did not participate in a particular decision due to recusal or absence. Multiple Persons may be deemed to have Control simultaneously.

The Elderly Preference Development definition should align with the choices available in the Application, or vice versa. The definition would allow for an Applicant to choose Elderly Preference Development without having HUD funding but, the 2016 Application did not allow that choice to be made.

We propose the following language for the definition of Control.

(98) Principal--Person~~s~~ that will exercise Control (which includes voting board members pursuant to §10.3(a)(29) of this chapter) over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) partnerships, Principals include all General Partners, ~~special limited partners,~~ and Principals with ownership interest, and special limited partners with ownership interest who also possess factors or attributes that give them Control;

(B) corporations, Principals include any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation, and any individual who has Control with respect to such stock holder; and

(C) limited liability companies, Principals include all managers, managing members, members having a 10 percent or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.

Subchapter B

10.101(a)(2) Undesirable Site Features

We propose the following language.

(2) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph maybe considered ineligible as determined by the Board. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs ("VA") may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application and must include a letter stating the Rehabilitation of the existing units is consistent with achieving at least one or more of the stated goals as outlined in the State of Texas Analysis of Impediments to Fair Housing Choice or, if within the boundaries of a participating jurisdiction or entitlement community, as outlined in the local analysis of impediments to fair housing choice and identified in the participating jurisdiction's Action Plan. The distances are to be measured from the nearest boundary of the Development Site to the ~~nearest boundary of the property or easement containing the~~ undesirable feature. ~~The minimum distances noted assume that the land between the proposed Development Site and the particular undesirable feature has no significant intervening barriers or obstacles such as waterways or bodies of water, major high speed roads, park land, or walls, such as noise suppression walls adjacent to railways or highways.~~ Where there is a local ordinance that ~~regulates the~~ for closer proximity ~~of~~ to such undesirable feature ~~to a multifamily development that differs from~~ than the minimum distances noted below, documentation, such as a copy of the local ordinance identifying such distances relative to the Development Site, must be included in the Application. ~~The distances identified in subparagraphs (A) - (J) of this paragraph are intended primarily to address sensory concerns such as noise or smell, social factors making it inappropriate to locate residential housing in proximity to certain businesses. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes.~~ If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (K) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

(A) Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Transportation Code, §396.001;

(B) Development Sites located within 300 feet of a solid waste or sanitary landfills;

(C) Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local Government Code, §243.002, or as zoned, licensed and regulated as such by the local municipality;

(D) Development Sites in which the buildings are located within 100 feet of the easement of any overhead high voltage transmission line, or support structures for high voltage transmission lines~~, or other similar structures~~. This does not apply to local service electric lines and poles;

(E) Development Sites located within ~~500~~100 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail;

(F) Development Sites located within 500 feet of heavy industrial (i.e. facilities that require extensive capital investment in land and machinery, are not easily relocated and produce high levels of external noise such as manufacturing plants, fuel storage facilities (excluding gas stations) etc.);

(G) Development Sites located within 10 miles of a nuclear plant;

(H) Development Sites in which the buildings are located within one-quarter mile of the accident zones or clear zones of any airport;

(I) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids. Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance ("PIPA");
(J) Development Sites located within 2 miles of refineries capable of refining more than 100,000 barrels of oil daily; or
(K) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated.

10.101(a)(3) Undesirable Neighborhood Characteristics

We agree with TAAHP recommendations.

10.101(b)(4) Mandatory Development Amenities

We agree with TAAHP's recommendation to strike the requirement for solar screens.

10.101(b)(5) Common Amenities

We recommend increasing the point value assigned to a furnished community room to 2 points, as this is a costly item.

10.101(b)(7) Tenant Supportive Services

We agree with TAAHP's recommendation to this section of the Rule.

Subchapter C

10.201(7) Administrative Deficiency Process

The Administrative Deficiency deadline for should remain 5 days.

10.203 Public Notifications

We agree with TAAHP's recommendation on this section.

10.204(16) Section 811 Project Rental Assistance Program

We agree with TAAHP's recommendations on this item.

Subchapter G

10.901(12) Extension Fees

We do not believe that Construction Status Reports should be included in this section. A $2,500 fee to extend the date of a simple report seems high.

(62) Miller Valentine Group

Miller Valentine Group
Development

Miller-Valentine Group
9349 WaterStone Blvd.
Suite 200
Cincinnati, Ohio 45249
513-774-8400
513-683-6165 Fax

Miller-Valentine Group has the following comments and proposed changes to various sections of the draft Multifamily Rules and QAP:

1. **Comment:** The change in how guarantors are considered for credit cap should be removed and last year's language should be included **(§11.4.(a)).** Any entity with significant involvement in the development and ownership of the property should be considered under the credit cap rules.

   Proposed Language: No change to the wording from last year's rules and qualified application plan.

2. **Comment:** Language allowing State Representatives to rescind their letters of support should be removed. This opens the door for corruption, NIMBY issues, and encourages unethical behavior. Additionally, it creates a situation where a state rep can say they were given false information, which may put the program and development community in a bad light **(§11.9.(d)(5)).**

   Proposed Language: No change to the wording from last year's rules and qualified application plan.

3. **Comment: Subchapter C, Section N (Page 11)** should be reinstated. Applicants that actively work to create opposition to competing applications or disseminate misinformation should be considered ineligible.

   Proposed Language: Reinstate **Subchapter C, Section N (Page 11).**

4. **Comment:** Solar Screens on all windows should not be a requirement. This should be a point item under the Green Building Features point scoring criteria. Solar Screens are consistent with the other items on the Green Building Features list, specifically the Limited Green Amenities list under **§10.101.(b)(5)(C)(xxxiii)(I).**

   Proposed Language: Add Solar Screen as one of the items under the Limited Green Amenities List under **§10.101.(b)(5)(C)(xxxiii)(I).**

5. **Comment:** Special Needs points should revert back to 2016 language, including points for enlisting in the Section 811 program and removing the explicit requirement for all applicants and applications to participate in the Section 811 program.

   Proposed Language: No change to the wording from last year's rules and qualified application plan.

Miller Valentine Group
Development

Miller-Valentine Group
9349 WaterStone Blvd.
Suite 200
Cincinnati, Ohio 45249
513-774-8400
513-683-6165 Fax

6. **Comment:** Rehabilitation and demolition points should be removed (**§11.9.(d).(7)(B)(i),(ii),(iii)).** Unlike the Urban revitalization points, the rehabilitation and demolition points incentivize replacing existing units rather than creating new and quality affordable housing units. The Urban Revitalization points incentivize developments that bring new investment and development to areas that are lacking development. The rehabilitation and demolition points targeted for rural areas incentivizes replacing existing investment rather than creating new investment in rural areas.

   Proposed Language: Remove the rehabilitation and demolition points in **§11.9.(d).(7)(B)(i),(ii),(iii).**

7. **Comment:** Applicants should be given a minimum of 5 days to address deficiencies. Quite often these responses require input or additional work from a third party consultant, many of which are engaged by multiple tax credit clients. It is very likely that multiple applicants will need information from the same company or companies (Architect, Market Analyst, Engineer). Requiring a full response from a third party consultant after only three business days for multiple tax credit clients and tax credit applications will be problematic **(§10.201.(7)(B)).** We understand that this must be balanced with TDHCA's need for quick review, however, reducing the correction period to 3 days has the potential to lead to unexpected consequences.

   Proposed Language: Change the language in **§10.201.(7)(B)** to reflect an Administrative Deficiency correction period of 5 days.

8. **Comment:** With the new changes to the Opportunity Index and Educational Quality scoring, it is important that TDHCA issue the data sets that they will use to for evaluation as quickly as possible. This information should be provided before October. Also, schools scores for sub-regions needs to made available immediately **(§11.9(c)(4) and §11.9(c)(5)).**

(63) National Church Residences

National Church Residences
EXCELLENCE THAT TRANSFORMS LIVES

October 13, 2016

Ms. Sharon Gamble
Tax Credit Program Manager
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Ms. Gamble,

Thank you for the opportunity to present recommendations to the 2017 Multi-Family Rules. Please consider the below recommendations by National Church Residences.

2017 Multi-Family Rules – TAC 10, Subchapter B

1. **Undesirable Neighborhood Characteristics**
   We strongly oppose all Undesirable Neighborhood characteristics and request removal of this entire section. These characteristics essentially eliminate the ability to serve many low-income neighborhoods along with entire communities from receiving safe, respectable and affordable housing. Should TDHCA not remove this section in entirety, we ask that the most restrictive language be changed back to 2016 standards.

   a. Poverty rate threshold should not be decreased from 40% to 30%. There are 1,038 census tracts representing 20% of the State of Texas with a poverty rate greater than 30% (587 tracts or 11% in-between 30% and 40%) that would be excluded from receiving or preserving affordable housing. Areas of gentrification and areas of mixed-income often have poverty rates greater than 30%. Furthermore, this is in direct conflict with federal statute which encourages development in Qualified Census Tracts which often have poverty rates greater than 30%.

   b. Three consecutive year Met Standard requirement for schools be deleted from this section. TEA ratings have repeatedly come under scrutiny for being poorly assessed, administered and unreflective of the true nature of school performance. The TEA ratings do not provide sufficient reason for directing affordable housing away from large numbers of neighborhoods and communities. Deterring development or preservation in these areas is going to negatively impact low income households, often most in need of safe affordable housing.

      Furthermore, while Elderly Limitation is included in the exemption, all Elderly properties (Preference AND Limitation) along with Supportive Housing developments housing targeting only adults should be exempt. It is rare that a single child would live at any of these properties and we should not make development and housing decisions based on rare exceptions.

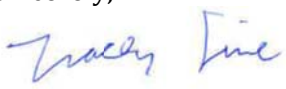
c. We strongly oppose the seven required items under Undesirable Neighborhood Characteristics Report for any single undesirable characteristic. Instead of all 7 items being a requirement, we ask that these items be a guide for information that may be submitted for TDHCA to evaluate the site. For example, if one of 3 schools did not meet standard once in the past 3 years, a detailed explanation regarding blight does not pertain to the issue at hand. This list is an excessive amount of information for both the applicant to compile, but also for TDHCA to review, much of which may not be pertinent to characteristic in question.

2. **Administrative Deficiencies for Competitive HTC Applications - TAC 10, Subchapter B**
We ask that the cure period remain at 5 days for Administrative Deficiencies for Competitive HTC. Cures often require collaboration with several 3rd parties and 3 days is often not sufficient time to appropriately cure a deficiency.

   We also ask that point deductions not be imposed for late responses. We guarantee that we work as quickly as possible, but some cures can be out of our hands, especially if a 3rd party is out of the office during the short time period of the cure.

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

Sincerely,



Tracey Fine
Project Leader, Southwest Region
National Church Residences
Office Location: Austin, Texas
Cell: 773.860.5747
tfine@nationalchurchresidences.org

CC:
Eric Walker, Director of Housing

(64) New Hope Housing

New Hope Housing

October 14, 2016

Ms. Marni Holloway
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
Delivered via email

Dear Marni,

This letter brings with it our deep appreciation to you and the Department for the changes made in response to the development community's input throughout the 2016 review cycle. Of particular value to Supportive Housing are: the revisions to Cost Per Square Foot, the point values associated with sites located in the urban core, and decoupling of educational excellence from income quartiles. We have seen tremendous progress this year, and with a few more modifications we will have a QAP and MF Rules that appropriately level the playing field for Supportive Housing, an important endeavor to ensuring availability of deeply affordable units and the services necessary to keep Texas' most fragile residents stably housed. Below you will find our comments on the current draft, with additional markups attached.

Multifamily Rules - Subchapter B – Section 10.101(a)(3)
Undesirable Neighborhood Characteristics
Once again, we respectfully request the complete removal of Undesirable Neighborhood Characteristics from the Multifamily Rules. This section of the rules is largely biased against urban core development and inhibits redevelopment in the most rapidly gentrifying parts of major metro areas. In light of the ICP case dismissal, removal of this provision would allow developers the opportunity to invest in urban core and inner loop areas that have the greatest access to transportation, services, and community amenities. The two projects TDHCA has approved for New Hope Housing in 2016, New Hope Housing at Harrisburg and New Hope Housing at Reed – both landmark developments in Houston – were exceptionally challenging and costly to move forward and the newly proposed rules only tighten the passageway for other similar projects. New Hope's inability to construct safe, affordable, decent housing leaves our most vulnerable populations (now including children) living on the streets, in cars, and other places not meant for human habitation. We can do better, and together we must do better for the least among us.

Should you elect to keep the provision, we respectfully request the attached modifications to the proposed language, particularly in two areas. 1) Single Room Occupancy should be added to the exemption to Met Standard School threshold as it has the same adult-only occupancy standard as Elderly Limitation. 2) Paragraph E, language is especially confusing and it would be helpful to tidy it up. Additions and deletions are highlighted, with the most imperative amendments in red.

Multifamily Rules - Subchapter B – Section 10.101(b)(7)

Tenant Supportive Services

We fully support the Department's addition of the following language to this paragraph. We feel this significantly enhances the quality of service to residents and it is an appropriate expectation that qualified personnel administer any supportive programs selected.

These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider.

QAP §11.9(c)(3)(B)

Tenant Services

We respectfully request the following modification to the existing language.

> *(B) The Applicant certifies that the Development will have a dedicated Service Coordinator to contact local service providers, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. The Service Coordinator will pro-actively engage and assess residents' needs through direct communication and tailor services appropriately. A Development selecting these points will also provide:*
>
> - *Minimum of 1 monthly program on-site provided by a local service provider; AND*
> - *Minimum of 3 local service providers engaged to provide services to residents; OR*
> - *The applicant is a non-profit and is a self-providing services to residents of the Development.*

The changes we are requesting here would increase the feasibility of direly needed Supportive Housing across the State of Texas. Should you wish to speak with me personally, I welcome hearing from you at any time.

Sincerely,

Joy Horak-Brown
President and CEO

CC: Tim Irvine, Teresa Morales

(3) Undesirable Neighborhood Characteristics.

(A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. An Applicant may choose to disclose the presence of such characteristics at the time the pre-application (if applicable) is submitted to the Department. Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit the documentation described under subparagraphs (C) and (D) of this paragraph at pre- application and staff may perform an assessment of the Development Site to determine Site eligibility. The Applicant understands that any determination made by staff or the Board at the time of bond inducement regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the undesirable neighborhood characteristics become available while the full Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board. Should staff determine that the Development Site has any of the characteristics described in subparagraph (B) of this paragraph and such characteristics were not disclosed, the Application may be subject to termination. Termination due to non-disclosure may be appealed pursuant to §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)). The presence of any characteristics listed in subparagraph (B) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit, and include, where applicable, a review as described in subparagraph (C) of this paragraph. The assessment of the Development Site and neighborhood will be presented to the Board with a recommendation with respect to the eligibility of the Development Site. Factors to be considered by the Board, despite the existence of the undesirable neighborhood characteristics are identified in subparagraph (E) of this paragraph. Should the Board make a determination that a Development Site is ineligible, the termination of the Application resulting from such Board action is not subject to appeal.

(B) The undesirable neighborhood characteristics include those noted in clauses (i) – (iv) of this subparagraph and additional information as provided in subparagraphs (C) and (D) must be submitted in the Application. If an Application for a Development Site involves three or more undesirable neighborhood characteristics, in order to be found eligible it will be expected that, in addition to demonstrating satisfactory mitigation for each characteristic disclosed, the Development Site must be located within an area in which there is a concerted plan of revitalization already in place or that private sector economic forces, such as those referred to as gentrification are already underway and indicate a strong likelihood of a reasonably rapid transformation of the area to a more economically vibrant area. In order to be considered as an eligible Site despite the presence of such undesirable neighborhood characteristic, an Applicant must demonstrate actions being taken that would lead a reader to conclude that there is a high probability the undesirable characteristic will be sufficiently mitigated within a reasonable time, typically prior to placement in service, and that the undesirable

characteristic will either no longer be present or will have been sufficiently mitigated such that it would not have required disclosure.

a. The Development Site is located within a census tract that has a poverty rate above ~~40~~30 40 percent for individuals

~~b. The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.~~

c. The Development Site is located within 1,000 feet (measured from nearest boundary of blighted structure) of ~~multiple~~ at least 5 vacant structures visible from the street, which that have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.

d. The Development Site is l~~o~~cated within the attendance zones of an elementary school~~, a middle school or a high school~~ that does not have a Met Standard rating by the Texas Education Agency. ~~Any school in the attendance zone that has not achieved Met Standard for three consecutive years and has failed by at least one point in the most recent year, unless there is a clear trend indicating imminent compliance, shall be unable to mitigate due to the potential for school closure as an administrative remedy pursuant to Chapter 39 of the Texas Education Code.~~ In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary~~, middle and high school, respectively,~~ which may possibly be attended by the tenants in determining whether or not disclosure is required. The applicable school rating will be the 2016~~5~~ accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K- 6), ~~middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12)~~, the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. ~~Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating.~~ Development Sites subject to an Elderly Limitation or Single Room Occupancy is considered exempt and does not have to disclose the presence of this characteristic.

(C) Should any of the undesirable neighborhood characteristics described in subparagraph (B) of this paragraph exist, the Applicant must submit the Undesirable Neighborhood Characteristics Report that contains the information described in clauses (i)-(viii) of this subparagraph and subparagraph (D) of this paragraph so that staff may conduct a further Development Site and neighborhood review.

(i) A determination regarding neighborhood boundaries, which will be based on the review of a combination of natural and manmade physical features (rivers, highways, etc.), apparent changes in land use, the Primary Market Area as defined in the Market Analysis, census tract or municipal boundaries, and information obtained from any Site visits;

(ii) An assessment of general land use in the neighborhood, including comment on the prevalence of residential uses;

(iii) An assessment concerning any of the features reflected in paragraph (3) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (3);

(iv) An assessment of the number of existing affordable rental units (generally includes rental properties subject to TDHCA, HUD, or USDA restrictions) in the Primary Market Area, including comment on concentration based on the size of the Primary Market Area;

(v) An assessment of the percentage of households residing in the census tract that have household incomes equal to or greater than the median household income for the MSA or county where the Development Site is located; ~~and~~

An assessment of the number of market rate multifamily units in the neighborhood and their current rents and levels of occupancy;

(vii) An assessment of school performance for each of the schools in the attendance zone containing the Development that did not achieve the Met Standard rating, for the previous two academic years (regardless of whether the school Met Standard in those years), that includes the TEA Accountability Rating Report, a discussion of performance indicators and what progress has been made over the prior year, and progress relating to the goals and objectives identified in the campus improvement plan in effect; and

(viii) Any additional information necessary to complete an assessment of the Development Site, as requested by staff.

(D) Information regarding mitigation of undesirable neighborhood characteristics should be relevant to the undesirable characteristics that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application and may include, but is not limited to, the measures described in clauses (i)-(iv) of this subparagraph. In addition to those measures described herein, documentation from the local municipality may also be submitted stating the Development is consistent with their obligation to affirmatively further fair housing. The mitigation must be accompanied by a report summarizing the data and to support the conclusion of a reasonable expectation by staff and the Board that the issues will be resolved or significantly improved by the time the Development is placed into service. Conclusions for such reasonable expectation must be affirmed by an industry professional, as appropriate.

(i) Evidence that the poverty rate within the census tract has decreased over the five-year period preceding the date of Application, or that the census tract is contiguous to a census tract with a poverty rate below ~~20%~~ 40% and there are no physical barriers between them such as highways or rivers which would be reasonably considered as separating or dividing the neighborhood containing the proposed Development from the low poverty area must be submitted. Other mitigation may include, but is not limited to, evidence of the availability of adult education and job training that will lead to full-time permanent employment for tenants, a description of additional tenant services to be provided at the development that address root causes of poverty, evidence of gentrification in the area (which may include contiguous census tracts) and a clear and compelling reason that the Development should be located at the Site. ~~Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility.~~

(ii) Evidence that crime rates are ~~substantially~~ decreasing, based on violent crime data from the city's police department or county sheriff's department, for the police beat or patrol area within which the Development Site is located, based on the population of the police beat or patrol area that would yield a crime rate below the threshold indicated in this section. The instances of violent crimes within the police beat or patrol area that encompass the census tract, calculated based on the population of the census tract, may also be used. A map plotting all instances of violent crimes within a one-half mile radius of the Development Site may also be provided that reflects that the crimes identified are not at a level that would warrant an ongoing concern. The data must include incidents reported during the entire 2015 and 2016 calendar year. Violent crimes reported through the date of Application submission may be requested by staff as part of the assessment performed under subparagraph (C) of this paragraph. A written statement from the local police department or local law enforcement agency, including a description of efforts by such enforcement agency addressing issues of crime and the results of their efforts may be provided, and depending on the data provided by the Applicant, such written statement may be required, as determined by staff. For Rehabilitation or Reconstruction Developments, to the extent that the high level of criminal activity is concentrated at the Development Site, documentation may be submitted to indicate such issue(s) could be remedied by the proposed Development. Evidence of such remediation should go beyond what would be considered a typical scope of work and should include a security plan, partnerships with external agencies, or other efforts to be implemented that would deter criminal activity. Information on whether such security features have been successful at any of the Applicant's existing properties should also be submitted, if applicable.

(iii) Evidence of mitigation efforts to address blight or abandonment may include new construction in the area already underway that evidences public and/or private investment. ~~Acceptable mitigation to address extensive blight should go beyond the acquisition or demolition of the blighted property and identify the efforts and timeline associated with the completion of a desirable permanent use of the site(s) such as new or rehabilitated housing, new business, development and completion of dedicated municipal or county-owned park space.~~ In instances where blight exists but may only include a few properties, mitigation efforts could include partnerships with

local agencies to engage in community-wide clean-up efforts, or other efforts to address the overall condition of the neighborhood.

(iv) Evidence of mitigation for all of the schools in the attendance zone that have not achieved Met Standard will include documentation from a school official with oversight of the school in question that indicates current progress towards meeting the goals and performance objectives identified in the Campus Improvement Plan. For schools that have not achieved Met Standard for two consecutive years, a letter from the superintendent, member of the school board or a member of the transformation team that has direct experience, knowledge and oversight of the specific school must also be submitted. The letter should, at a minimum and to the extent applicable, identify the efforts that have been undertaken to increase student performance, decrease mobility rate, benchmarks for re-evaluation, increased parental involvement, plans for school expansion, and long-term trends that would point toward their achieving Met Standard by the time the Development is placed in service. ~~The letter from such education professional should also speak to why they believe the staff tasked with carrying out the plan will be successful at making progress towards acceptable student performance considering that prior Campus Improvement Plans were unable to do so.~~ Such assessment could include whether the team involved has employed similar strategies at prior schools and were successful. In addition to the aforementioned letter from the school official, information should also be provided that addresses the types of services and activities offered at the Development or external partnerships that will facilitate and augment classroom performance.

(E) In order for the Development Site to be found eligible by the Board, despite the existence of undesirable neighborhood characteristics, the Board must find that the use of Department funds at the Development Site must be consistent with achieving at least one of the goals in clauses (i) – (iii) of this subparagraph.

(i) Preservation of existing occupied affordable housing units, subject to federal or state income restrictions and mitigating evidence supports a conclusion that the characteristic will be remedied in an appropriate time period, which may be after placement in service; or ~~to ensure they are safe and suitable, or development of new high quality affordable housing units that are subject to federal rent or income restrictions; and~~

(ii) Factual determination that the undesirable characteristic(s) that has been disclosed are not of such a nature or severity that ~~they~~ should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph. Such information sufficiently supports a conclusion that the characteristic(s) will be remedied by the time the Development places into service; Or

(iii) The Development satisfies HUD Site and Neighborhood Standards or is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order.

(65) OM Housing

From: Deepak P. Sulakhe
To: Sharon Gamble
Subject: Comment on Draft 2017 TDHCA Rules and QAP
Date: Wednesday, October 12, 2016 10:21:41 PM
Attachments: image001.png
image002.png

Sharon:

I am making comment on Undesirable Site Features in Section 10.101(a)(2)(E).

The 2017 TDHCA Rules on the QAP is proposing a change concerning Undesirable Site Features in Section 10.101(a)(2)(E). The old rules state that a site must be 100 feet away from a railroad, but now the proposal is to increase it to 500. We feel that this greatly reduces the availability of viable sites at competitive pricing and kindly request that this rule remain 100 feet as it was before. Please keep in mind that if there is a noise issue, developers will have to perform a noise study and design the product to mitigate the higher noise levels.

Again, I respectfully request that this condition not be added as part of the Undesirable Site Features in the upcoming QAP.

Thank you so much for all of your hard work on getting this year's QAP together. We look forward to working with you!

Sincerely,

HOME Housing Quality, Eco-Friendly, Affordable Housing at its best.

Deepak P. Sulakhe
Off: (214) 432-7610
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Email: dsulakhe@omhousing.com

go green™ Please consider the environment before printing this e-mail.

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(66) O-SDA Industries

O-SDA INDUSTRIES

5714 Sam Houston Circle Austin, TX 78731 (830) 330-0762 megan@o-sda.com

October 14, 2016

Via Email – tim.irvine@tdhca.state.tx.us
Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, Texas 78701

Re: Comments - Draft 2017 Qualified Allocation Plan and Multifamily Rule

Dear Mr. Irvine,

Thank you for allowing us the opportunity to weigh in on the 2017 QAP. Please accept the following comments O-SDA Industries, LLC.

Equality in Scoring Among Population Types

In 2015, the Texas Legislature passed House Bill 3311, which disallowed TDHCA from awarding a different number of points to a general population application and a senior population application. During the development of the 2016 QAP, staff considered this bill when proposing scoring criteria and purposefully limited Educational Excellence points for supportive housing developments to 2 out of 5 possible points in order to maintain parity among population types. In the November 12, 2015, board book, staff wrote the following:

"In response to commenters (1), (23), (32), (45), and (49) regarding parity in points achievable for Aging in Place and Educational Excellence, staff has also considered recent legislation regarding parity between Elderly and general population Developments in recommending that Supportive Housing Developments be limited to two (2) points under Educational Excellence. This limitation would allow parity between a Supportive Housing general population Development and an Elderly Development."

The draft 2017 QAP includes points for Educational Quality, but the proposed language does not limit supportive housing developments to 2 points. Supportive housing developments (only) qualify for 3 additional points through Rent Levels of the Tenants and Tenant Services, which creates a scoring advantage should all other scoring categories be the same. Supportive housing

developments already receive special consideration in excess of these additional points. For example, supportive housing developments do not need to comply with Unit Size requirements and automatically receive 8 points for Unit Sizes without meeting the size minimums. They also start with a base score on Unit and Development features and therefore are not required to provide as many features as non-supportive housing developments. They are allowed to make owner contributions to the development without the risk of losing points under the Leveraging of Private, State, and Federal Resources scoring item that limits deferred developer fee (which would include owner contributions for non-supportive housing developments). They also receive feasibility allowances under the REA rules.

In order to maintain parity, I ask that staff revisit the 2016 QAP and limit the points available to supportive housing developments under the Educational Quality scoring item. Should educational Quality be deleted or its idea relocated under another scoring item, I ask that staff limit supportive housing developments in some other scoring area such that they do not have an overall 3 point advantage. All population types should have parity in scoring
We respectfully submit these suggested changes for staff's consideration and inclusion in the final 2017 QAP and Multifamily Rules. Please do not hesitate to contact me with any questions.

General eligibility

The addition of adaptive reuse as it relates to one for one replacement makes no sense. If you have an adaptive reuse then by definition that building included no units because it was being used for other purposes. So, how would the minimum replacement of one for one be applied in this situation? Adaptive reuse should be removed from this ineligibility section.

> A Development utilizing a Direct Loan that is subject to the Housing and Community Development Act, 104(d) requirements and proposing Rehabilitation, or Reconstruction ~~or Adaptive Reuse~~, if the Applicant is not proposing at least the one-for-one replacement of the existing unit mix. Adding additional units would not violate this provision.

Public Office Notifications

If there is a change from pre-app to app, to notify within 14 days of the person taking office. This should be kept as it was drafted in 2016 with the re-notifications occurring prior to submission of the full application. It is very difficult to keep track of newly elected or appointed officials, especially with respect to school districts and school superintendents. The 14-day period creates yet another pitfall for Applicants who are trying to coordinate many evolving bits of information.

> In addition, should a change in elected official occur between the submission of a pre-application and the submission of an Application, Applicants are required to notify the newly elected (or appointed) official ~~within fourteen (14) days of when they take office~~ prior to submission of a full application.

Contents of public notification

Townhomes were removed as a development type. This development type is an acceptable community in the application therefore removing it as a type does not seem consistent. Townhomes should be included as a type of development for public notification purposes.

> the physical type of Development being proposed (e.g. single family homes, duplex, apartments, ~~townhomes~~, high-rise etc.)

Architectural drawings

A requirement was added to describe flood mitigation with the site plan. This information is not handled by the architect generally but by the civil engineer and makes more sense to be included in the feasibility report than on the face of a site plan. Please move this requirement to one included as part of the civil feasibility report rather than on the site plan.

> describe, if applicable, how flood mitigation or any other required mitigation will be accomplished

Preliminary Site Plan

There is a new requirement for the site plan to identify accessible routes. Accessible routes are subject to very nominal slopes and grades, 5%, 8% with handrails and 2% cross slopes and those generally cannot be determined until full topography is known and grading plans are complete. At the time of application, not enough information or work has been determine to make informed decisions on accessible routes. A statement by the architect or engineer that the site will comply

with the requirement to have an accessible route would be more appropriate than requesting that they be identified on the site plan.

811 program

Under paragraph a – an applicant must use an existing development to the extent there is one in the applicant's portfolio. An applicant is only eligible for paragraph b (setting aside units in current application) if there is not a development that can be utilized under para a. Any requirement to implement a new program and/or use agreement on an existing development must provide for lender and investor approval and if such approval cannot be obtained the applicant should be allowed to default to paragraph b without penalty.

Site Changes from Pre-App to Full App

The revised language indicates that any change in site may not require new notification. This notification prohibition should be for the position the person holds, not the person itself – i.e. an applicant notifies the county judge but a new judge is elected, so the person holding that position changed – an applicant could re-notify without penalty. But if the applicable judge changed because the site changed, then this prohibition would apply.

> A change in the site from pre-application to full Application may not result in a requirement to notify any new position or entity not required to have been notified at pre-application.

Leveraging

The economic impact of lowering the leveraging is devastating to deals and results in developments that are significantly less financially sound. Below is an example of the financial impact on a generic deal:

> Assume the average Tax Credit Request is $1.5M, the average deal cost at that tax credit request is $18,750,000. ($18,750,000 * 8% = $1.5M). Now reduce the 8% to 7% ($18,750,000 * 7% = $1,312,500) - instead of $1.5M in credits, you can only request $1,312,500 in credits – a $187,500 reduction in annual credits. **Multiply that by the 10 year credit period and a 1% reduction in leveraging results in $1,875,000 LESS sources to fund the deal the exact same deal.**

There simply are not enough soft money resources available to bridge financing gaps this significant. The leveraging points should revert to those used in 2016.

Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii))

"Voluntarily included in eligible basis" should apply to both Building Costs and Hard Costs, not just to Hard Costs. The purpose of modifying this section of the QAP was to allow applicants to provide actual total costs while still limiting and encouraging an efficient use of tax credits in financing the development. Building Cost is the measurement most often used in applications and therefore to provide meaningful change, Building Cost used for scoring should be that voluntarily included in eligible basis, same as the change made for Hard Costs. The measurement factor for Hard Costs is used by applicants on a very limited basis due to the limited amount allowed for an expanded set of construction cost categories. Therefore allowing the eligible basis option for only Hard Costs will not produce the desired result.

> An Application may qualify to receive up to twelve (12) points based on the amount voluntarily included in eligible basis for either the Building Cost or the Hard Costs per square foot of the proposed Development ~~voluntarily included in eligible basis~~ ("Eligible Hard Cost"), as originally submitted in the Application.

Mandatory Development Amenities – Solar Screens

A better, more effective solution to consider would instead be mandating a specific window value (SHGC) minimum, appropriate per climate zone; and/or further still, mandating compliance with an above-code third party green certification program --or at the very least, exempting an entity who already includes delivery of a green cert program, as window & shading values are inherently included with a minimum standard window within these programs for higher level energy compliance.

I believe the requirement to include solar screens will cause ongoing maintenance issues and will potentially be in violation of certain city building codes. In addition, I believe it will create an environment with less natural light for the tenant, which will require the tenant to turn on their lights earlier in the evening, perhaps increasing energy use. Higher quality windows are a more effective longer-lasting solution.

Sincerely,

Megan Lasch
O-SDA Industries, LLC

Cc: Marni Holloway, TDHCA
Sharon Gamble, TDHCA
Teresa Morales, TDHCA

(67) Palladium USA

October 13, 2016

Texas Department of Housing and Community Affairs
Attn: Sharon Gamble
P.O. Box 13941
Austin, TX 78711-3941

RE: Public Comment concerning the 2017 QAP and Multifamily Rules

Dear Sharon,
Our team has spent some time digesting the current draft of the QAP and Multifamily Rules and would like to give some observations and suggestions based on what we believe would be in the best interest of the industry, and will help to deliver the best products at the best locations. We understand staff's intentions to do just that and hope that input such as ours, and others, will be helpful for the Department to gain a better understanding of the real world challenges and consequences we, as developers, face when we submit to current rules in our efforts to get quality affordable communities on the ground.

11.9(c)(5) Educational Quality
We understand the necessity of housing choice in our industry. However, it is a grave concern to us that TAAHP is arguing for the removal or the minimizing of Educational Quality in the QAP. Everyone evaluates schools when weighing housing decisions. The argument that school quality should be compromised for the sake of housing choice is inherently flawed. It would be easier as a developer to find cheap land in undesirable areas, the same areas some have argued passionately as needing new housing investment, but that really is not good for our residents and it fundamentally is not good real estate. Removing or reducing the point magnitude of Educational Quality would incentivize much of the 2017 applications to go to urban neighborhoods where land is cheap and opposition is not likely and opportunity for families and our residents is very low. No real estate investment should or would go on its own to these places. However, if this point category is minimized, we would have to go there as well in order to be competitive. I realize my argument makes development harder. It is hard and expensive to develop where schools are good, which tends to be the path of growth. However, developing in the path of growth is fundamental to good real estate and provides the type of real opportunity our residents need. I do not buy into the theoretical idea that placing a new affordable housing development in an undesirable urban neighborhood is the economic driver to lift that neighborhood into renewal. I also don't buy that it is "too hard" to do development in high opportunity areas. In the 2016 round, we won awards for two 9% deals that are both great examples of good real estate, great location for workforce housing while providing excellent school choice. Our 2016 award in Garland is minutes from downtown Dallas and thousands of employers located right on Interstate 30. Just because it does not fall in the City of Dallas city limits does not matter. These high opportunity deals can and do get done.

<u>Our recommendation</u>: leave Educational Quality points as written in the draft QAP.

11.9(c)(4) Opportunity Index

While we are thankful and agree with the broadening of this point category to include some 3rd quartile census tracts and believe that change will open up new areas of possibility, we still believe that census tracts that earn the highest median income really do in the real world represent the most desirable places people want to live. This is because many 1st quartile census tracts are suburban neighborhoods with excellent opportunity in terms of schools and positive growth and now that the Opportunity Index incentivizes proximity to important services, there is little risk of developers seeking 1st quartile tracts in the middle of nowhere. However, they are also the hardest deals to get done in terms of support and land cost. Therefore, we believe that a development that fights those battles and wins over public support to be in the best places in Texas, should have a point advantage. Below is our recommendation to give 1st quartile census tracts a one point advantage over 2nd and 3rd quartile census tracts. If 1st quartile sites are as hard as we all believe them to be, this point advantage will really only reward the few developments that put in the time and effort to win over those hard to win highest of opportunity areas.

Our 1st recommendation:

(A) A Proposed Development is eligible for a maximum of eight~~seven~~ (8~~7~~) opportunity index points if it is located in a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and meets the requirements in (i) or (ii) below.

(i) The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and an income rate in the ~~two~~ highest quartile~~s~~ within the uniform service region. (2 points)

(ii) The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with income in the second quartile or the third quartile within the region, as long as~~and~~ the third quartile census tract is contiguous to a census tract in the first or second quartile, without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. and, (1 points)

(B) An application that meets the foregoing criteria may qualify for an additional ~~points up to~~ six~~seven~~ (6~~7~~) points for any one or more of the following factors. Each facility or amenity may be used only once for scoring purposes, regardless of the number of categories it fits:

Our 2nd recommendation:

We propose to add zoning to the list of amenity point items under 4(B)(i) as that item shows readiness to proceed as well as the fact that city planning has already happened. Therefore, if a site already has appropriate zoning in place to allow the proposed use, that should be worth at least one (1) or more points on the list of items to make up Opportunity Index points.

(XVI) Development site is appropriately zoned for the proposed use by March 1, 2017 (1 point)

11.9(c)(6) Underserved Area

We believe that there should be an opportunity to claim Underserved Area points for being in a census tract that does not have an active tax credit development serving the same Target Population.

Our recommendation:

(D) For areas not scoring points for (C) above, a census tract that does not have ~~a Development subject to an active tax credit LURA~~an active tax credit development serving the same Target Population; (2 points);

10.101(b)(4) Mandatory Development Amenities

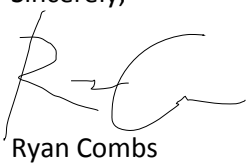
We believe a clarification is necessary in the rules in relation to parking. Since the cap of 1.5 million dollars of tax credits has existed, many urban developments include market rate units and with those units covered parking as a way to add additional income to help make a development feasible. The current rule is too limiting in its language and does not allow for flexibility in relation to parking.

Our recommendation:

(M) Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be one and a half (1.5) spaces per Unit for non-Elderly Developments and one (1) space per Unit for Elderly Developments. The minimum number of required spaces must be available to the ~~tenants~~ affordable units at no cost.

We want to thank you and the rest of the TDHCA staff for your diligence in effort and openness to suggestions from the industry. You are the guardians of the integrity of the affordable housing industry in the State of Texas and while it is important to get input from the industry, it is also important to weigh input with what is best for this program and ultimately our residents who live in the housing we develop and manage. We look forward to another great year working with you and the TDHCA team.

Sincerely,



Ryan Combs
Palladium USA

(69) Purple Martin Real Estate

PURPLE MARTIN REAL ESTATE

October 14, 2016

Multifamily Finance Division
Texas Department of Housing and Community Affairs
Attn: Marni Holloway, Director
221 East 11th Street
Austin, Texas 78701

Re: Public Comment – 2017 Draft Uniform Multifamily Rules ("Rules") and Qualified Allocation Plan ("QAP)

Dear Ms. Holloway:

Thank you for the opportunity to comment on the proposed 2017 Rules and QAP. I appreciate staff's efforts to consider stakeholder input throughout the year, and its efforts in preparing these drafts for public comment.

Subchapter B – Site and Development Requirements and Restrictions

Section 10.101(a)(2) Undesirable Site Features

Requested Changes:
(2) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph maybe considered ineligible as determined by the Board. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs ("VA") may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application ~~and must include a letter stating the Rehabilitation of the existing units is consistent with achieving at least one or more of the stated goals as outlined in the State of Texas Analysis of Impediments to Fair Housing Choice or, if within the boundaries of a participating jurisdiction or entitlement community, as outlined in the local analysis of impediments to fair housing choice and identified in the participating jurisdiction's Action Plan~~. The distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the undesirable feature. The minimum distances noted assume that the land between the proposed Development Site and the particular undesirable feature has no significant intervening barriers or obstacles such as waterways or bodies of water, major high speed roads, park land, or walls, such as noise suppression walls adjacent to railways or highways, in which case this section does not apply. Where there is a local ordinance that regulates the proximity of such undesirable feature to a multifamily development that ~~differs from~~ has smaller distances than the minimum distances noted below, documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application. The distances identified in subparagraphs (A) - (J) of this paragraph are intended primarily to address sensory concerns such as noise or smell, social factors making it inappropriate to locate residential housing in proximity to certain businesses. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements

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regarding separation for safety purposes. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (K) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

(A)Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Transportation Code, §396.001;

(B)Development Sites located within 300 feet of a solid waste or sanitary landfills;

(C)Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local Government Code, §243.002, or as zoned, licensed and regulated as such by the local municipality;

(D)Development Sites in which the buildings are located within ~~100 feet~~ of the easement of any overhead high voltage transmission line, support structures for high voltage transmission lines, or other similar structures. This does not apply to local service electric lines and poles; high voltage transmission are lines that carry 138 Kv of power or greater.

(E)Development Sites located within ~~5~~ 100 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail, or the Applicant submits a noise study with the application and commits at the time of commitment to provide sound attenuation of noise levels in excess of 65 decibels;

(F)Development Sites located within 500 feet of heavy industrial (i.e. facilities that require extensive capital investment in land and machinery, are not easily relocated and produce high levels of external noise such as manufacturing plants, fuel storage facilities (excluding gas stations) etc.);

(G)Development Sites located within 10 miles of a nuclear plant;

(H)Development Sites in which the buildings are located within ~~one-quarter mile~~ of the accident zones or clear zones of any airport;

(I)Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids. Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance ("PIPA");

(J)Development Sites located within 1000 feet ~~2 miles~~ of refineries capable of refining more than 100,000 barrels of oil daily; or

(K)Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated.

Justification: The radii in previous years' QAP are more appropriate. With regard to proximity to railroad tracks, the proposed change is consistent with HUD's guidelines on proximity to active railroad tracks which are more appropriate guidelines to use because they address the impact to the resident, rather than redline entire swaths of urban areas.

Section 10.101(a)(2)(B) Undesirable Neighborhood Characteristics.

Consistent with TAAHP comments, I request that this entire section be deleted.

Justification: This section is a remnant of the remediation plan and should be removed from the rules in the wake of the dismissal of the ICP litigation. It is an anti-urban provision that works to eliminate large swaths of urban areas from the competition. Furthermore, because that data sources like neighborhood scout and school performance data are inherently faulty and produce inconsistent results, such measures are of questionable value in determining the worth of certain neighborhoods.

In the event that TDHCA does not support an entire removal of this section, I recommend the below revisions.

Requested Changes:

(A)If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. An Applicant may choose to disclose the presence of such characteristics at the time the pre-application (if applicable) is submitted to the Department. Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit the documentation described under subparagraphs (C) and (D) of this paragraph at pre-application and staff may perform an assessment of the Development Site to determine Site eligibility. The Applicant understands that any determination made by staff or the Board at the time of bond inducement regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the undesirable neighborhood characteristics become available while the full Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board. Should staff determine that the Development Site has any of the characteristics described in subparagraph (B) of this paragraph and such characteristics were not disclosed, the Application may be subject to termination. Termination due to non-disclosure may be appealed pursuant to §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)). The presence of any characteristics listed in subparagraph (B) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit, and include, where applicable, a review as described in subparagraph (C) of this paragraph. The assessment of the Development Site and neighborhood will be presented to the Board with a recommendation with respect to the eligibility of the Development Site. Factors to be considered by the Board, despite the existence of the undesirable neighborhood characteristics are identified in subparagraph (E) of this paragraph. Should the Board make a determination that a Development Site is ineligible, the termination of the Application resulting from such Board action is not subject to appeal.

(B)The undesirable neighborhood characteristics include those noted in clauses (i) - (iv) of this subparagraph and additional information as provided in subparagraphs (C) and (D) of this paragraph must be submitted in the Application. ~~If an Application for a Development Site involves three or more undesirable neighborhood characteristics, in order to be found eligible it will be expected that, in addition to demonstrating satisfactory mitigation for each characteristic disclosed, the Development Site must be located within an area in which there is a concerted plan of revitalization already in place or that private sector economic forces, such as those referred to as gentrification are already underway and indicate a strong likelihood of a reasonably rapid transformation of the area to a more economically vibrant area~~. In

order to be considered as an eligible Site despite the presence of such undesirable neighborhood characteristic, an Applicant must demonstrate actions being taken that would lead a reader to conclude that there is a high probability the undesirable characteristic will be sufficiently mitigated within a reasonable time, typically ~~prior to~~ 5 years after placement in service, and that the undesirable characteristic will either no longer be present or will have been sufficiently mitigated such that it would not have required disclosure.

(i)The Development Site is located within a census tract that has a poverty rate above ~~30~~ 40 percent for individuals.

~~(ii)The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.~~

(iii)The Development Site is located within 1,000 feet (measured from nearest boundary of the Site to the nearest boundary of blighted structure) of ~~multiple~~ at least 15 vacant structures that have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.

(iv)The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met Standard rating by the Texas Education Agency. ~~Any school in the attendance zone that has not achieved Met Standard for three consecutive years and has failed by at least one point in the most recent year, unless there is a clear trend indicating imminent compliance, shall be unable to mitigate due to the potential for school closure as an administrative remedy pursuant to Chapter 39 of the Texas Education Code.~~ In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required. The applicable school rating will be the 2016 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating. Development Sites subject to an Elderly Limitation or Single Room Occupancy is considered exempt and do~~es~~ not have to disclose the presence of this characteristic.

(C)Should any of the undesirable neighborhood characteristics described in subparagraph (B) of this paragraph exist, the Applicant must submit the Undesirable Neighborhood Characteristics Report that contains the information described in clauses (i) - (viii) of this subparagraph and subparagraph (D) of this paragraph so that staff may conduct a further Development Site and neighborhood review.

(i)A determination regarding neighborhood boundaries, which will be based on the review of a combination of natural and manmade physical features (rivers, highways, etc.), apparent changes in land use, the Primary Market Area as defined in the Market Analysis, census tract or municipal boundaries, and information obtained from any Site visits;

(ii)An assessment of general land use in the neighborhood, including comment on the prevalence of residential uses;

(iii)An assessment concerning any of the features reflected in paragraph (3) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (3) of this subsection;

(iv)An assessment of the number of existing affordable rental units (generally includes rental properties subject to TDHCA, HUD, or USDA restrictions) in the Primary Market Area, including comment on concentration based on the size of the Primary Market Area;

(v)An assessment of the percentage of households residing in the census tract that have household incomes equal to or greater than the median household income for the MSA or county where the Development Site is located;

(vi)An assessment of the number of market rate multifamily units in the neighborhood and their current rents and levels of occupancy;

(vii)An assessment of school performance for each of the schools in the attendance zone containing the Development that did not achieve the Met Standard rating, for the previous two academic years (regardless of whether the school Met Standard in those years), that includes the TEA Accountability Rating Report, a discussion of performance indicators and what progress has been made over the prior year, and progress relating to the goals and objectives identified in the campus improvement plan in effect; and

(viii)Any additional information necessary to complete an assessment of the Development Site, as requested by staff.

(D)Information regarding mitigation of undesirable neighborhood characteristics should be relevant to the undesirable characteristics that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application and may include, but is not limited to, the measures described in clauses (i) - (iv) of this subparagraph. In addition to those measures described herein, documentation from the local municipality may also be submitted stating the Development is consistent with their obligation to affirmatively further fair housing~~. The mitigation must be accompanied by a report summarizing the data and to support the conclusion of a reasonable expectation by staff and the Board that the issues will be resolved or significantly improved by the time the Development is placed into service. Conclusions for such reasonable expectation must be affirmed by an industry professional, as appropriate.~~

~~1.~~ (i)Evidence that the poverty rate within the census tract has decreased over the five-year period preceding the date of Application, or that the census tract is contiguous to a census tract with a poverty rate below ~~4~~20% and there are no physical barriers between them such as highways or rivers which would be reasonably considered as separating or dividing the neighborhood containing the proposed Development from the low poverty area must be submitted. Other mitigation may include, but is not limited to, evidence of the availability of adult education and job training that will lead to full-time permanent employment for tenants, a description of additional tenant services to be provided at the development that address root causes of poverty, evidence of gentrification in the area (which may include contiguous census tracts), and a clear and compelling reason that the Development should be located at the Site~~. Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility.~~

(ii)~~Evidence that crime rates are substantially decreasing, based on violent crime data from the city's police department or county sheriff's department, for the police beat or patrol area within which the Development Site is located, based on the population of the police beat or patrol area that would yield a crime rate below the threshold indicated in this section. The instances of violent crimes within the police~~

~~beat or patrol area that encompass the census tract, calculated based on the population of the census tract, may also be used. A map plotting all instances of violent crimes within a one-half mile radius of the Development Site may also be provided that reflects that the crimes identified are not at a level that would warrant an ongoing concern. The data must include incidents reported during the entire 2015 and 2016 calendar year. Violent crimes reported through the date of Application submission may be requested by staff as part of the assessment performed under subparagraph (C) of this paragraph. A written statement from the local police department or local law enforcement agency, including a description of efforts by such enforcement agency addressing issues of crime and the results of their efforts may be provided, and depending on the data provided by the Applicant, such written statement may be required, as determined by staff. For Rehabilitation or Reconstruction Developments, to the extent that the high level of criminal activity is concentrated at the Development Site, documentation may be submitted to indicate such issue(s) could be remedied by the proposed Development. Evidence of such remediation should go beyond what would be considered a typical scope of work and should include a security plan, partnerships with external agencies, or other efforts to be implemented that would deter criminal activity. Information on whether such security features have been successful at any of the Applicant's existing properties should also be submitted, if applicable.~~

(iii)Evidence of mitigation efforts to address blight or abandonment may include new construction in the area already underway that evidences public and/or private investment. ~~Acceptable mitigation to address extensive blight should go beyond the acquisition or demolition of the blighted property and identify the efforts and timeline associated with the completion of a desirable permanent use of the site(s) such as new or rehabilitated housing, new business, development and completion of dedicated municipal or county owned park space.~~ In instances where blight exists but may only include a few properties, mitigation efforts could include partnerships with local agencies to engage in community-wide clean-up efforts, or other efforts to address the overall condition of the neighborhood.

(iv)Evidence of mitigation for all of the schools in the attendance zone that have not achieved Met Standard will include documentation from a school official with oversight of the school in question that indicates current progress towards meeting the goals and performance objectives identified in the Campus Improvement Plan. For schools that have not achieved Met Standard for two consecutive years, a letter from the superintendent, member of the school board or a member of the transformation team that has direct experience, knowledge and oversight of the specific school must also be submitted. The letter should, at a minimum and to the extent applicable, identify the efforts that have been undertaken to increase student performance, decrease mobility rate, benchmarks for re-evaluation, increased parental involvement, plans for school expansion, and long-term trends that would point toward their achieving Met Standard by the time the Development is placed in service. ~~The letter from such education professional should also speak to why they believe the staff tasked with carrying out the plan will be successful at making progress towards acceptable student performance considering that prior Campus Improvement Plans were unable to do so.~~ Such assessment could include whether the team involved has employed similar strategies at prior schools and were successful. In addition to the aforementioned letter from the school official, information should also be provided that addresses the types of services and activities offered at the Development or external partnerships that will facilitate and augment classroom performance.

(E~~)In order for the Development Site to be found eligible by the Board, despite the existence of undesirable neighborhood characteristics, the Board must find that the use of Department funds at the Development Site must be consistent with achieving the goals in clauses (i) and (ii) of this subparagraph.~~

~~(i)Preservation of existing occupied affordable housing units to ensure they are safe and suitable or development of new high quality affordable housing units that are subject to federal rent or income restrictions; and~~

~~(ii)Factual determination that the undesirable characteristic(s) that has been disclosed are not of such a nature or severity that should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph. Such information sufficiently supports a conclusion that the characteristic(s) will be remedied by the time the Development places into service.~~

Section 10.101(b)(7) Tenant Supportive Services

I request deletion of the new language regarding who provides these services.

Justification: Many properties, especially smaller rural ones, cannot financial support a separate staff person or a third party provider to provide supportive services. In many rural communities, those third party providers are not even available.

Subchapter C: Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications

Section 10.201(7)(B) Administrative Deficiencies for Competitive HTC Applications.

I recommend changing the period to cure a deficiency from three days to five days.

Justification: More times than not, requests for deficiencies create a ripple effect, where making a change to one document requires the applicant to change several other documents to be consistent. When one of the documents requires input from a third party, addressing the deficiency takes time. Five days is more appropriate than three days.

§10.203 Public Notifications

I request deletion of the new 14-day requirement.

Justification: It is very difficult to keep track of newly elected or appointed officials, especially with respect to school districts and school superintendents. The 14-day period creates yet another pitfall for Applicants who are trying to coordinate many evolving bits of information. Under prior rules Applicants have until the date of full application to notify newly elected/appointed officials.

Section 10.204(16) Section 811 Project Based Rental Assistance Program

I request that this Section be moved to the scoring criteria under the QAP as in past years. I believe this change can be made since the QAP addresses the Section 811 Program under the Tenants with Special Needs section of the QAP. Adding this provision back into the QAP would be a natural outgrowth of the Tenants with Special Needs section.

The justification for moving back to the scoring section is that as threshold, this provision burdens 4% developments in two ways. First, administering 811 units creates an added operating expenses to deals that often need tax exemptions or soft money to work. Second, adding this requirement limits the ability

to position these developments as “workforce housing” and gives neighbors another reason to strongly oppose.

In the event that TDHCA determined that it cannot be moved back to scoring, I request the 4% tax credit/tax exempt bond transactions are exempted from this threshold provision.

Regardless of whether this section remains as a threshold item or a scoring item, I request that this rule revert back to previous version where the Applicant has a choice regarding placing Section 811 residents in existing developments or in the development for which an application is submitted. This flexibility is important to applicants, especially when committing existing developments to accept Section 811 residents requires lender and investor approval. I recommend language allowing applicants to choose to locate the Section 811 residents in an existing development or in the development for which the application is submitted. Additionally, I request language that an Applicant be exempt from locating 811 residents in existing development if applicant provides evidence that it cannot receive approval from either its lender or investor.

Additionally, I recommend that for developments with 100 or fewer units, the unit requirement be 10% of total units, not 10 units.

Qualified Allocation Plan

Section 11.9 Competitive HTC Selection Criteria

(c)(7) Tenant Populations with Special Needs

I recommend moving the Section 811 requirements back to this scoring category as previously discussed.

(e)(2) Cost of the Development per Square Foot

Requested Changes:
An Application may qualify to receive up to twelve (12) points based on the amount voluntarily included in eligible basis for either the Building Cost or the Hard Costs per square foot of the proposed Development ~~voluntarily included in eligible basis~~ (“Eligible Hard Cost”), as originally submitted in the Application.

Justification: “Voluntarily included in eligible basis” should apply to both Building Costs and Hard Costs, not just to Hard Costs. The purpose of modifying this section of the QAP was to allow applicants to provide actual total costs while still limiting and encouraging an efficient use of tax credits in financing the development. Building Cost is the measurement most often used in applications and therefore to provide meaningful change, Building Cost used for scoring should be that voluntarily included in eligible basis, same as the change made for Hard Costs. The measurement factor for Hard Costs is used by applicants on a very limited basis due to the limited amount allowed for an expanded set of construction cost categories. Therefore, allowing the eligible basis option for only Hard Costs will not produce the desired result.

(3) Leveraging of Private, State and Federal Resources

Requested Changes (reversion to 2016 language):

(A)An Application may qualify to receive up to three (3) points if at least five (5) percent of the total Units are restricted to serve households at or below 30 percent of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) - (iv) of this subparagraph:

(i)the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 9 percent of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or

(ii)if the Housing Tax Credit funding request is less than eight ~~seven~~ (~~8~~7) percent of the Total Housing Development Cost (3 points); or

(iii)if the Housing Tax Credit funding request is less than ~~eight~~ nine (~~8~~9) percent of the Total Housing Development Cost (2 points); or

(iv)if the Housing Tax Credit funding request is less than ~~nine~~ ten (~~9~~ 10) percent of the Total Housing Development Cost (1 point).

(B)The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50 percent of the developer fee can be deferred. Where costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect

Justification: There are several other provisions that create a cap on credits per application. This one is very difficult to achieve and results in an under-leverage of credits.

Subchapter D – Underwriting and Loan Policy

§10.304(d)(10)(B) Appraisal Rules and Guidelines: Value Estimates, Developments with Project-Based Rental Assistance.

Requested Changes:

(B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value". ~~inclusive of the value associated with the rental assistance.~~ For public housing converting to project-based rental assistance or project-based vouchers under the Rental Assistance Demonstration (RAD) program, the value must be based on the ~~post conversion restricted rents and must consider any other~~ ~~on-going restrictions that will remain in place even if not affecting rents~~ unrestricted market rents. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates and/or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter.

Justification: Nationwide a number of closed RAD transactions have been awarded acquisition credits based on building values derived using market rents under the income approach, including those in

including Colorado, Florida, Georgia, New Jersey, Pennsylvania, South Carolina, and Virginia. Tax counsel for these transactions have opined that this approach is reasonable, as have national accounting and appraisal firms. The reason this approach has been accepted nationwide is that in the "As Is" condition public housing developments operate on a breakeven basis, preventing an accurate valuation under the income approach. There are several ways in which HUD may allow the release of public housing restrictions. For public housing converting to Section 8 assistance, at the closing of RAD transactions, the existing public housing restrictions are removed and the property is unencumbered. This release of public housing restrictions supports the use of a market-rent derived value.

For public housing converting to Section 8 assistance, at the closing of RAD transactions, the existing public housing restrictions are removed and the property is unencumbered. This release of public housing restrictions supports the use of a market-rent derived value. The additional resources generated by this approach can be significant in markets with strong rental markets, where affordability crises often exist. For example, in Austin the differential between appraised value based on market rents versus RAD rents represented approximately $5 million in additional tax credit equity generated from acquisition tax credits.

Sincerely,

Audrey Martin
Principal

(72) Structure Development

October 14, 2016

Via Email

Ms. Sharon Gamble
TDHCA
221 East 11th Street
Austin, TX 78701

RE: Comments on 2017 QAP and 2017 Multi Family Rules

Dear Ms. Gamble:

I am writing to comment on the proposed QAP and Multifamily Rules for 2017. I have been active in two group comment sessions. The comments herein are limited to the individual thoughts of my company, staff, and the clients we serve. I also have a list of requested clarifications on the last page.

QAP

Legislative letters. Please do not allow legislators to rescind their support. This opens the door for nimbyism and political pressure to affect the legislator after support has been provided.

Educational quality. Please allow all development sites the opportunity to obtain the supplementary 2 points that can be reached by 4 different methods identified in section 11.9 (c)(5)(E) rather than restricting to only sites that have a base of 1 or 3 points. Suggested language is ~~If the Development Site is able to score one or three points under clauses (B) – (D) above,~~ two additional points or 1 point for Supportive Housing Development may be ~~added~~ utilized if one or more of the features described in clause (i) – (iv) is present for a maximum of 5 points.

Concerted Revitalization Plan. The population threshold of 100,000 is inconsistent with a city's desire and ability to revitalize an area of their town. I recommend you open up this constraint to include Qualified Census Tracts in revitalization areas, which is consistent with Section 42 of the Internal Revenue Code. Also, please clarify that the additional point from 6 to 7 is available without having the first prong of demographic characteristics. Suggested language is "Applications will receive (1) point in addition to those under sub clause (I) and (II) if the development is in a location that ~~would score at least 4 points~~ meets 4 factors under Opportunity Index 11.9 (c)(4)." Finally, please consider that the public actually participate in the public input process. The adoption of a plan where there were no interested stakeholders participating is clearly not an area of concern to the general public or in need of revitalization.

Deficiencies. Please maintain the 5 business day 2016 deficiency response deadline. Within minutes of receiving a deficiency, I assess it and assign tasks for the responsible party. I send out a group email and get on the phone to each team member, or a group call, whichever is most

viable at the time. I literally *drop* all other tasks - non 9% work, any and all meetings, family events, and personal care events such as doctor's appointments, to work on the deficiency. Many times I receive these Friday afternoon, which means MOST people have left for the weekend which results in 1 lost work day. We set an internal deadline of three days and are able to complete many of the tasks the day the deficiency comes in OR shortly thereafter. If a team member is out of town, on vacation, is sick, has a sick child, is in meetings (with a city council, a lender or otherwise), at a conference or otherwise unavailable we often do not have anyone else who can provide the item, especially if it involves a signature. Many times the signature authorities on a project are busy civic leaders and have very busy schedules and are often unreachable on short notice.

Moreover, architects, engineers and third party report providers do not work on a TDHCA-dominated schedule. They go about their business without any concern for these types of deadlines. An architect may be at another job site, or working on a deadline for another client, or an ESA provider may be in the field for a week and unable to respond. Or they may simply be on vacation and no one else in the office has any knowledge of the item or a concern for the deadline. Many of the deficiencies are simple - an architect has a different parking count than the application. But without access to the CAD files, I simply cannot make their parking count match.

The nature of the deficiency process is that it is unpredictable AND lasts 5 months from March to July. There is not a single day between March 7 and July 28 (or there about) in which staff in our office are not on "high alert". We do rotate and assign tasks to one another, but deficiencies are our highest priority and may require the input of several people.

As a consultant working on multiple applications, we may receive several deficiencies in one day. I realize that that is not TDHCA's problem, but it simply becomes impossible to manage the volume. A development assistant with one year of experience simply does not substitute for a 10-year veteran of the program when making decisions on how to respond. Unfortunately, the quantity of deficiencies is a symptom of the short and compressed application period. Accordingly, our clients, and our firm puts far too much time, effort, and money into a proposed project to have it "tanked" by a point reduction because we can't get a signature or a parking plan corrected in 3 days. Please leave the deficiency response time to 5 business days.

Multi Family Rules

Railroad. Please exempt rehabilitation deals from the railroad distance separation requirement since it is impossible or cost prohibitive to move an existing building.

Poverty. 30% is onerous for a bond deal. Census tracts can be as small as 1200 people and have an artificial perception of high poverty based on both small geographical and capita size. I request you revert to the 2016 40% value.

High voltage power line easement. Please revert to 2016 requirements, since easements on other people's property will not be revealed in a survey.

Points of Clarification

There are a number of items in the QAP that are either unclear or need further explanation. Additional clarity in these areas will be beneficial to TDHCA because it will eliminate assumptions and misunderstandings that lead to challenges during the process. Fully vetting these items and providing clear direction has the added benefit of reducing deficiency items. Per my conversations with Tim Irvine and Marni Holloway, TDHCA wants these inquiries during this public comment period.

Underserved. To get the full 5 underserved points, the development must be in a census tract that has not received an LIHTC award in 15 years, and be surrounded by census tracts that have not received an LIHTC award in 15 years, and be within the city limits of a city with a population over 500,000. How will you handle census tracts that fit that description, but straddle the city boundaries? To not penalize city areas that only contain a portion of the census tract, I recommend a wording change from "A Census tract within the boundaries of an incorporated area and …" to "An incorporated area in a census tract…"

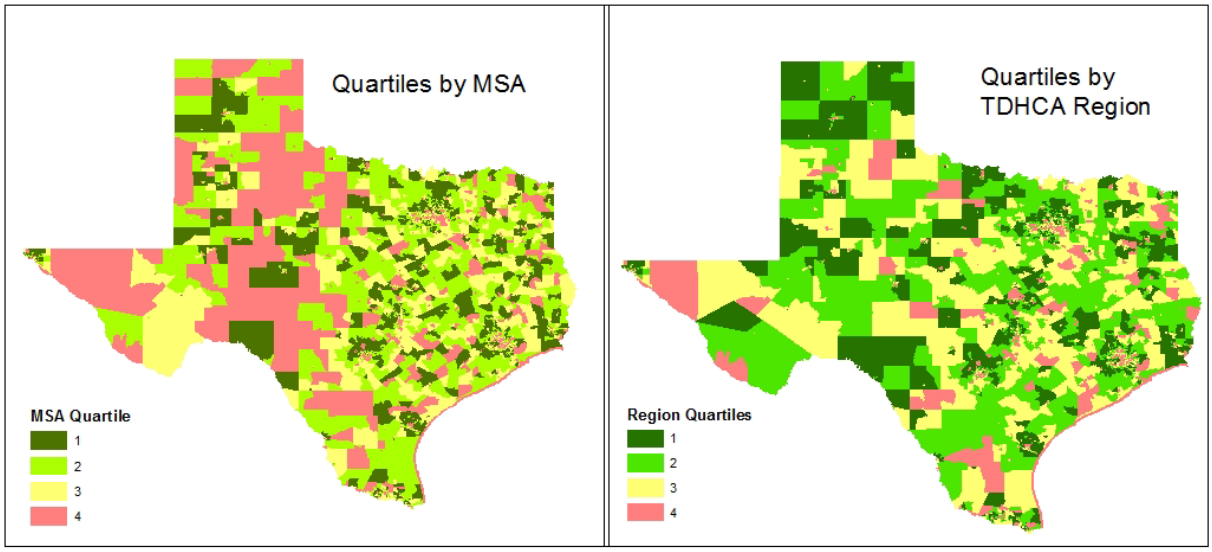
Parks with accessible playground on an accessible route. How do you define accessible playground, access, play equipment, from the perspective of the child and/or the caregiver?

Graduation rate. Suggest using "Graduates" in lieu of "Graduates + GED+ Recipients + Continuers".

Big Box Retail. Four big boxes are preferred over 1 million square feet. What is the proximity measure of big boxes to each other? I suggest using the walkable standard of ¼ mile from building corner to building corner to qualify for the 4 box big cluster.

Extended Day Pre-K. Recommend using a full school day for "Extended Day" as it is an extension of many pre-k programs that end before the traditional school day ends. Does a pre-k that is available to the development site but is NOT in the same building as the elementary school, such as an Early Childhood Education Center, qualify? We suggest changing this language to provide points if Pre-K is offered at all for the development site, regardless of the length of the day, and not required to be within the elementary school.

High Opportunity. The language for calculating High Opportunity areas in 2017 is by ***region***, rather than ***MSA***, as done in the past. Calculating the Quartiles by region pushes the High Opportunity areas into agricultural and lower populated areas. Using the MSAs, high opportunity is greater in the urbanized area, where people are and housing is needed. See the graphic below to demonstrate the differences. I recommend quartiles be calculated by MSA to better serve Texans in need.



Thank you for your consideration. Please feel free to contact me if you have any questions.

Sincerely,

Sarah Andre

(73) The Brownstone Group

6517 Mapleridge
Houston, TX 77081
T. 713.432.7727
F. 713.432.0120

October 14, 2016

Via email htc.public-comment@tdhca.state.tx.us

Ms. Sharon Gamble
9% Competitive Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

Re: Public Comments on QAP and MF Rules

Dear Sharon:

Attached are our comments on the proposed 2017 QAP and Multifamily Rules, submitted in accordance with the notice published in the September 23, 2016, edition of the Texas Register. Please let us know if you have any questions.

Sincerely,

Brownstone Affordable Housing, Ltd., a Texas limited partnership

By: Three B Ventures, Inc., a Texas corporation, its general partner

By:_____
Doak D. Brown, Vice President
doak@thebrownstonegroup.net

enclosures

Subchapter A

10.3 Definitions

We do not believe that Special Limited Partners generally possess factors or attributes that give them Control, although some may. Therefore, we offer the following recommendation to the definition of Control.

(29) Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. Controlling entities of a partnership include the general partners, may include special limited partners when applicable, but not investor limited partners or special limited partners who do not possess other factors or attributes that give them Control. Controlling entities of a limited liability company include but are not limited to the managers, managing members, any members with 10 percent or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership, but not investor members who do not possess other factors or attributes that give them Control. Controlling individuals or entities of a corporation, including non-profit corporations, include voting members of the corporation's board, whether or not any one member did not participate in a particular decision due to recusal or absence. Multiple Persons may be deemed to have Control simultaneously.

The current definition of Elderly Preference Development does not preclude an Application from choosing this type of Elderly Development even if HUD funding (or other federal assistance) is not used; however, the 2016 Application conflicted with this plain language and did not allow for that type of a choice to be made. If the intention of the Elderly Preference Development definition is that it only apply to developments with HUD funding or other types of federal assistance, that should be clearly articulated in the definition.

We offer the following recommendation for the definition of Principal. The first relates to the unclear nature of whether "Persons" is capitalized because it refers to the defined term, or simply because it is the first word in the sentence. The context leads us to believe that it is the generalized term, which informs our recommendation. The second relates to our earlier comment on the definition of Control.

(98) Principal--Any ~~P~~persons~~s~~ that will exercise Control (which includes voting board members pursuant to §10.3(a)(29) of this chapter) over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) partnerships, Principals include all General Partners, ~~special limited partners,~~ and Principals with ownership interest, and special limited partners with ownership interest who also possess factors or attributes that give them Control;

(B) corporations, Principals include any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation, and any individual who has Control with respect to such stock holder; and

(C) limited liability companies, Principals include all managers, managing members, members having a 10 percent or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.

Subchapter B

10.101(a)(2) Undesirable Site Features

We make the following recommendations to this section.

(2) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph maybe considered ineligible as determined by the Board. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs ("VA") may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application and must include a letter stating the Rehabilitation of the existing units is consistent with achieving at least one or more of the stated goals as outlined in the State of Texas Analysis of Impediments to Fair Housing Choice or, if within the boundaries of a participating jurisdiction or entitlement community, as outlined in the local analysis of impediments to fair housing choice and identified in the participating jurisdiction's Action Plan. The distances are to be measured from the nearest boundary of the Development Site to the ~~nearest boundary of the property or easement containing the~~ undesirable feature. ~~The minimum distances noted assume that the land between the proposed Development Site and the particular undesirable feature has no significant intervening barriers or obstacles such as waterways or bodies of water, major high speed roads, park land, or walls, such as noise suppression walls adjacent to railways or highways.~~ Where there is a local ordinance that ~~regulates the~~ for closer proximity ~~of~~ to such undesirable feature ~~to a multifamily development that differs from~~ than the minimum distances noted below, documentation, such as a copy of the local ordinance identifying such distances relative to the Development Site, must be included in the Application. ~~The distances identified in subparagraphs (A) - (J) of this paragraph are intended primarily to address sensory concerns such as noise or smell, social factors making it inappropriate to locate residential housing in proximity to certain businesses. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes.~~ If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (K) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

(A) Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Transportation Code, §396.001;

(B) Development Sites located within 300 feet of a solid waste or sanitary landfills;

(C) Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local Government Code, §243.002, or as zoned, licensed and regulated as such by the local municipality;

(D) Development Sites in which the buildings are located within 100 feet of the easement of any overhead high voltage transmission line, or support structures for high voltage transmission lines~~, or other similar structures~~. This does not apply to local service electric lines and poles;

(E) Development Sites located within ~~500~~100 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail;

(F) Development Sites located within 500 feet of heavy industrial (i.e. facilities that require extensive capital investment in land and machinery, are not easily relocated and produce high levels of external noise such as manufacturing plants, fuel storage facilities (excluding gas stations) etc.);

(G) Development Sites located within 10 miles of a nuclear plant;

(H) Development Sites in which the buildings are located within one-quarter mile of the accident zones or clear zones of any airport;

(I) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids. Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance ("PIPA");
(J) Development Sites located within 2 miles of refineries capable of refining more than 100,000 barrels of oil daily; or
(K) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated.

10.101(a)(3) Undesirable Neighborhood Characteristics

We agree with the language recommendations made by TAAHP.

10.101(b)(4) Mandatory Development Amenities

We agree with TAAHP's recommendation to strike the requirement for solar screens.

10.101(b)(5) Common Amenities

We recommend leaving furnished community room as a 2 points.

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

In-unit laundry equipment should be a 3 point item.

10.101(b)(7) Tenant Supportive Services

We agree with TAAHP's recommendation to this section of the Rule. We also recommend increasing scholastic tutoring 5 points.

Subchapter C

10.201(7) Administrative Deficiency Process

The Administrative Deficiency deadline should remain 5 days.

10.203 Public Notifications

We agree with TAAHP's recommendation on this section.

10.204(6) Experience Requirement

The 2014 criteria for experience certificates is exactly the same in 2015 and 2016, so 2014 certificates should still count.

10.204(16) Section 811 Project Rental Assistance Program

We agree with TAAHP's recommendations on this item.

Subchapter D

10.302(e)(1)(C) Acquisition from Seller without current Title

We agree with Oryx Compliance, LLC's comment on this section.

10.302(e)(9) Reserves

New language has been added to the 5th sentence of this section, and we recommend the following changes.

> In no instance at initial underwriting will total reserves exceed twelve (12) months of stabilized operating expenses plus debt service (and only for USDA or HUD financed rehabilitation transactions the initial deposits to replacement reserves, initial deposits to required voucher reserves and transferred replacement reserves ~~for USDA or HUD financed rehabilitation transactions~~).

Subchapter G

10.901(5) Third Party Underwriting Fee

The third party underwriter language has been removed from 10.201(5), so this fee is no longer applicable and should be removed.

10.901(12) Extension Fees

Construction Status Reports should not need to be extended. We recommend removing this reference from the Extension Fee section.

(74) Alyssa Carpenter

October 10, 2016

Sharon Gamble
TDHCA
PO Box 13941
Austin, TX 78711

RE: 2017 Draft TDHCA Rules and QAP Comments

Dear Ms. Gamble:

Thank you for the opportunity to provide comment on the 2017 TDHCA Draft MF Rules and QAP. Please consider the following comments.

10.101 Undesirable Site Features

The proposed language states the following:
The distances identified in subparagraphs (A) -(J) of this paragraph are intended primarily to address sensory concerns such as noise or smell, social factors making it inappropriate to locate residential housing in proximity to certain businesses.

If this is the case, then there should be an avenue for the applicant to prove existing mitigation or provide mitigation of any sensory concerns for a site that would otherwise be ineligible within such distances. For example, a site located 1.99 miles from an oil refinery is extremely unlikely to have any sensory noise or smell factors that would render it undesirable and ineligible.

This section further states the following:
The minimum distances noted assume that the land between the proposed Development Site and the particular undesirable feature has no significant intervening barriers or obstacles such as waterways or bodies of water, major high speed roads, park land, or walls, such as noise suppression walls adjacent to railways or high-ways. Where there is a local ordinance that regulates the proximity of such undesirable feature to a multifamily development that differs from the minimum distances noted below, documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application.

If there are significant intervening barriers between a site and an undesirable feature, what is the process for submission and proof that those barriers provide mitigation of any sensory concerns? Are these board determinations that must be submitted at a certain time in the application process?

11.9 Opportunity Index

The proposed rule states the following with regard to qualifying census tracts:
The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile, without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. and, (1 point)

“Highway” is used here; however, per Merriam Webster, a “highway” is defined as a “public way” and could therefore refer to any local street. Additionally, Wikipedia states that “A highway is any public road or other public way on land. It is used for major roads, but also includes other

public roads and public tracks: It is *not* an equivalent term to controlled-access highway, or a translation for *autobahn*, *autoroute*, etc."

As written, "highway" could be defined as any public way, which would not make sense considering nearly all census tracts have at least one boundary that is public street of some size. I would assume that staff meant for this item to refer to a significant road like a major high speed thoroughfare with some specified number of lanes or speed limit or a controlled access highway like a freeway or toll road with exits.

I propose that "highway" be changed to "controlled access highway" as this is more likely to create "non-contiguous" areas on either side.

11.9 Educational Quality

As written, Supportive Housing development are eligible for the 5 point option, 2 out of 3 points for the 3 point option, and eligible for the 1 point option as well as any of the additional four 1-point additions. This is a departure from the 2016 rules and also contradicts the scoring matrix table the was published in the board book that states "Supportive Housing can score up to two points." I am assuming this is an oversight and this language should be revised to be consistent with staff's intent.

11.9 Underserved Area

Subsections C, D, and E have inconsistent language with regard to whether there is a development in the census tract that is currently active. Please make this language consistent across all subsections to consider only developments that are subject to an active tax credit LURA and currently being monitored by TDHCA.

11.9 Urban Core

It was my understanding from staff that the Urban Core scoring item was added to the QAP as a way to "balance out" the Education Quality scoring item between suburban areas with higher performing schools and urban areas with lower performing schools. If staff proposes the deletion of the Educational Quality scoring item or the relocation of the scoring item such that it is not a standalone point item, then deletion or similar relocation of the Urban Core scoring item should also be considered.

Regards,

Alyssa Carpenter

(77) Texas Department of Transportation

(77)

Texas Department of Transportation

600 WEST INTERSTATE 2, PHARR, TEXAS 78577-1717 | 956.702.6100 | WWW.TXDOT.GOV

September 9, 2016

Ms. Sharon Gamble
9% Competitive Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

Re: Railroad Buffer Requirements

Dear Ms. Gamble:

As District Engineer for the Texas Department of Transportation – Pharr District, I am writing to inform the Texas Department of Housing and Community Affairs that the Department of Transportation does not regulate development nor does it have any separation requirements from railroads.

Please feel free to contact our office at (956) 702-6100 if you have any questions or require additional information concerning this matter.

Sincerely,

Toribio Garza, Jr., P.E.
Pharr District Engineer
Texas Department of Transportation

(78) Coats Rose

(78)

COATS | ROSE

A PROFESSIONAL CORPORATION

BARRY PALMER
DIRECTOR

BPALMER@COATSROSE.COM
DIRECT: (713) 653-7395
FAX: (713) 890-3944

October 12, 2016

Via Email: Sharon.gamble@tdhca.state.tx.us
Ms. Sharon Gamble
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

Re: Public Comment - 10 TAC, Chapter 10, Subchapter B

Dear Ms. Gamble,

This letter serves to highlight my concerns regarding the proposed changes to Section 10.101 of 10 Texas Administrative Code, Chapter 10, Subchapter B, currently under consideration by the Texas Department of Housing and Community Affairs (the "TDHCA"). The language in question impedes the redevelopment of projects utilizing 4% non-competitive Low-Income Housing Tax Credits (LIHTCs) developed in underserved neighborhoods, by identifying these neighborhoods as undesirable based on criteria that is too subjective in its assessment and too broad in its enactment, and consequently should be struck or altered in the rule's final version.

Section 10.101 addresses site and development requirements and restrictions that apply to developer's seeking multifamily funding or assistance from the TDHCA. Under the new rules, TDHCA has the option of classifying a development site as ineligible for assistance, depending on the location and character of the site. Classification as an Undesirable Neighborhood under Section 10.101(a)(3) increases the likelihood of a site being found ineligible. Under 10.101(a)(3), the presence of any of the criteria listed in Section 10.101(a)(4) triggers a suitability review of a development site:

(i) the site is located in a census tract that has a poverty rate above 30%;

(ii) the site is located in, or within 1,000 feet of, a census tract in an urban area with a Part I violent crime rate of greater than 18 per 1,000 persons;

(iii) the site is located within 1,000 feet of multiple vacant structures that have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned; and

(iv) the site is located within the attendance zone of an elementary school, a middle school, or a high school that does not have a Met Standard rating by the Texas Education Agency.

First, TDHCA requires that a site meeting any of these characteristics must be identified in a developer's tax credit application, with termination of its award the consequence of failing to comply. Second, the presence of even one of the characteristics listed above will prompt a staff-initiated assessment of the site for suitability. Should the staff find that too many characteristics are present and mitigation efforts insufficient, TDHCA can recommend the site as non-eligible to the TDHCA Board.

As written, the undesirable neighborhood characteristics are too subjective as evaluation criteria, overly broad in their reach, and unreasonable in their requirements. The first issues arises from Subsection (iii)'s use of a common standard or frame work for defining blight – simply put, it is ambiguous. In major cities, the appearance of a vacant, derelict, or overgrown, building may not be indicative of a vacant property, high crime area, or undesirable location for urban redevelopment. Dwellings that often appear derelict or overgrown may in fact be occupied by a living tenant. This is especially true of areas with high concentrations of elderly persons living without assistance who may be unable to complete frequent maintenance of their yard or dwelling.

In addition, the patch work nature of vacant areas in and around major urban centers coupled with Subsection (i)'s 30% poverty rate characteristic, Subsection (ii)'s low threshold for violent crime, and Subsection (iv)'s Met Standard Rating requirement for local schools, the new rule is so broad as to redline huge swaths of major cities from any re-development, arguably in some of the very areas that need to see an expansion of housing options. A quick review of Houston crime statics examining crime rates in police beats comprising the neighborhoods of the inner loop reveal the striking breadth of TDHCA's rule: in January of 2016 alone, most of the beats experienced over 100 incidents classified as Part I crime;[1] to wit, nearly the entirety of the inner loop of Houston would be classified as an undesirable neighborhood. Houston cannot be the only large city in Texas with that level of urban crime. As with crime so too with education; the odds of a development site being in close proximity to a school that fails to receive a Met Standard rating, as required under Subsection (iv), is high within dense urban areas of major Texas cities. In a 2015 article the Houston Chronicle highlighted that nearly 40% of campuses in the Houston Independent School District were characterized as poor performers.[2] Disconcertingly, Dallas ISD had the same percentage of underperforming schools, which along with Houston ISD, makes up the two largest school districts in Texas.[3] Even more detrimental, Subsection (iv) eliminates as a mitigating factor, schools sharing attendance zones with the failing school, that are currently passing, but have not received a Met Standard for three consecutive years and have failed by one point in the most recent year.

[1] http://www.houstontx.gov/police/cs/beatpages/beat_stats.htm
[2] http://www.houstonchronicle.com/news/education/article/More-area-schools-land-on-state-s-most-troubled-6700914.php
[3] *Id.*

Ultimately, the majority of development sites located in major urban areas will be characterized as undesirable neighborhoods by at least one, and most likely multiple criteria under TDHCA's new rules. Ambiguity in the definition of urban blight has the potential to lead to irregular application of the criteria leaving many neighborhoods characterized as undesirable for development purposes, when they should not be. Finally, TDHCA's thresholds for meeting the crime and Met Standard characterizations are woefully low, failing to reflect the realities present in urban centers across the county at large, and as a consequence, are so broad they extend the undesirable neighborhood characterization to huge portions of the major cities in Texas. The TDHCA should eliminate the concept of undesirable neighborhood characterization and return to the older rule formulations, or at a minimum, alter the rule's language to allow for redevelopment to occur in the urban core of the State's largest cities.

Very truly yours,

Barry Palmer

(79) Matt Sigler

From: Matt Sigler
To: Teresa Morales
Subject: WaterSense and Kitchen Faucets
Date: Wednesday, October 12, 2016 2:02:54 PM

Teresa-

I got your voicemail. In regards to the proposed rulemaking below, PMI would like to point out that there is not a EPA WaterSense Specification for kitchen faucets. If I can be of further assistance, please do not hesitate to contact me.

Title:
Site and Development Requirements and Restrictions

Agency:
Community Development

Summary:
The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 10, Subchapter B, s.10.101, concerning Site and Development Requirements and Restrictions. The purpose of the new section is to provide guidance relating to site and development requirements and restrictions for all development sites for which applications are submitted in applying for multifamily funding through the Department. The proposed repeal of existing s.10.101 is published concurrently with this rulemaking.

Summary Comments:
(xxxii) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Points may be selected from only one of four categories: Limited Green Amenities, Enterprise Green Communities, Leadership in Energy and Environmental Design (LEED), and ICC 700 National Green Building Standard. A Development may qualify for no more than four (4) points total under this clause. (I) Limited Green Amenities (2 points). The items listed in subclauses (I) - (IV) of this clause constitute the minimum requirements for demonstrating green building of multifamily Developments. Six (6) of the twenty-two (22) items listed under items (-a-) - (-v-) of this subclause must be met in order to qualify for the maximum number of two (2) points under this subclause; (-a-) a rain water harvesting/collection system and/or locally approved greywater collection system; (-b-) newly installed native trees and plants that minimize irrigation requirements and are appropriate to the Development Site's soil and microclimate to allow for shading in the summer and heat gain in the winter. For Rehabilitation Developments this would be applicable to new landscaping planned as part of the scope of work; (-c-) water-conserving fixtures that meet the EPA's WaterSense Label. Such fixtures must include low-flow or high efficiency toilets, bathroom lavatory faucets, showerheads, and kitchen faucets. Rehabilitation Developments may install WaterSense faucet aerators (minimum of 30% more efficient) instead of replacing the entire faucets;

Regards,

Matt Sigler
Plumbing Manufacturers International
Technical Director
847-217-7212
Email: msigler@safeplumbing.org
www.safeplumbing.org

Are you signed up yet? Registration is now open - don't miss out! PMI 2016 Conference October 24-27, 2016 at The Westin O'Hare in Rosemont, IL.

#Didyouknow? In 1991, @EPA put Lead Copper Rule into effect; and 1st set of lead-free plumbing products introduced http://bit.ly/29r2fJg

Safe, responsible plumbing. Always.

Mission Statement

(80) Liberty Multifamily

October 13, 2016

Texas Department of Housing and Community Affairs
Attn: Sharon Gamble
P.O. Box 13941
Austin, Texas 78711-3941
Email: sharon.gamble@tdhca.state.tx.us

RE: New Proposed Rule at 10 Texas Administrative Code ("TAC") Chapter 10 Uniform Multifamily Rules, Subchapter B, Site and Development Requirements and Restrictions §10.101(b)(2)

We propose a change to the QAP regarding Development Size Limitations. This request is specifically for Tax Exempt Bond Developments.

Current Language

§10.101(b)(2) Development Size Limitations. The minimum Development size is 16 Units. New Construction or Adaptive Reuse Developments in Rural Areas are limited to a maximum of 80 Units. Other Developments do not have a limitation as to the maximum number of Units.

Proposed Language

§10.101(b)(2) Development Size Limitations. The minimum Development size is 16 Units. New Construction or Adaptive Reuse Developments in Rural Areas are limited to a maximum of 80. *New Construction Tax Exempt Bond Developments may exceed 80 units if the Market Analysis clearly documents that there is significant demand for additional Units.* Other Developments do not have a limitation as to the maximum number of Units.

LIBERTY MULTIFAMILY

Background

In prior years, the QAP allowed for developments in Rural areas that exceeded 80 units. For example, the 2004 QAP contained the following language:

§50.6 (e)(2) Rural Developments involving new construction will be limited to 76 Units unless the Market Analysis clearly documents that larger developments are consistent with the comparables in the community and that there is significant demand for additional Units. Rural Developments involving only rehabilitation do not have a size limitation

Rural Areas exist in major MSAs such as Dallas, Austin, Houston, San Antonio, El Paso and Mc Allen that have significant demand. The market study is the most reasonable method to determine the number of units demand in the market.

Developments have been placed in service in Rural Area that are larger than 80 units. There are 33 properties that have been developed in Places designated Rural. Exhibit A lists the developments that have been placed in service in Places designated Rural.

Thank you for your consideration. We look forward to furthering the development of modern, quality and energy efficient housing for families across Texas.

Respectfully,

Richard Ashton, HCCP, MRP

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Inventory of Developments Placed in Service or Under Construction 1990-2014

TDHCA #	Program Type	Year	Board Approval	Development Name	Project Address	Project City	Project County	Zip Code	LIHTC Amt Awarded	Total Units	LIHTC Units	Population Served	Apt. Phone #	Rural
01404	4% HTC	2001	03/27/01	Silverton Village	3700 FM 85	Ennis	Ellis	75119	$871,086	250	250	General	(888) 523-9383	Rural
94184	4%HTC	2012	09/06/12	Ridgewood West Apartments	2830 Lake Road	Huntsville	Walker	77340	$1,427,558	232	232	General	(972) 769-2002	Rural
96134	9% HTC	1996	1996	Oaks Apartments (FKA Sabine Oaks)	111 Pine Ave.	Orange	Orange	77630	$897,897	200	200	General	(713) 481-1200	Rural
02424	4% HTC	2002	09/12/02	Spring Hill Apartments	3413 E. Main	Nacogdoches	Nacogdoches	75963	$704,393	200	200	General	(936) 699-2960	Rural
07604	4% HTC	2007	04/12/07	Terraces at Cibolo	518 Fabra Street	Boerne	Kendall	78006	$588,451	150	150	Elderly	(830) 257-5323	Rural
05626	4% HTC	2005	03/20/06	Bella Vista Apartments	1000 Bella Vista Drive	Gainesville	Cooke	76240	$518,676	144	144	General	214-750-8845	Rural
04402	4% HTC	2004	04/08/04	Blue Water Garden Apartments	612 Irving	Hereford	Deaf Smith	79045	$228,973	132	131	General	(512) 494-8200	Rural
97027	9% HTC	1997	1997	Courts Of Las Palomas Apartments	600 General Cavazos Blvd.	Kingsville	Kleberg	78363	$514,980	128	128	General	(361) 516-0114	Rural
04410	4% HTC	2004	03/12/04	The Vista Apartments	1700 Mustang Dr.	Marble Falls	Burnet	78654	$373,889	124	124	General	(830) 693-4521	Rural
02043	9% HTC	2002	07/29/02	King's Crossing	1505 E. Corral Avenue	Kingsville	Kleberg	78363	$777,472	120	120	General	(713) 522-4141	Rural
00001T	4% HTC	2000	2000	Grace Townhomes	1212 Grace Cir.	Ennis	Ellis	75119	$256,508	112	112	General	(972) 878-2040	Rural
00038	9% HTC	2000	2000	Pemberton Place	1509 Martin Luther King, Jr. Blvd	Marshall	Harrison	75670	$912,658	112	103	General	(409) 853-3040	Rural
94052	9% HTC	1994	1994	Sea Greens	202 Seashell Drive	Port Lavaca	Calhoun	77979	$548,207	110	109	General	(361) 552-6508	Rural
16065	9%HTC	2016	07/28/16	Northside Manor Apartments	1741/1745 E. Henderson Road	Angleton	Brazoria	77515	$782,291	104	104	General		Rural
01461	4% HTC	2001	04/11/02	Park Meadow Apartments	140 Calk Lane	Boerne	Kendall	78006	$226,166	100	100	Elderly	(830) 248-1122	Rural
13112	9%HTC	2013	07/25/13	Liberty Trails Townhomes	2225 Ranch Road 1869	Liberty Hill	Williamson	78642	$1,090,000	100	75	General	(407) 772-0200	Rural
04118	9% HTC	2004	08/19/04	Churchill at Commerce	731 Culver	Commerce	Hunt	75428	$727,212	100	90	General	(972) 550-7800	Rural
93089	9% HTC	1993	1993	Rio Grande Apartments	2173 Del Rio Blvd.	Eagle Pass	Maverick	78852	$122,300	100	100	General	(830) 773-8385	Rural
01108	9% HTC	2001	07/31/01	Logan's Pointe	101 Logans Pointe Drive	Mount Vernon	Franklin	75457	$614,176	100	100	General	(903) 537-3991	Rural
13232	9%HTC	2013	07/25/13	Pine Lake Estates	2012 Durst Street	Nacogdoches	Nacogdoches	75964	$714,418	100	100	Elderly	(512) 306-9206	Rural
99102	9% HTC	1999	1999	Stonebriar Village of Plainview	1500 Yonkers St.	Plainview	Hale	79072	$342,681	100	90	General	(806) 293-4960	Rural
15035	9% HTC	2015	07/30/15	Oaks of Fairview	160 Gibson Road	Athens	Henderson	75751	$540,696	98	98	General	(281) 419-6114	Rural
16175	9%HTC	2016	07/28/16	Crosby Meadows Apartments	304 Krenek	Crosby	Harris	77532	$649,865	97	96	General	(281) 689-2030	Rural
70090	9% HTC	1990	1990	Pam Apartments	1200 N. Wells	Pampa	Gray	79605	$119,223	96	96	General	(806) 669-2594	Rural
02112	9% HTC	2002	07/29/02	Cardinal Village	1630 Cardinal St.	Nacogdoches	Nacogdoches	75961	$762,000	96	95	General	(936) 568-9000	Rural
12365	9%HTC	2012	07/26/12	Stepping Stone & Taylor Square Apartments	2501 Davis St./1005 Cottonbowl	Taylor	Williamson	76574	$889,626	96	96	General	(512) 756-6809	Rural
13089	9% HTC	2013	07/25/13	Pinewood Park	120 Kirksey Drive	Lufkin	Angelina	75904	$860,855	94	94	General	(409) 724-0020	Rural
15419	4%HTC	2015	11/12/15	Woodside Village	2020 Martin Luther King Jr Blvd	Palestine	Anderson	75801	$292,329	92	92	General	(801) 244-6658	Rural
97084	9% HTC	1997	1997	Eagles Ridge Terrace	1500 S. State St.	Decatur	Wise	76234	$66,855	90	89	General	(940) 627-5438	Rural
15022	9%HTC	2015	07/30/15	Oaks of Westview	1201 West College	Canton	Van Zandt	75103	$597,478	88	88	General	(281) 419-6114	Rural
07199	9% HTC	2007	07/30/07	Kingsville LULAC Manor Apartments	1220 N. 17th	Kingsville	Kleberg	78363	$491,514	88	88	General	(210) 821-4308	Rural
01072	9% HTC	2001	07/31/01	TownePark in Fredericksburg	1125 S. Adams	Fredericksburg	Gillespie	78624	$302,752	88	88	Elderly	(830) 693-4521	Rural
98164	9% HTC	1998	1998	Timbercreek Village	1908 W. 6th St.	Rusk	Cherokee	75785	$75,227	84	84	General	(903) 683-5116	Rural

(81) Jason Lain

From: Jason Lain
To: Sharon Gamble
Subject: Undesirable Site Features in Section 10.101(a)(2)(E)
Date: Wednesday, October 12, 2016 9:02:29 PM

Sharon, it has been brought to our attention that 2017 TDHCA Rules on the QAP have changed concerning Undesirable Site Features in Section 10.101(a)(2)(E). The old rules state that a site must be 100 feet away from a railroad, but now have increased to 500. We feel that this is greatly reduces the availability of viable sites and kindly request that this rule remain 100 feet.

Thank you so much for all of your hard work on getting this year's QAP together.

Keep the faith,
Jason G. Lain, MDiv, MA, Broker
LS Real Estate Services, President & CEO
NfinitE Ministries, Founder
325.660.7232 Mobile
972.836.7232 Central

6c

BOARD ACTION REQUEST

REAL ESTATE ANALYSIS DIVISION

NOVEMBER 10, 2016

Presentation, Discussion, and Possible Action on an order adopting the repeal of 10 TAC Chapter 10, Subchapter D, concerning Underwriting and Loan Policy, and an order adopting new 10 TAC Chapter 10, Subchapter D, concerning Underwriting and Loan Policy and directing their publication in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, pursuant to Chapter 2306 of the Texas Government Code, the Department is provided the authority to adopt rules governing the administration of the Department and its programs and

WHEREAS, at the Board meeting of September 8, 2016, the proposed repeal of 10 TAC Chapter 10, Subchapter D, concerning Underwriting and Loan Policy and proposed new 10 TAC, Chapter 10, Subchapter D, concerning Underwriting and Loan Policy, were approved for publication in the *Texas Register* for public comment, and the public comment period has ended

NOW, therefore, it is hereby

RESOLVED, that the referenced repeal and new rules are hereby adopted and the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the adoption of the repeal of 10 TAC Chapter 10, Subchapter D, concerning Underwriting and Loan Policy, and the adoption of new 10 TAC Chapter 10, Subchapter D concerning Underwriting and Loan Policy, in the forms presented to this meeting, to be published in the *Texas Register*, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of subchapter specific preambles.

BACKGROUND

On September 8, 2016, the Department's Governing Board approved the proposed repeal and new Underwriting and Loan Policy rules for publication in the *Texas Register* and public comment.

On September 23, 2016, the repeal and proposed 2016 rules were published in the *Texas Register*. Upon publication, an official public comment period commenced on September 23, 2016, and ended on October 14, 2016.

In addition to publishing the proposed new rule in the *Texas Register*, a copy was made available on the Department's web site. Public comment on the proposed rule was received at the Board meeting of October 13, 2016. In addition, fifteen commenters provided written comments regarding the proposed new rule, and their comments are addressed in the Reasoned Response.

In keeping with the requirements of the Administrative Procedures Act staff has reviewed the comments received and is providing a reasoned response to each comment herein. As part of each response, staff also provides a recommendation as to accepting the comment or not accepting the comment.

Attachment A: Preamble, Reasoned Response and Repeal of 10 TAC, Chapter 10, Subchapter D, concerning 2016 Underwriting and Loan Policy.

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 10, Subchapter D, §§10.301 – 10.307 concerning 2016 Underwriting and Loan Policy without changes to the proposed text as published in the September 23, 2016, issue of the *Texas Register* (41 TexReg 7333).

REASONED JUSTIFICATION. This repeal was published concurrently with the proposed adoption of the new 10 TAC Chapter 10, Subchapter D, §§10.301 – 10.306 concerning 2017 Underwriting and Loan Policy. The purpose of the repeal is to allow for the rewrite of portions of the rule.

The Department accepted public comments between September 23, 2016, and October 14, 2016. Comments regarding the repeal were accepted in writing via fax and email. No comments were received concerning the proposed repeal.

The Board approved the final order adopting the repeal on November 10, 2016.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Specifically Texas Government Code §2306.141 gives the Department the authority to promulgate rules governing the administration of its housing programs. The proposed repeal affects no other code, article or statute.

§10.301. General Provisions.
§10.302. Underwriting Rules and Guidelines.
§10.303. Market Analysis Rules and Guidelines.
§10.304. Appraisal Rules and Guidelines.
§10.305. Environmental Site Assessment Rules and Guidelines.
§10.306. Property Condition Assessment Guidelines.
§10.307. Direct Loan Requirements.

Attachment B: Preamble, Reasoned Response and New 10 TAC, Chapter 10, Uniform Multifamily Rules, Subchapter D, §§10.301 – 10.306, Underwriting and Loan Policy

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 10, Subchapter D, §§10.301 – 10.306, concerning Underwriting and Loan Policy, with changes to the proposed text as published in the September 23, 2016, issue of the *Texas Register* (41 TexReg 7333).

REASONED JUSTIFICATION FOR THE RULE: The proposed new 10 TAC Chapter 10, Subchapter D, §§10.301 – 10.306, concerning Underwriting and Loan Policy was published concurrently with the proposed repeal of the same section. The new rule clarifies language that was potentially causing uncertainty in the rule and in some instances will require additional supportive information to ensure accurate processing of underwriting activities and communicate the underwriting analysis and recommendations for funding or award by the Department more effectively.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS: The Department accepted public comments between September 23, 2016 and October 14, 2016. Comments regarding new sections and the proposed staff changes were accepted at a public hearing and in writing. Written comments were received from: (1) Doak Brown, Brownstone Affordable Housing, Ltd.; (2) Leslie Holleman, Leslie Holleman & Associates, Inc.; (3) Apolonio Flores, Flores Residential, L.C.; (4) Texas Coalition of Affordable Developers (TX-CAD); (5) Marque Real Estate Consultants; (6) Evon Harris, Evolie Housing Partners; (7) Dominium; (8) Barry J. Palmer, Coats | Rose; (9) Texas Affiliation of Affordable Housing Providers; (10) Terri Anderson, Anderson Development & Construction, LLC; (11) Bob Coe, Affordable Housing Analysts; (12) Darrell G. Jack, Apartment MarketData, (13) Naomi Byrne, Fort Worth Housing Solutions; (14) Blake Rue, Oryx Group; and, (15) Chris Akbari, ITEX Group.

1. §10.302(d)(4)(D) Acceptable Debt Coverage Ratio Range ("DCR") (7)

COMMENT SUMMARY: Commenter (7) proposes increasing the maximum DCR for tax-exempt bond deals that are 80% or greater project based Section 8 because lenders and investors may underwrite more conservatively and require a higher DCR (greater than 1.35 or even 1.50). Commenter (7) also states this change will allow flexibility to make it easier to preserve HUD-assisted developments

STAFF RESPONSE:

Staff disagrees with commenter's suggested change primarily because it would be inconsistent with the evaluation required under IRC 42(m)(2). Also, the rules already allow for exemptions for additional flexibility in deals that are 50% or greater project based Section 8.

The acceptable debt coverage ratio range serves two purposes. First, the minimum 1.15 times DCR serves to cap the amount of debt on a property to minimize default risk. TDHCA's 1.15 times DCR minimum requirement is lower than the industry standard of 1.20 to 1.25 times providing applicants with more flexibility in structuring their transaction. Lenders and syndicators are going to apply their own credit standards and underwriting guidelines that will certainly be different than the Department's guidelines.

Second, the maximum 1.35 times DCR serves to ensure that tax credits are being efficiently allocated (serves as a sizing tool). This tool addresses the requirement in IRC 42(m)(2)(A) that "The housing credit dollar amount allocated to a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period." A DCR greater than 1.35 times indicates that a property can support additional debt and therefore require less tax credits. Lenders and syndicators do not have a maximum DCR as their interest is only the default risk**.**

At initial underwriting, the capital structure assumptions, including the pro forma net operating income, are merely preliminary. Each lender and syndicator underwrites the transaction based on their own guidelines and risk tolerances. Regardless, all financing participants including TDHCA recognize that there will be a re-underwriting of the transaction at some point in the future based on actual cost and operating information and not on the up front assumptions.

In addition, §10.302(i)(6)(B) allows for exceptions to expense ratio, pro forma rents, and long-term feasibility for Developments that will receive Section 8 vouchers for at least 50% of the Units. These exemptions allow for flexibility in the operating assumptions for Section 8 developments while not inflating eligible basis.

Staff does not recommend any changes to the proposed rule in this section.

2. §10.302(d)(4)(D)(i)(I) Acceptable Debt Coverage Ratio Range (10)

COMMENT SUMMARY: Commenter (10) suggests that REA should not decrease the Direct Loan below an amount that would require more than 50% of the developer fee be deferred, but

instead adjust the interest rate and amortization term of the Direct Loan to achieve a 1.15 DCR minimum. Commenter suggests that 100% deferred developer fee makes a transaction more risky.

STAFF RESPONSE:

Staff agrees that limiting the amount of developer fee that can be deferred warrants discussion, but the eventual sizing of the deferred fee amount is under control of the Applicant and financing partners. Limiting the fee could potentially increase the tax credit award to an amount greater than is needed for financial feasibility. Regardless, the commenter's proposed change is too significant to address at this time as it is not a natural outgrowth of the proposed changes. Additionally, because the comment is related to the sizing and terms of a Direct Loan, commenter's suggestions have been forwarded to the Multifamily Loan Program. The Multifamily Direct Loan Rule 10 TAC Chapter 13 is out for public comment from October 28, 2016 to November 28, 2016.

Staff does not recommend any changes to the proposed rule in this section.

3. §10.302(e)(1)(C) Acquisition from Seller without current Title (1), (3), (5), (14)

COMMENT SUMMARY:

Commenter (14) opposes the proposed rule stating: (1) that it would increase development site costs; (2) undermine TDHCA policies; (3) generate potential legislative and legal risk for TDHCA; (4) that it takes a long time to close on land in tax credit deals and many contracts never close if tax credits are not awarded; (5) that land sellers dislike long term contracts and often require a premium purchase price for a long term contract; and, (6) that an Intermediary Purchaser allows lower land costs because the contract term is shorter and therefore the Seller does not charge a premium purchase price.

Commenter (14) also states, "By adopting the Proposed Acquisition Language TDHCA would undermine its own policies by limiting locations where affordable housing could be developed. Intermediary Purchasers, through our flexibility to close on development sites within typical short term timeframes, expand the potential locations of affordable housing in line with TDHCA policies and thereby promote TDHCAs goals and mission."

Lastly, Commenter (14) states that the proposed rule is an "infringement on legally recognized private property rights." The example provided, "Let's look at a scenario where the adoption of the Proposed Acquisition Language could ultimately lead. Landowner A owns legal title to a development site. As previously mentioned legal title, like equitable title, is a private property right recognized by the state of Texas. In February of 20xx, a developer, who has secured an award of tax credits, requests a contract extension from Landowner A. Landowner A, who has no interaction, affiliation, obligation or duty to TDHCA or the developer, over the past 12 months has become educated and realizes his property has significantly increased in value now that an award of tax credits has been secured by the developer. Landowner A now doubles or even triples his required price to the maximum amount he believes a developer could pay. Will TDHCA now attempt to restrict the price for which Landowner A can sell his property to the developer?"

Commenter (1) and (3) state agreement with Commenter (14).

Commenter (5) suggests additional language, "Something to the effect that if the applicant is not purchasing the land from the current title holder (most don't) then the applicant must require in the purchase and sale agreement with the seller that a copy of the closing statement or other evidence of amount paid to the title holder will be provided to the applicant and be submitted at 10% test. Most control the land then assign control via the buy sell agreement to the LP. So they won't care. Those that are flipping the land will care and make noise. The process may impede the intent on this one."

STAFF RESPONSE:

Pursuant to IRC §42(m)(2), the Department is legally bound to allocate tax credits in an amount no more than necessary to make a Development financially feasible. Part of that determination requires the Department to determine the "reasonableness of the developmental and operational costs of the project." As land cost is part of the total development costs, the Department is obligated to evaluate its reasonableness.

§2306.6701 requires the Department to administer the tax credit program to "maximize the number of suitable, affordable residential rental units added to the state's housing supply." The impact of providing more credits than needed on one transaction affects the amount of tax credits available for other applications. Over sourcing on one application results in the Department awarding fewer applications generating fewer affordable units which is inconsistent with statute.

Although the proposed language would not restrict or limit the purchase price being paid by the Applicant to the intermediary, or the price being paid by the intermediary to the current title holder, nor does it impact or mandate contractual terms between private parties, staff believes, based on comment that the proposed rule warrants further discussion with stakeholders to ensure it is effective in optimizing the results it is intended to achieve and is consistent with statute.

With regard to Commenter (5), the Department requires a title policy showing the current owner. If the current owner is not the seller pursuant to the Application, then the intermediary contract is to be provided during the application review process. Therefore, the information suggested at 10% Test is not necessary.

Therefore, staff recommends removal of the proposed language.

~~(C) **Acquisition from Seller without current Title**. In cases where as of the first day of the Application Acceptance Period the seller does not hold title to the property, the acquisition price will be limited to the acquisition price between the seller and the current title holder unless the seller can document land improvement costs or work to be performed by the seller as obligated in the site control documents. If the seller is acquiring more land from the current title holder than will be conveyed to the Applicant [whether under a single or multiple purchase contract(s)], the value ascribed to the proposed Development Site will be determined according to §10.302(e)(1)(A).~~

4. §10.302(e)(7) Developer Fee (10)

COMMENT SUMMARY: Commenter (10) states the maximum allowable deferred developer fee should be 50% before an application is deemed infeasible.

STAFF RESPONSE:

Staff believes this comment is better addressed in §10.302(c)(2) Gap Method which states, "This method evaluates the amount of funds needed to fill the gap created by Total Housing Development Cost less total non Department sourced funds or Housing Tax Credits. In making this determination, the Underwriter resizes any anticipated deferred developer fee downward (but not less than zero) before reducing the amount of Department funds or Housing Tax Credits."

Staff agrees that limiting the amount of developer fee that can be deferred warrants discussion, but the commenter's proposed change is too significant to address at this time, as it is not a natural outgrowth of the proposed changes.

Staff does not recommend any changes to the proposed rule in this section.

5. §10.302(e)(7)(C)(i) Developer Fee (15)

COMMENT SUMMARY: Commenter (15) requests an increase of developer fees for RAD transactions. Commenter (15) proposes the following addition to the rule to allow RAD transactions to become feasible in areas where the rents are lower:

> "(i) the allocation of eligible Developer fee in calculating Rehabilitation/New Construction Housing Tax Credits will not exceed 15 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing fifty (50) Units or more and 20 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing either HUD Rental Assistance Demonstration Program or have forty-nine (49) Units or less;"

STAFF RESPONSE:

Staff evaluated the complexity of converting public housing under the HUD Rental Assistance Demonstration ("RAD") program. The Real Estate Analysis division has underwritten RAD transactions and understands the complexity of combining RAD assistance with tax exempt bond transactions. The RAD program is a HUD program in which guidance and program requirements are changing and evolving. Staff believes that the overhead and resources required of housing authorities to participate in the program on tax exempt bond transactions, due to their inherent complexity, represent additional Developer Services above those already defined in rule. For these reasons, the increase in developer fee was added in 2016.

Comments for the 2016 rules suggested that the developer fee calculation also be based on the building acquisition basis. The comments did not provide evidence of a relationship between the value of a building and Developer Services.

Staff does not recommend any changes to the proposed rule in this section.

6. §10.302(e)(7)(C)(ii) Developer Fee (15), (13)

COMMENT SUMMARY: Commenter (15) requests that the Department allow for developer fee on Identity of Interest acquisition transactions that are utilizing Project-Based Section 8 Rental Assistance or HUD Rental Assistance Demonstration Program. Commenter (15) proposes the following addition to the rule:

> "(ii) no Developer fee attributable to an identity of interest acquisition of the Development will be included unless the project is utilizing Project-based Section 8 Rental Assistance or the HUD Rental Assistance Demonstration Program for at least 50 percent of the Units. "

Commenter (13) suggests allowing a 15% developer fee on acquisition costs in 4% tax credit transactions if financed through the RAD Program as this would reflect the work that is required in seeking the necessary HUD approval, such as for demolition/disposition and RAD. Commenter (13) also states that the 4% program is not competitive, so this change would not harm other developments' feasibility.

STAFF RESPONSE:

The requested change would provide additional tax credits on the eligible basis associated with building value. Building value is determined by related parties.

Staff believes that the overhead and resources required of housing authorities to participate in the program on tax exempt bond transactions, due to the inherent complexity of bond transactions, represent additional Developer Services above those already defined in rule, however there is no demonstrated relationship between the value of a building and Developer Services. Based on these same comments in the development of 2016 rules, the overall fee for RAD/Bond transactions was increased in the 2016 rules to 20% for the increase in Developer Services and not for building value.

Staff does not recommend any changes to the proposed rule in this section.

7. §10.302(e)(9) Reserves (1), (2), (3), (6)

COMMENT SUMMARY: Commenters (1), (2), (3), and (6) all suggest the same change to the proposed rule to include initial deposits to required voucher reserves in reserve calculation:

> "(9) In no instance at initial underwriting will total reserves exceed twelve (12) months of stabilized operating expenses plus debt service (and only for USDA or HUD financed rehabilitation transactions the initial deposits to replacement reserves, initial deposits to required voucher reserves and transferred replacement reserves ~~for USDA or HUD financed rehabilitation transactions~~)."

STAFF RESPONSE:

Voucher reserves are generally a lender requirement to provide contingent operating funds should the rental assistance payments by HUD or USDA be decreased or eliminated. Generally the rent provided by the rental assistance is higher than the tax credit or achievable market rents. While staff understands the concern, the reserves can be substantial (as high as $20K per unit in some cases) and the amount is determined on the lender's underwriting to cover their own risk. Staff believes that the entire underwriting assumes that the rental subsidy is in place and the preservation of that subsidy is the rationale for providing tax credits to the application. Staff believes that tax credits should not be sourcing the reserves. While not to be included in staff's underwriting, staff is not limiting the amount of reserves that can be sourced in other ways, subject to the gap methodology.

Staff does not recommend any changes to the proposed rule in this section

8. §10.303 Market Study (7)

COMMENT SUMMARY: Commenter (7) suggests a market study not be required for existing tax credit and Section 8 properties if they are not moving rents more than 5% and have been at least 90% occupied over the past 12 months. Commenter (7) states this is an inefficient use of time and money.

STAFF RESPONSE:

IRC §42(m)(1)(A)(iii) requires a comprehensive market study of the housing needs of low-income individuals in the area to be served by the project is conducted before the credit allocation is made and at the developer's expense by a disinterested party who is approved by the state agency.

Staff does not recommend any changes to the proposed rule in this section

9. §10.303(d)(8)(B)(i)(V) Secondary Market Area and §10.303(d)(9)(B)(i)(V) Primary Market Area (11)

COMMENT SUMMARY: Commenter (11) states that the proposed rule is vague and would like to see a minimum number of employment concentrations required

STAFF RESPONSE:

The general intent of this proposed rule is to show where concentrations of income qualified households and income qualifying employment are located in the Primary Market Area (PMA) and Secondary Market Area (SMA). This information allows staff and the Market Analyst to see where the income qualifying people are living and where they are likely to travel for jobs in relation to the Subject property.

Staff believes this type of analysis will only apply in certain situations and is not necessary for every Market Study, and that it is more suitable to be shown by density maps than in the definition of the PMA and SMA.

Staff recommends the removal of the specific subsections of the proposed rule requiring this information on all transactions and will request information on households and employment concentrations on a case-by-case basis as allowed for in §10.303(e).

The change to the proposed rule is combined with Item 10 and shown below.

10. §10.303(d)(8)(B)(i)(VI) Secondary Market Area and §10.303(d)(9)(B)(i)(VI) Primary Market Area (11)

COMMENT SUMMARY: Commenter (11) states: (1) that the proposed rule will increase the cost of market studies and add nothing useful to the demand analysis; (2) that current scoring is pushing tax credit developments into high opportunity areas which have fewer low/moderate income renter households and therefore will not necessarily be within a one mile radius of the Subject; and, (3) that market analysts will have to run additional demographic reports and demand analysis for the 1-mile radius.

STAFF RESPONSE:

The general intent of this proposed rule evaluates whether the households in the immediate area can afford the Pro Forma Rents. If household incomes in the immediate area are lower than the county median income that the Pro Forma rents are calculated off of, then local households may not be able to afford the Pro Forma Rents. This is very important when Pro Forma rents are close to the breakeven rents as this affects the Development's financial feasibility.

The place/city median income is available on the Census Bureau website and would not require additional demographics or demand analysis calculated by the Market Analyst. It would require additional discussion if the local incomes could not support the Pro Forma Rents.

Staff believes this proposed rule is more relevant to §10.303(d)(9)(B)(i)(VI) regarding the Primary Market Area only and should not be included in reference to the Secondary Market Area.

The proposed language will be removed from §10.303(d)(8)(B)(i)(VI) Secondary Market Area and modified in §10.303(d)(9)(B)(i)(VI) Primary Market Area.

Proposed changes to the staff proposed rule resulting from comment #9 and #10:

§10.303(d)(8)(B)(i)(V) Secondary Market Area

(B) The Market Analyst's definition of the SMA must include:
  (i) a detailed narrative specific to the SMA explaining;
    (I) how the boundaries of the SMA were determined with respect to census tracts chosen and factors for including or excluding certain census tracts in proximity to the Development;
    (II) whether a more logical market area within the SMA exists but is not definable by census tracts and how this subsection of the SMA supports the rationale for the defined SMA, and also explains how the SMA relates to the PMA in terms of its qualitative and quantitative aspects;

(III) what are the specific attributes of the Development's location within the SMA that would draw prospective tenants currently residing in other areas of the SMA to relocate to the Development;

(IV) what are the specific attributes, if known, of the Development itself that would draw prospective tenants currently residing in other areas of the SMA to relocate to the Development; and

~~(V) the household and employment concentrations across the SMA and proximity to the Development;~~

~~(VI) that prospective tenants within one mile of the Development will be able to afford the Pro Forma rent or if not provide further comment on where eligible demand will come from; and~~

(V~~II~~) other housing issues in general, if pertinent.

§10.303(d)(9)(B)(i)(V) Primary Market Area

(B) The Market Analyst's definition of the PMA must include:

(i) a detailed narrative specific to the PMA explaining:

(I) how the boundaries of the PMA were determined with respect to census tracts chosen and factors for including or excluding certain census tracts in proximity to the Development;

(II) whether a more logical market area within the PMA exists but is not definable by census tracts and how this subsection of the PMA supports the rationale for the defined PMA ;

(III) what are the specific attributes of the Development's location within the PMA that would draw prospective tenants currently residing in other areas of the PMA to relocate to the Development;

(IV) what are the specific attributes, if known, of the Development itself that would draw prospective tenants currently residing in other areas of the PMA to relocate to the Development;

~~(V) the household and employment concentrations across the PMA and proximity to the Development;~~

(V~~I~~) ~~that prospective tenants within one mile of the Development~~ the median income (as reported on the Census Bureau website) of the city, town or place where the Subject is located and if this median income will be able to ~~afford~~ support the Pro Forma rent or if not provide further comment on where eligible demand will come from; and

(VI~~I~~) other housing issues in general, if pertinent.

11. §10.303(d)(9)(A)(i) Primary Market Area (12)

COMMENT SUMMARY: Commenter (12) states that the proposed rule is likely to cause the market analyst to have to perform two demand calculations: 1) using the smallest PMA they believe will provide sufficient demand to meet the capture rate threshold, and 2) a larger PMA (likely 100,000 pop.) so that a larger PMA may be considered if the staff's demand number is lower than that calculated by the market analyst. Commenter (12) suggests language be added that would allow the market analyst to submit a modified demand calculation (increasing the population) after the market study deadline if staff determines lower demand on the original PMA.

STAFF RESPONSE:

The proposed change to the rule is meant to clarify that Primary Market Areas (PMAs) should not automatically be pushed to the 100,000 population maximum, but instead reflect the logical area that the Market Analyst believes most of the demand for Subject units will come from. The limit should not be used as a target population.

In most Market Studies, the proposed change will not have any effect, but instead gives Staff the ability to request updated information if the PMA is geographically large, and there is insufficient explanation of why demand will come from the large area. This is especially important when a large PMA produces a very low capture rate.

Staff does not recommend any changes to the proposed rule in this section.

12. §10.303(d)(10)(F) Employment (11)

COMMENT SUMMARY: Commenter (11) states that the proposed rule is vague and he would like to see a minimum number of employment opportunities that must be listed. Commenter (11) also states that getting information on employee income levels is very difficult.

STAFF RESPONSE:

Income qualifying employment opportunities in the Primary Market Area (PMA) are essential to understanding the demand for Subject units. The proposed language requires the Market Analyst to discuss current or planned employment opportunities in the PMA as this affects where households will locate. Proximity of the Development to the employment centers and traffic patterns must be part of the analysis. For example, if there is a planned distribution center nearby, this may be a reason for income qualified households to move to the area.

Staff does not feel that putting a minimum requirement for employment centers is necessary; Market Analysts should include general employment information/largest employers, etc. as they do now, and also include any planned or current employment opportunities that are a driving factor for income qualified households to relocate or remain in the area.

To clarify, the proposed language does not assume the Market Analyst will verify incomes for all jobs in the PMA, but instead, will do general analysis to see if the jobs that are listed in their report, particularly those in proximity to the Development and within a reasonable drive time, are likely to income qualify for the Pro Forma rents. This will be especially important if a Market Study states that a planned employment opportunity in the PMA is a large factor in drawing tenants to the Subject. In these cases, the Market Analyst should do further research to see if the jobs they reference are indeed, income eligible.

Staff does not recommend any changes to the proposed rule in this section.

13. §10.304(d)(10)(B) Value Estimates (4), (8), (9), (13), (15)

COMMENT SUMMARY: Commenters (4), (8), (9), (13), and (15) all propose the same change to the rule allowing RAD deals to be appraised at unrestricted market rents instead of the post conversion restricted rents.

"(B) For existing Developments with any project based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as is as currently restricted value". For public housing converting to project based rental assistance, the value must be based on ~~the post conversion restricted rents and must consider any other ongoing restrictions that will remain in place even if not affecting rents~~ the unrestricted market rents. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates and/or occupancy rates on project based developments, this must be fully explained and supported to the satisfaction of the Underwriter."

Commenter (4) provided further information, "Nationwide a number of closed RAD transactions have been awarded acquisition credits based on building values derived using market rents under the income approach. Tax counsel for these transactions have opined that this approach is reasonable, as have national accounting and appraisal firms. The reason this approach has been accepted nationwide is that in the "As Is" condition public housing developments operate on a breakeven basis, preventing an accurate valuation under the income approach. There are several ways in which HUD may allow the release of public housing restrictions. For public housing converting to Section 8 assistance, at the closing of RAD transactions, the existing public housing restrictions are removed and the property is unencumbered. This release of public housing restrictions supports the use of a market-rent derived value."

The other Commenters provided similar statements stating the unrestricted market value as a common valuation on RAD deals throughout the country.

STAFF RESPONSE:

Since acquisition cost is part of the total development costs, the Department is obligated to evaluate its reasonableness.

An appraisal is required on all Identity of Interest transactions. Staff will review the appraisal submitted with the application and may require, a third-party review appraisal to ensure that the value is properly supported. If a third-party review appraisal concludes that the valuation was not appropriately determined the Real Estate Analysis staff may recommend that the award of acquisition credits be based on rent restricted values but this may be an appealable matter.

The Department does not restrict or limit the purchase price being paid by the Applicant to the housing authority. The Department only determines an acquisition value used to size the tax credits pursuant to IRC §42(m)(2). The sale price between the buyer and seller is not dictated by the Department.

Staff recommends the following changes to the staff proposed rule:

(B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value". For public housing converting to project-based rental assistance, the appraiser must provide a value based on the future restricted rents. The value used in the analysis ~~must~~ may be based on ~~the post conversion~~ unrestricted market rents if supported by the appraisal. The Department may

require that the appraisal be reviewed by a third-party appraiser acceptable to the Department but selected by the Applicant. Use of future restricted rents by the appraiser will not require a third-party appraisal review. Regardless of the rents used in the valuation, the appraiser ~~and~~ must consider any other on-going restrictions that will remain in place even if not affecting rents. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates and/or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter.

14. §10.307(a)(2) Direct Loan Requirements (10)

COMMENT SUMMARY: Commenter (10) states that Direct Loan terms should not exceed the loan amortizations and both the term and amortization must be greater than the first lien debt term not to exceed 40 years and 6 months.

STAFF RESPONSE:

The Direct Loan Requirements have been moved from Subchapter D to Chapter 13. Commenter's suggestions have been forwarded to the Multifamily Loan Program. The Multifamily Direct Loan Rule 10 TAC Chapter 13 is out for public comment from October 28, 2016 to November 28, 2016.

~~**§10.307. Direct Loan Requirements.**~~

~~(a) Direct Loans through the Department must be structured according to the criteria as identified in paragraphs (1) - (5) of this subsection:~~

~~(1) the interest rate may be as low as zero percent provided all applicable NOFA and program rules and requirements are met as well as requirements in this Subchapter;~~
~~(2) unless structured only as an interim construction or bridge loan and provided all NOFA and program requirements are met, the loan term shall be no less than fifteen (15) years and no greater than forty (40) years and the amortization schedule shall be no less than thirty (30) years and no greater than forty (40) years. The Department's debt will match within six (6) months of the shortest term or amortization of any senior debt so long as neither exceeds forty (40) years.~~
~~(3) the loan shall be structured with a regular monthly payment beginning on the first day of the 25th full month following the actual date of loan closing and continuing for the loan term. If the first lien mortgage is a federally insured HUD or FHA mortgage, the Department may approve a loan structure with annual payments payable from surplus cash flow provided that the debt coverage ratio, inclusive of the loan, continues to meet the requirements in this Subchapter. The Board may also approve, on a case-by-case basis, a cash flow loan structure provided it determines that the financial risk is outweighed by the need for the proposed housing;~~
~~(4) the loan shall have a deed of trust with a permanent lien position that is superior to any other sources for financing including hard repayment debt that is less than or equal to the Direct Loan amount and for any other sources that have soft repayment structures, non-amortizing balloon notes, have deferred forgivable provisions or in which the lender has an identity of interest with any member of the Development Team. The Board may also approve, on a case-~~

by-case basis, an alternative lien priority provided it determines that the financial risk is outweighed by the need for the proposed housing; and,

(5) If the Direct Loan amounts to more than 50 percent of the Total Housing Development Cost, except for Developments also financed through the USDA §515 program, the Application must include the documents as identified in subparagraphs (A) - (B) of this paragraph:

(A) a letter from a Third Party CPA verifying the capacity of the Applicant, Developer or Development Owner to provide at least 10 percent of the Total Housing Development Cost as a short term loan for the Development; or

(B) evidence of a line of credit or equivalent tool equal to at least 10 percent of the Total Housing Development Cost from a financial institution that is available for use during the proposed Development activities.

(b) Direct Loans through the Department must observe the following construction, occupancy, and repayment provisions in accordance with the Federal requirements in 24 CFR Part 92 and as included in the Direct Loan documents:

(1) Construction must begin no later than six (6) months from the date of "Committing to a specific local project" as defined in 24 CFR Part 92 and must be completed within twenty-four (24) months of the actual date of loan closing as reflected by the development's certificate(s) of occupancy and Certificate of Substantial Completion (AIA Form G704). A final construction inspection request must be sent to the Department within 18 months of the actual loan closing date, with the repayment period beginning on the first day of the 25th month following the actual date of loan closing. Extensions to the construction or development period may only be made for good cause and approved by the Executive Director or authorized designee provided the start of construction is no later than twelve (12) months from the date of committing to a specific local project;

(2) Initial occupancy by eligible tenants shall occur within six (6) months of project completion. Requests to extend the initial occupancy period must be accompanied by marketing information and a marketing plan which will be submitted by the Department to HUD for final approval;

(3) repayment will be required on a per unit basis for units that have not been rented to eligible households within twenty-four (24) months of project completion; and

(4) termination and repayment of the HOME award in full will be required for any development that is not completed within four (4) years of the date of funding commitment.

Subchapter D – Underwriting and Loan Policy

§10.301. General Provisions.

(a) **Purpose**. This Subchapter applies to the underwriting, Market Analysis, appraisal, Environmental Site Assessment, Property Condition Assessment, and Direct Loan standards employed by the Department. This Subchapter provides rules for the underwriting review of an affordable housing Development's financial feasibility and economic viability that ensures the most efficient allocation of resources while promoting and preserving the public interest in ensuring the long-term health of the Department's portfolio. In addition, this Subchapter guides staff in making recommendations to the Executive Award and Review Advisory Committee (the "Committee"), Executive Director, and the Board to help ensure procedural consistency in the determination of Development feasibility (Texas Government Code, §§2306.081(c), 2306.185, and 2306.6710(d)). Due to the unique characteristics of each Development, the interpretation of the rules and guidelines described in this Subchapter is subject to the discretion of the Department and final determination by the Board.

(b) **Appeals**. Certain programs contain express appeal options. Where not indicated, §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)] includes general appeal procedures. In addition, the Department encourages the use of Alternative Dispute Resolution ("ADR") methods, as outlined in §10.904 of this chapter (relating to Alternative Dispute Resolution (ADR) Policy).

§10.302. Underwriting Rules and Guidelines.

(a) **General Provisions**. Pursuant to Texas Government Code, §2306.148 and §2306.185(b), the Board is authorized to adopt underwriting standards as set forth in this section. Furthermore for Housing Credit Allocation, §42(m)(2) of the Internal Revenue Code of 1986 (the "Code"), requires the tax credits allocated to a Development not to exceed the amount necessary to assure feasibility. The rules adopted pursuant to the Texas Government Code and the Code are developed to result in a Credit Underwriting Analysis Report ("Report") used by the Board in decision making with the goal of assisting as many Texans as possible by providing no more financing than necessary based on an independent analysis of Development feasibility. The Report generated in no way guarantees or purports to warrant the actual performance, feasibility, or viability of the Development.

(b) **Report Contents**. The Report provides a synopsis and reconciliation of the Application information submitted by the Applicant. For the purpose of this Subchapter the term Application includes additional documentation submitted after the initial award of funds that is relevant to any subsequent reevaluation. The Report contents will be based upon information that is provided in accordance with and within the timeframes set forth in the current Qualified Allocation Plan ("QAP") (10 TAC Chapter 11) or a Notice of Funds Availability ("NOFA"), as applicable, and the Uniform Multifamily Rules (10 TAC Chapter 10, Subchapters A – E and G).

(c) **Recommendations in the Report**. The conclusion of the Report includes a recommended award of funds or Housing Credit Allocation Amount and states any feasibility or other conditions to be placed on the award. The award amount is based on the lesser of the following:

(1) **Program Limit Method**. For Housing Credit Allocations, this method is based upon calculation of Eligible Basis after applying all cost verification measures and program limits as described in this section. The Applicable Percentage used is defined in §10.3 of this chapter (relating to Definitions). For Department programs other than Housing Tax Credits, this method is based upon calculation of the funding limit in current program rules or NOFA at the time of underwriting.

(2) **Gap Method**. This method evaluates the amount of funds needed to fill the gap created by Total Housing Development Cost less total non-Department-sourced funds or Housing Tax Credits. In making this determination, the Underwriter resizes any anticipated deferred developer fee downward (but not less than zero) before reducing the amount of Department funds or Housing Tax Credits. In the case of Housing Tax Credits, the syndication proceeds needed to fill the gap in permanent funds are divided by the syndication rate to determine the amount of Housing Tax Credits. In making this determination and based upon specific conditions set forth in the Report, the Underwriter may assume adjustments to the financing structure (including treatment of cash flow loans as if fully amortizing over its term) or make adjustments to any Department financing, such that the cumulative Debt Coverage Ratio ("DCR") conforms to the standards

described in this section. For Housing Tax Credit Developments at cost certification, timing adjusters may be considered as a reduction to equity proceeds for this purpose. Timing adjusters must be consistent with and documented in the original partnership agreement (at admission of the equity partner) but relating to causes outside of the Developer's or Owner's control. The equity partner must provide a calculation of the amount of the adjuster to be used by the Underwriter.

(3) **The Amount Requested**. The amount of funds that is requested by the Applicant. For Housing Tax Credit Developments (exclusive of Tax-Exempt Bond Developments) this amount is limited to the amount requested in the original Application documentation.

(d) **Operating Feasibility**. The operating feasibility of a Development funded by the Department is tested by analyzing its Net Operating Income ("NOI") to determine the Development's ability to pay debt service and meet other financial obligations throughout the Affordability Period. NOI is determined by subtracting operating expenses, including replacement reserves and taxes, from rental and other income sources.

(1) **Income.** In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's income pro forma by determining the appropriate rental rate per unit based on subsidy contracts, program limitations including but not limited to utility allowances, actual rents supported by rent rolls and Market Rents and other market conditions. Miscellaneous income, vacancy and collection loss limits as set forth in subparagraphs (B) and (C) of this paragraph, respectively, are used unless well-documented support is provided and independently verified by the Underwriter.

(A) **Rental Income**. The Underwriter will review the Applicant's proposed rent schedule and determine if it is consistent with the representations made throughout the Application. The Underwriter will independently calculate a Pro Forma Rent for comparison to the Applicant's estimate in the Application.

(i) Market Rents. The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §10.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst and other market data sources. For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the Gross Program Rent at 60% AMI. As an alternative, if the Applicant submits market rents that are up to 30% higher than the 60% AMI gross rent and the Applicant submits an investor commissioned market study with the application, the Underwriter has the discretion to use the market rents supported by the investor commissioned market study in consideration of the independently determined rents. The Applicant must also provide a statement by the investor indicating that they have reviewed the market study and agree with its conclusions.

(ii) Gross Program Rent. The Underwriter will use the Gross Program Rents for the year that is most current at the time the underwriting begins. When underwriting for a simultaneously funded competitive round, all Applications are underwritten with the Gross Program Rents for the same year. If Gross Program Rents are adjusted by the Department after the close of the Application Acceptance Period, but prior to publication of the Report, the Underwriter may adjust the Effective Gross Income ("EGI") to account for any increase or decrease in Gross Program Rents for the purposes of determining the reasonableness of the Applicant's EGI.

(iii) Contract Rents. The Underwriter will review rental assistance contracts to determine the Contract Rents currently applicable to the Development. Documentation supporting the likelihood of continued rental assistance is also reviewed. The Underwriter will take into consideration the Applicant's intent to request a Contract Rent increase. At the discretion of the Underwriter, the Applicant's proposed rents may be used as the Pro Forma Rent, with the recommendations of the Report conditioned upon receipt of final approval of such an increase.

(iv) Utility Allowances. The Utility Allowances used in underwriting must be in compliance with all applicable federal guidance, and §10.614 of Subchapter F of this Chapter relating to Utility Allowances. Utility allowances must be calculated for individually metered tenant paid utilities.

(v) Net Program Rents. Gross Program Rent less Utility Allowance.

(vi) Actual Rents for existing Developments will be reviewed as supported by a current rent roll. For Unstabilized Developments, actual rents will be based on the most recent units leased with occupancy and leasing velocity considered. Actual rents may be adjusted by the Underwriter to reflect lease-up concessions and other market considerations.

(vii) Collected Rent. Represents the monthly rent amount collected for each Unit Type. For rent-assisted units, the Contract Rent is used. In absence of a Contract Rent, the lesser of the Net Program Rent, Market Rent or actual rent is used.

(B) **Miscellaneous Income**. All ancillary fees and miscellaneous secondary income, including, but not limited to late fees, storage fees, laundry income, interest on deposits, carport and garage rent, washer and dryer rent, telecommunications fees, and other miscellaneous income, are anticipated to be included in a $5 to $20 per Unit per month range. Exceptions may be made at the discretion of the Underwriter and must be supported by either the normalized operating history of the Development or other existing comparable properties within the same market area.

(i) The Applicant must show that a tenant will not be required to pay the additional fee or charge as a condition of renting a Unit and must show that the tenant has a reasonable alternative.

(ii) The Applicant's operating expense schedule should reflect an itemized offsetting line-item associated with miscellaneous income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.

(iii) Collection rates of exceptional fee items will generally be heavily discounted.

(iv) If an additional fee is charged for the optional use of an amenity, any cost associated with the construction, acquisition, or development of the hard assets needed to produce the additional fee for such amenity must be excluded from Eligible Basis.

(C) **Vacancy and Collection Loss**. The Underwriter generally uses a normalized vacancy rate of 7.5 percent (5 percent vacancy plus 2.5 percent for collection loss). The Underwriter may use other assumptions based on conditions in the immediate market area. 100 percent project-based rental subsidy developments and other well documented cases may be underwritten at a combined 5 percent at the discretion of the Underwriter if the immediate market area's historical performance reflected in the Market Analysis is consistently higher than a 95 percent occupancy rate.

(D) **Effective Gross Income ("EGI")**. EGI is the total of Collected Rent for all units plus Miscellaneous Income less Vacancy and Collection Loss. If the Applicant's pro forma EGI is within 5 percent of the EGI independently calculated by the Underwriter, the Applicant's EGI is characterized as reasonable in the Report; however, for purposes of calculating the underwritten DCR the Underwriter's pro forma will be used unless the Applicant's pro forma meets the requirements of paragraph (3) of this subsection.

(2) **Expenses.** In determining the first year stabilized operating expense pro forma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate based upon the characteristics of each Development, including the location, utility structure, type, the size and number of Units, and the Applicant's management plan . Historical, stabilized and certified financial statements of an existing Development or Third Party quotes specific to a Development will reflect the strongest data points to predict future performance The Underwriter may review actual operations on the Applicant's other properties monitored by the Department, if any, or review the proposed management company's comparable properties. The Department's Database of properties located in the same market area or region as the proposed Development also provides data points; expense data from the Department's Database is available on the Department's website. Data from the Institute of Real Estate Management's ("IREM") most recent Conventional Apartments-Income/Expense Analysis book for the proposed Development's property type and specific location or region may be referenced. In some cases local or project-specific data such as PHA Utility Allowances and property tax rates are also given significant weight in determining the appropriate line item expense estimate. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.

(A) **General and Administrative Expense** ("G&A")--Accounting fees, legal fees, advertising and marketing expenses, office operation, supplies, and equipment expenses. G&A does not include partnership related expenses such as asset management, accounting or audit fees. Costs of tenant services are not included in G&A.

(B) **Management Fee**. Fee paid to the property management company to oversee the operation of the Property and is most often based upon a percentage of EGI as documented in an existing property management agreement or proposal. Typically, 5 percent of EGI is used, though higher percentages for rural transactions may be used. Percentages as low as 3 percent may be used if well documented.

(C) **Payroll Expense**. Compensation, insurance benefits, and payroll taxes for on-site office, leasing and maintenance staff. Payroll does not include Third-Party security or tenant services contracts. Staffing specific to tenant services, security or other staffing not related to customary property operations should be itemized and included in other expenses or tenant services expense.

(D) **Repairs and Maintenance Expense**. Materials and supplies for the repairs and maintenance of the Development including Third-Party maintenance contracts. This line-item does not include costs that are customarily capitalized that would result from major replacements or renovations.

(E) **Utilities Expense**. Gas and electric energy expenses paid by the Development. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.

(F) **Water, Sewer, and Trash Expense** ("WST"). Includes all water, sewer and trash expenses paid by the Development.

(G) **Insurance Expense**. Cost of Insurance coverage for the buildings, contents, and general liability, but not health or workman's compensation insurance.

(H) **Property Tax**. Includes real property and personal property taxes but not payroll taxes.

(i) An assessed value will be calculated based on the capitalization rate published by the county taxing authority. If the county taxing authority does not publish a capitalization rate, a capitalization rate of 10 percent or a comparable assessed value may be used.

(ii) If the Applicant proposes a property tax exemption or PILOT agreement the Applicant must provide documentation in accordance with §10.402(d). At the underwriter's discretion, such documentation may be required prior to Commitment if deemed necessary.

(I) **Replacement Reserves**. Periodic deposits to a reserve account to pay for the future replacement or major repair of building systems and components (generally items considered capitalized costs).The Underwriter will use a minimum reserve of $250 per Unit for New Construction and Reconstruction Developments and $300 per Unit for all other Developments. The Underwriter may require an amount above $300 for the Development based on information provided in the Property Condition Assessment ("PCA"). The Applicant's assumption for reserves may be adjusted by the Underwriter if the amount provided by the Applicant is insufficient to fund capital needs as documented by the PCA during the first fifteen (15) years of the long term pro forma. Higher reserves may be used if documented by a primary lender or syndicator.

(J) **Other Operating Expenses**. The Underwriter will include other reasonable, customary and documented property-level operating expenses such as audit fees, security expense, telecommunication expenses (tenant reimbursements must be reflected in EGI) and TDHCA's compliance fees. This category does not include depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees.

(K) Tenant Services. Tenant services are not included as an operating expense or included in the DCR calculation unless:

(i) There is a documented financial obligation on behalf of the Owner with a unit of state or local government to provide tenant supportive services at a specified dollar amount. The financial obligation must be identified by the permanent lender in their term sheet and the dollar amount of the financial obligation must be included in the DCR calculation on the permanent lender's 15-year pro forma at Application. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred; or,

(ii) The Applicant demonstrates a history of providing comparable supportive services and expenses at existing affiliated properties within the local area. Except for Supportive Housing Developments, the estimated expense of supportive services must be identified by the permanent lender in their term sheet and included in the DCR calculation on the 15-year pro forma. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred;

(iii) On-site staffing or pro ration of staffing for coordination of services only, not provision of services, can be included as a supportive services expense without permanent lender documentation.

(L) **Total Operating Expenses.** The total of expense items described above. If the Applicant's total expense estimate is within 5 percent of the final total expense figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating DCR, the Underwriter's independent calculation will be used unless the Applicant's first year stabilized pro forma meets the requirements of paragraph (3) of this subsection.

(3) **Net Operating Income ("NOI")**. The difference between the EGI and total operating expenses. If the Applicant's first year stabilized NOI figure is within 5 percent of the NOI calculated by the Underwriter, the

Applicant's NOI is characterized as reasonable in the Report; however, for purposes of calculating the first year stabilized pro forma DCR, the Underwriter's calculation of NOI will be used unless the Applicant's first year stabilized EGI, total operating expenses, and NOI are each within 5 percent of the Underwriter's estimates. For Housing Tax Credit Developments at cost certification, actual NOI will be used as adjusted for stabilization of rents and extraordinary lease-up expenses. Permanent lender and equity partner stabilization requirements documented in the loan and partnership agreements will be considered in determining the appropriate adjustments and the NOI used by the Underwriter.

(4) **Debt Coverage Ratio**. DCR is calculated by dividing NOI by the sum of scheduled loan principal and interest payments for all permanent debt sources of funds. If executed loan documents do not exist, loan terms including principal and/or interest payments are calculated based on the terms indicated in the most current term sheet(s). Otherwise, actual terms indicated in the executed loan documents will be used. Term sheet(s) must indicate the DCR required by the lender for initial underwriting as well as for stabilization purposes. Unusual or non-traditional financing structures may also be considered.

(A) **Interest Rate**. The rate documented in the term sheet(s) or loan document(s) will be used for debt service calculations. Term sheets indicating a variable interest rate must provide a breakdown of the rate index and any component rates comprising an all-in interest rate. The term sheet(s) must state the lender's underwriting interest rate assumption, or the Applicant must submit a separate statement from the lender with an estimate of the interest rate as of the date of such statement. At initial underwriting, the Underwriter may adjust the underwritten interest rate assumption based on market data collected on similarly structured transactions or rate index history. Private Mortgage Insurance premiums and similar fees are not included in the interest rate but calculated on outstanding principal balance and added to the total debt service payment.

(B) **Amortization Period**. For purposes of calculating DCR, the permanent lender's amortization period will be used if not less than thirty (30) years and not more than forty (40) years. Up to fifty (50) years may be used for federally sourced or insured loans For permanent lender debt with amortization periods less than thirty (30) years, thirty (30) years will be used. For permanent lender debt with amortization periods greater than forty (40) years, forty (40) years will be used. For non-Housing Tax Credit transactions a lesser amortization period may be used if the Department's funds are fully amortized over the same period as the primary senior debt.

(C) **Repayment Period**. For purposes of projecting the DCR over a thirty (30) year period for developments with permanent financing structures with balloon payments in less than thirty (30) years, the Underwriter will carry forward debt service based on a full amortization at the interest rate stated in the term sheet(s).

(D) **Acceptable Debt Coverage Ratio Range**. Except as set forth in clauses (i) or (ii) of this subparagraph, the acceptable first year stabilized pro forma DCR for all priority or foreclosable lien financing plus the Department's proposed financing must be between a minimum of 1.15 and a maximum of 1.35 (maximum of 1.50 for Housing Tax Credit Developments at cost certification).

(i) If the DCR is less than the minimum, the recommendations of the Report may be based on an assumed reduction to debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause subject to a Direct Loan NOFA and program rules:

(I) a reduction to the principal amount of a Direct Loan, or in the case where no repayable Developer Fee remains available for deferral and the Direct Loan is necessary to balance the sources and uses, a reduction to the interest rate or an increase in the amortization period for Direct Loans;

(II) a reclassification of Direct Loans to reflect grants,

(III) a reduction in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet(s) as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(ii) If the DCR is greater than the maximum, the recommendations of the Report may be based on an assumed increase to debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause subject to a Direct Loan NOFA and program rules:

(I) reclassification of Department funded grants to reflect loans;

(II) an increase in the interest rate or a decrease in the amortization period for Direct Loans;

(III) an increase in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(iii) For Housing Tax Credit Developments, a reduction in the recommended Housing Credit Allocation Amount may be made based on the Gap Method described in subsection (c)(2) of this section as a result of an increased debt assumption, if any.

(iv) The Underwriter may limit total debt service that is senior to a Direct Loan to produce an acceptable DCR on the Direct Loan.

(5) **Long Term Pro forma.** The Underwriter will create a 30-year operating pro forma using the following:

(A) The Underwriter's or Applicant's first year stabilized pro forma as determined by paragraph (3) of this subsection.

(B) A 2 percent annual growth factor is utilized for income and a 3 percent annual growth factor is utilized for operating expenses except for management fees that are calculated based on a percentage of each year's EGI.

(C) Adjustments may be made to the long term pro forma if satisfactory support documentation is provided by the Applicant or as independently determined by the Underwriter.

(e) **Total Housing Development Costs**. The Department's estimate of the Total Housing Development Cost will be based on the Applicant's development cost schedule to the extent that costs can be verified to a reasonable degree of certainty with documentation from the Applicant and tools available to the Underwriter. For New Construction Developments, the Underwriter's total cost estimate will be used unless the Applicant's Total Housing Development Cost is within 5 percent of the Underwriter's estimate. The Department's estimate of the Total Housing Development Cost for Rehabilitation Developments will be based in accordance with the estimated cost provided in the PCA for the scope of work as defined by the Applicant and §10.306(a)(5) of this chapter (relating to PCA Guidelines). If the Applicant's cost estimate is utilized and the Applicant's line item costs are inconsistent with documentation provided in the Application or program rules, the Underwriter may make adjustments to the Applicant's Total Housing Development Cost.

(1) **Acquisition Costs.** The underwritten acquisition cost is verified with Site Control document(s) for the Property.

(A) **Excess Land Acquisition**. In cases where more land is to be acquired (by the Applicant or a Related Party) than will be utilized as the Development Site and the remainder acreage is not accessible for use by tenants or dedicated as permanent and maintained green space, the value ascribed to the proposed Development Site will be prorated based on acreage from the total cost reflected in the Site Control document(s). An appraisal containing segregated values for the total acreage, the acreage for the Development Site and the remainder acreage, or tax assessment value may be used by the Underwriter in making a proration determination based on relative value; however, the Underwriter will not utilize a prorated value greater than the total amount in the Site Control document(s).

(B) **Identity of Interest Acquisitions**.

(i) An acquisition will be considered an identity of interest transaction when the seller is an Affiliate of, a Related Party to, any owner at any level of the Development Team or a Related Party lender; and

(I) is the current owner in whole or in part of the Property; or

(II) has or had within the prior 36 months, legal or beneficial ownership of the property or any portion thereof or interest therein prior to the first day of the Application Acceptance Period.

(ii) In all identity of interest transactions the Applicant is required to provide:

(I) the original acquisition cost evidenced by an executed settlement statement or, if a settlement statement is not available, the original asset value listed in the most current financial statement for the identity of interest owner; and

(II) if the original acquisition cost evidenced by subclause (I) of this clause is less than the acquisition cost stated in the application:

(-a-) an appraisal that meets the requirements of §10.304 of this chapter (relating to Appraisal Rules and Guidelines); and

(-b-) any other verifiable costs of owning, holding, or improving the Property, excluding seller financing, that when added to the value from subclause (I) of this clause justifies the Applicant's proposed acquisition amount.

(-1-) For land-only transactions, documentation of owning, holding or improving costs since the original acquisition date may include property taxes, interest expense to unrelated Third Party lender(s), capitalized costs of any physical improvements, the cost of zoning, platting, and any off-site costs to provide utilities or improve access to the Property. All allowable holding and improvement costs must directly benefit the proposed Development by a reduction to hard or soft costs. Additionally, an annual return of 10 percent may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost is incurred until the date of the Department's Board meeting at which the Grant, Direct Loan and/or Housing Credit Allocation will be considered.

(-2-) For transactions which include existing buildings that will be rehabilitated or otherwise retained as part of the Development, documentation of owning, holding, or improving costs since the original acquisition date may include capitalized costs of improvements to the Property, and in the case of USDA financed Developments the cost of exit taxes not to exceed an amount necessary to allow the sellers to be made whole in the original and subsequent investment in the Property and avoid foreclosure. Additionally, an annual return of 10 percent may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost was incurred until the date of the Department's Board meeting at which the Grant, Direct Loan and/or Housing Credit Allocation will be considered. For any period of time during which the existing buildings are occupied or otherwise producing revenue, holding costs may not include capitalized costs, operating expenses, including, but not limited to, property taxes and interest expense.

(iii) In no instance will the acquisition cost utilized by the Underwriter exceed the lesser of the original acquisition cost evidenced by clause (ii)(I) of this subparagraph plus costs identified in clause (ii)(II)(-b-) of this subparagraph, or if applicable the "as-is" value conclusion evidenced by clause (ii)(II)(-a-) of this subparagraph. Acquisition cost is limited to appraised land value for transactions which include existing buildings that will be demolished. The resulting acquisition cost will be referred to as the "Adjusted Acquisition Cost."

~~(C) **Acquisition from Seller without current Title**. In cases where as of the first day of the Application Acceptance Period the seller does not hold title to the property, the acquisition price will be limited to the acquisition price between the seller and the current title holder unless the seller can document land improvement costs or work to be performed by the seller as obligated in the site control documents. If the seller is acquiring more land from the current title holder than will be conveyed to the Applicant [whether under a single or multiple purchase contract(s)], the value ascribed to the proposed Development Site will be determined according to §10.302(e)(1)(A).~~

(~~D~~C) **Eligible Basis on Acquisition of Buildings**. Building acquisition cost will be included in the underwritten Eligible Basis if the Applicant provided an appraisal that meets the Department's Appraisal Rules and Guidelines as described in §10.304 of this chapter. The underwritten eligible building cost will be the lowest of the values determined based on clauses (i) - (iii) of this subparagraph:

(i) the Applicant's stated eligible building acquisition cost;

(ii) the total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in subparagraph (B)(iii) of this paragraph), prorated using the relative land and building values indicated by the applicable appraised value;

(iii) total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in subparagraph (B)(iii) of this paragraph), less the appraised "as-vacant" land value; or

(iv) the Underwriter will use the value that best corresponds to the circumstances presently affecting the Development that will continue to affect the Development after transfer to the new owner in determining the building value. These circumstances include but are not limited to operating subsidies, rental assistance and/or property tax exemptions. Any value of existing favorable financing will be attributed prorata to the land and buildings.

(2) **Off-Site Costs.** The Underwriter will only consider costs of Off-Site Construction that are well documented and certified to by a Third Party engineer on the required Application forms with supporting documentation.

(3) **Site Work Costs**. The Underwriter will only consider costs of Site Work that are well documented and certified to by a Third Party engineer on the required Application forms with supporting documentation.

(4) **Building Costs**.

(A) **New Construction and Reconstruction**. The Underwriter will use the Marshall and Swift Residential Cost Handbook, other comparable published Third-Party cost estimating data sources, historical final cost certifications of previous Housing Tax Credit developments and other acceptable cost data available to the Underwriter to estimate Building Cost. Generally, the "Average Quality" multiple, townhouse, or single family costs, as appropriate, from the Marshall and Swift Residential Cost Handbook or other comparable published Third-Party data source, will be used based upon details provided in the Application and particularly building plans and elevations. The Underwriter will consider amenities, specifications and development types not included in the Average Quality standard. The Underwriter may consider a sales tax exemption for nonprofit General Contractors.

(B) **Rehabilitation and Adaptive Reuse**.

(i) The Applicant must provide a detailed narrative description of the scope of work for the proposed rehabilitation.

(ii) The Underwriter will use cost data provided on the PCA Cost Schedule Supplement.

(5) **Contingency.** Total contingency, including any soft cost contingency, will be limited to a maximum of 7 percent of Building Cost plus Site Work and off-sites for New Construction and Reconstruction Developments, and 10 percent of Building Cost plus Site Work and off-sites for Rehabilitation and Adaptive Reuse Developments. For Housing Tax Credit Developments, the percentage is applied to the sum of the eligible Building Cost, eligible Site Work costs and eligible off-site costs in calculating the eligible contingency cost.

(6) **General Contractor Fee**. General Contractor fees include general requirements, contractor overhead, and contractor profit. General requirements include, but are not limited to, on-site supervision or construction management, off-site supervision and overhead, jobsite security, equipment rental, storage, temporary utilities, and other indirect costs. General Contractor fees are limited to a total of 14 percent on Developments with Hard Costs of $3 million or greater, the lesser of $420,000 or 16 percent on Developments with Hard Costs less than $3 million and greater than $2 million, and the lesser of $320,000 or 18 percent on Developments with Hard Costs at $2 million or less. For tax credit Developments, the percentages are applied to the sum of the Eligible Hard Costs in calculating the eligible contractor fees. For Developments also receiving financing from USDA, the combination of builder's general requirements, builder's overhead, and builder's profit should not exceed the lower of TDHCA or USDA requirements. Additional fees for ineligible costs will be limited to the same percentage of ineligible Hard Costs but will not be included in Eligible Basis.

(7) **Developer Fee.**

(A) For Housing Tax Credit Developments, the Developer Fee included in Eligible Basis cannot exceed 15 percent of the project's eligible costs, less Developer fees, for Developments proposing fifty (50) Units or more and 20 percent of the project's eligible costs, less Developer fees, for Developments proposing forty-nine (49) Units or less. For Public Housing Authority Developments for conversion under the HUD Rental Assistance Demonstration ("RAD") program that will be financed using tax-exempt mortgage revenue bonds, the Developer Fee cannot exceed 20 percent of the project's eligible cost less Developer Fee.

(B) Any additional Developer fee claimed for ineligible costs will be limited to the same percentage but applied only to ineligible Hard Costs (15 percent for Developments with fifty (50) or more Units, or 20 percent for Developments with forty-nine (49) or fewer Units). Any Developer fee above this limit will be excluded from Total Housing Development Costs. All fees to Affiliates and/or Related Parties for work or guarantees determined by the Underwriter to be typically completed or provided by the Developer or Principal(s) of the Developer will be considered part of Developer fee.

(C) In the case of a transaction requesting acquisition Housing Tax Credits:

(i) the allocation of eligible Developer fee in calculating Rehabilitation/New Construction Housing Tax Credits will not exceed 15 percent of the Rehabilitation/New Construction eligible costs less

Developer fees for Developments proposing fifty (50) Units or more and 20 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing forty-nine (49) Units or less; and

(ii) no Developer fee attributable to an identity of interest acquisition of the Development will be included.

(D) Eligible Developer fee is multiplied by the appropriate Applicable Percentage depending whether it is attributable to acquisition or rehabilitation basis.

(E) For non-Housing Tax Credit developments, the percentage can be up to 15 percent, but is based upon Total Housing Development Cost less the sum of the fee itself, land costs, the costs of permanent financing, excessive construction period financing described in paragraph (8) of this subsection, reserves, and any identity of interest acquisition cost.

(8) **Financing Costs**. All fees required by the construction lender, permanent lender and equity partner must be indicated in the term sheets. Eligible construction period interest is limited to the lesser of actual eligible construction period interest, or the interest on one (1) year's fully drawn construction period loan funds at the construction period interest rate indicated in the term sheet(s). For tax-exempt bond transactions up to twenty four (24) months of interest may be included. Any excess over this amount will not be included in Eligible Basis. Construction period interest on Related Party construction loans is only included in Eligible Basis with documentation satisfactory to the Underwriter that the loan will be at a market interest rate, fees and loan terms and the Related Party lender can demonstrate that it is routinely engaged in construction financing to unrelated parties.

(9) **Reserves**. Except for the underwriting of a Housing Tax Credit Development at cost certification, the Underwriter will utilize the amount described in the Applicant's project cost schedule if it is within the range of two (2) to six (6) months of stabilized operating expenses plus debt service. Alternatively, the Underwriter may consider a greater amount proposed by the first lien lender or syndicator if the detail for such greater amount is found by the Underwriter to be both reasonable and well documented. Reserves do not include capitalized asset management fees, guaranty reserves, tenant services reserves or other similar costs. Lease up reserves, exclusive of initial start-up costs, funding of other reserves and interim interest, may be considered with documentation showing sizing assumptions acceptable to the Underwriter. In no instance at initial underwriting will total reserves exceed twelve (12) months of stabilized operating expenses plus debt service (and only for USDA or HUD financed rehabilitation transactions the initial deposits to replacement reserves and transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Pursuant to §10.404(c) and for the underwriting of a Housing Tax Credit Development at cost certification, operating reserves that will be maintained for a minimum period of five years and documented in the Owner's partnership agreement and/or the permanent lender's loan documents will be included as a development cost.

(10) **Soft Costs**. Eligible soft costs are generally costs that can be capitalized in the basis of the Development for tax purposes. The Underwriter will evaluate and apply the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Code. Generally the Applicant's costs are used however the Underwriter will use comparative data to determine the reasonableness of all soft costs.

(11) Additional Tenant Amenities. For Housing Tax Credit Developments and after submission of the cost certification package, the Underwriter may consider costs of additional building and site amenities (suitable for the tenant population being served) proposed by the Owner in an amount not to exceed 1.5% of the originally underwritten Hard Costs. The additional amenities may be included in the LURA.

(12) Special Reserve Account. For Housing Tax Credit Developments at cost certification, the Underwriter may include a deposit of up to $2,500 per Unit into a Special Reserve Account [pursuant to §10.404(d)] as a Development Cost.

(f) **Development Team Capacity and Development Plan**.

(1) The Underwriter will evaluate and report on the overall capacity of the Development Team by reviewing aspects, including but not limited to those identified in subparagraphs (A) - (D) of this paragraph:

(A) personal credit reports for development sponsors, Developer fee recipients and those individuals anticipated to provide guarantee(s) in cases when warranted. The Underwriter may evaluate the credit report and identify any bankruptcy, state or federal tax liens or other relevant credit risks for compliance with eligibility and debarment requirements in this chapter;

(B) quality of construction, Rehabilitation, and ongoing maintenance of previously awarded housing developments by review of construction inspection reports, compliance on-site visits, findings of UPCS violations and other information available to the Underwriter;

(C) for Housing Tax Credit Developments, repeated or ongoing failure to timely submit cost certifications, requests for and clearance of final inspections, and timely response to deficiencies in the cost certification process;

(D) adherence to obligations on existing or prior Department funded developments with respect to program rules and documentation.

(2) While all components of the development plan may technically meet the other individual requirements of this section, a confluence of serious concerns and unmitigated risks identified during the underwriting process may result in an Application being referred to the Committee by the Director of Real Estate Analysis. The Committee will review any recommendation made under this subsection to deny an Application for a Grant, Direct Loan and/or Housing Credit Allocation prior to completion of the Report and posting to the Department's website.

(g) **Other Underwriting Considerations**. The Underwriter will evaluate additional feasibility elements as described in paragraphs (1) - (3) of this subsection.

(1) **Floodplains**. The Underwriter evaluates the site plan, floodplain map, survey and other information provided to determine if any of the buildings, drives, or parking areas reside within the 100-year floodplain. If such a determination is made by the Underwriter, the Report will include a condition that:

(A) the Applicant must pursue and receive a Letter of Map Amendment ("LOMA") or Letter of Map Revision ("LOMR-F"); or

(B) the Applicant must identify the cost of flood insurance for the buildings and for the tenant's contents for buildings within the 100-year floodplain and certify that the flood insurance will be obtained; and

(C) the Development must be proposed to be designed to comply with the QAP, NOFA and applicable Federal requirements.

(2) **Proximity to Other Developments**. The Underwriter will identify in the Report any developments funded or known and anticipated to be eligible for funding within one linear mile of the subject. Distance is measured in a straight line from nearest boundary point to nearest boundary point.

(3) **Supportive Housing**. The unique development and operating characteristics of Supportive Housing Developments may require special consideration in these areas:

(A) **Operating Income**. The extremely-low-income tenant population typically targeted by a Supportive Housing Development may include deep-skewing of rents to well below the 50 percent AMGI level or other maximum rent limits established by the Department. The Underwriter should utilize the Applicant's proposed rents in the Report as long as such rents are at or below the maximum rent limit proposed for the units and equal to any project based rental subsidy rent to be utilized for the Development;

(B) **Operating Expenses**. A Supportive Housing Development may have significantly higher expenses for payroll, management fee, security, resident support services, or other items than typical affordable housing developments. The Underwriter will rely heavily upon the historical operating expenses of other Supportive Housing Developments affiliated with the Applicant or otherwise available to the Underwriter. Expense estimates must be categorized as outlined in subsection (d)(2) of this section;

(C) **DCR and Long Term Feasibility**. Supportive Housing Developments may be exempted from the DCR requirements of subsection (d)(4)(D) of this section if the Development is anticipated to operate without conventional or "must-pay" debt. Applicants must provide evidence of sufficient financial resources to offset any projected 15-year cumulative negative Cash Flow. Such evidence will be evaluated by the Underwriter on a case-by-case basis to satisfy the Department's long term feasibility requirements and may take the form of one or a combination of: executed subsidy commitment(s); set-aside of Applicant's financial resources to be substantiated by current financial statements evidencing sufficient resources; and/or proof of annual fundraising success sufficient to fill anticipated operating losses. If either a set aside of financial resources or annual fundraising are used to evidence the long term feasibility of a Supportive Housing Development, a resolution from the Applicant's governing board must be provided confirming their irrevocable commitment to the provision of these funds and activities; and/or

(D) **Total Housing Development Costs**. For Supportive Housing Developments designed with only Efficiency Units, the Underwriter may use "Average Quality" dormitory costs, or costs of other appropriate design styles from the Marshall & Swift Valuation Service, with adjustments for amenities and/or quality as evidenced in the Application, as a base cost in evaluating the reasonableness of the Applicant's Building Cost estimate for New Construction Developments.

(h) **Work Out Development**. Developments that are underwritten subsequent to Board approval in order to refinance or gain relief from restrictions may be considered infeasible based on the guidelines in this section, but may be characterized as "the best available option" or "acceptable available option" depending on the circumstances and subject to the discretion of the Underwriter as long as the option analyzed and recommended is more likely to achieve a better financial outcome for the property and the Department than the status quo.

(i) **Feasibility Conclusion**. An infeasible Development will not be recommended for a Grant, Direct Loan or Housing Credit Allocation unless the Underwriter can determine an alternative structure and/or conditions the recommendations of the Report upon receipt of documentation supporting an alternative structure. A Development will be characterized as infeasible if paragraph (1) or (2) of this subsection applies. The Development will be characterized as infeasible if one or more of paragraphs (3) - (5) of this subsection applies unless paragraph (6)(B) of this subsection also applies.

(1) **Gross Capture Rate and Individual Unit Capture Rate**. The method for determining capture rates for a Development is defined in §10.303of this chapter. The Underwriter will independently verify all components and conclusions of the capture rates and may, at their discretion, use independently acquired demographic data to calculate demand and may make a determination of the capture rates based upon an analysis of the Sub-market. The Development:
   (A) is characterized as an Elderly Development and the Gross Capture Rate exceeds 10 percent for the total proposed Units; or
   (B) is outside a Rural Area and targets the general population, and the Gross Capture Rate exceeds 10 percent for the total proposed Units; or
   (C) is in a Rural Area and targets the general population, and the Gross Capture Rate exceeds 30 percent; or
   (D) is Supportive Housing and the Gross Capture Rate exceeds 30 percent; or,
   (E) has an Individual Unit Capture Rate for any Unit Type greater than 75 percent.
   (F) Developments meeting the requirements of subparagraph (A), (B), (C), (D) or (E) of this paragraph may avoid being characterized as infeasible if clause (i) or (ii) of this subparagraph apply.
      (i) Replacement Housing. The proposed Development is comprised of affordable housing which replaces previously existing affordable housing within the Primary Market Area as defined in §10.303 of this chapter on a Unit for Unit basis, and gives the displaced tenants of the previously existing affordable housing a leasing preference.
      (ii) Existing Housing. The proposed Development is comprised of existing affordable housing, whether defined by an existing land use and rent restriction agreement or if the subject rents are at or below 50% AMI rents, which is at least 50 percent occupied and gives displaced existing tenants a leasing preference as stated in a relocation plan.

(2) **Deferred Developer Fee**. Applicants requesting an allocation of tax credits where the estimated deferred Developer Fee, based on the underwritten capitalization structure, is not repayable from Cash Flow within the first fifteen (15) years of the long term pro forma as described in subsection (d)(5) of this section.

(3) **Pro Forma Rent**. The Pro Forma Rent for Units with rents restricted at 60 percent of AMGI is less than the Net Program Rent for Units with rents restricted at or below 50 percent of AMGI unless the Applicant accepts the Underwriter's recommendation, if any, that all restricted units have rents and incomes restricted at or below the 50 percent of AMGI level.

(4) **Initial Feasibility**.
   (A) Except when underwritten at cost certification, the first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 68 percent for Rural Developments 36 Units or less and 65 percent for all other Developments.
   (B) The first year DCR is below 1.15 (1.00 for USDA Developments).

(5) **Long Term Feasibility**. The Long Term Pro forma at any time during years two through fifteen, as defined in subsection (d)(5) of this section, reflects:
   (A) a Debt Coverage Ratio below 1.15; or,

(B) negative cash flow (throughout the term of a Direct Loan).

(6) **Exceptions**. The infeasibility conclusions may be excepted when:

(A) Waived by the Executive Director of the Department or by the Committee if documentation is submitted by the Applicant to support unique circumstances that would provide mitigation.

(B) Developments not meeting the requirements of one or more of paragraphs (3), (4)(A) or (5) of this subsection will be re-characterized as feasible if one or more of clauses (i) - (v) of this subparagraph apply. A Development financed with a Direct Loan will not be re-characterized as feasible with respect to (5)(B).

(i) The Development will receive Project-based Section 8 Rental Assistance or the HUD Rental Assistance Demonstration Program for at least 50 percent of the Units and a firm commitment, with terms including Contract Rent and number of Units, is submitted at Application.

(ii) The Development will receive rental assistance for at least 50 percent of the Units in association with USDA financing.

(iii) The Development will be characterized as public housing as defined by HUD for at least 50 percent of the Units.

(iv) The Development will be characterized as Supportive Housing for at least 50 percent of the Units and evidence of adequate financial support for the long term viability of the Development is provided.

(v) The Development has other long term project based restrictions on rents for at least 50 percent of the Units that allow rents to increase based upon expenses and the Applicant's proposed rents are at least 10 percent lower than both the Net Program Rent and Market Rent.

§10.303. Market Analysis Rules and Guidelines.

(a) **General Provision**. A Market Analysis prepared for the Department must evaluate the need for decent, safe, and sanitary housing at rental rates or sales prices that eligible tenants can afford. The analysis must determine the feasibility of the subject Property rental rates or sales price and state conclusions as to the impact of the Property with respect to the determined housing needs. The Market Analysis must include a statement that the report preparer has read and understood the requirements of this section.

(b) **Self-Contained**. A Market Analysis prepared for the Department must allow the reader to understand the market data presented, the analysis of the data, and the conclusions derived from such data. All data presented should reflect the most current information available and the report must provide a parenthetical (in-text) citation or footnote describing the data source. The analysis must clearly lead the reader to the same or similar conclusions reached by the Market Analyst. All steps leading to a calculated figure must be presented in the body of the report.

(c) **Market Analyst Qualifications**. A Market Analysis submitted to the Department must be prepared and certified by an approved Qualified Market Analyst. (§2306.67055) The Department will maintain an approved Market Analyst list based on the guidelines set forth in paragraphs (1) - (3) of this subsection.

(1) The approved Qualified Market Analyst list will be updated and published annually on or about October 1st. If not listed as an approved Qualified Market Analyst by the Department, a Market Analyst may request approval by submitting items in subparagraphs (A) - (F) of this paragraph at least thirty (30) days prior to the first day of the competitive tax credit Application Acceptance Period or thirty (30) days prior to submission of any other application for funding for which the Market Analyst must be approved.

(A) Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships).

(B) A current organization chart or list reflecting all members of the firm who may author or sign the Market Analysis. A firm with multiple offices or locations must indicate all members expected to be providing Market Analysis.

(C) Resumes for all members of the firm or subcontractors who may author or sign the Market Analysis.

(D) General information regarding the firm's experience including references, the number of previous similar assignments and timeframes in which previous assignments were completed.

(E) Certification from an authorized representative of the firm that the services to be provided will conform to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the Application Round in which each Market Analysis is submitted.

(F) A sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the sample Market Analysis is submitted.

An already approved Qualified Market Analyst will remain on the list so long as at least one (1) Market Analysis has been submitted to the Department in the previous 12 months or items (A),(B),(C) and (E) are submitted prior to October 1st. Otherwise, the Market Analyst will automatically be removed from the list.

(2) During the underwriting process each Market Analysis will be reviewed and any discrepancies with the rules and guidelines set forth in this section may be identified and require timely correction. Subsequent to the completion of the Application Round and as time permits, staff or a review appraiser will re-review a sample set of submitted market analyses to ensure that the Department's Market Analysis Rules and Guidelines are met. If it is found that a Market Analyst has not conformed to the Department's Market Analysis Rules and Guidelines, as certified to, the Market Analyst will be notified of the discrepancies in the Market Analysis and will be removed from the approved Qualified Market Analyst list.

(A) In and of itself, removal from the list of approved Market Analysts will not invalidate a Market Analysis commissioned prior to the removal date and at least ninety (90) days prior to the first day of the applicable Application Acceptance Period.

(B) To be reinstated as an approved Qualified Market Analyst, the Market Analyst must amend the previous report to remove all discrepancies or submit a new sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the updated or new sample Market Analysis is submitted.

(3) The list of approved Qualified Market Analysts will be posted on the Department's web site no later than November 1st.

(d) **Market Analysis Contents**. A Market Analysis for a rental Development prepared for the Department must be organized in a format that follows a logical progression and must include, at minimum, items addressed in paragraphs (1) - (13) of this subsection.

(1) **Title Page**. Include Property address or location, effective date of analysis, date report completed, name and address of person authorizing report, and name and address of Market Analyst.

(2) **Letter of Transmittal**. The date of the letter must be the date the report was completed. Include Property address or location, description of Property, statement as to purpose and scope of analysis, reference to accompanying Market Analysis report with effective date of analysis and summary of conclusions, date of Property inspection, name of persons inspecting subject Property, and signatures of all Market Analysts authorized to work on the assignment. Include a statement that the report preparer has read and understood the requirements of this section.

(3) **Table of Contents**. Number the exhibits included with the report for easy reference.

(4) **Market Analysis Summary**. Include the Department's Market Analysis Summary exhibit.

(5) **Assumptions and Limiting Conditions**. Include a description of all assumptions, both general and specific, made by the Market Analyst concerning the Property.

(6) **Identification of the Property**. Provide a statement to acquaint the reader with the Development. Such information includes street address, tax assessor's parcel number(s), and Development characteristics.

(7) **Statement of Ownership**. Disclose the current owners of record and provide a three (3) year history of ownership for the subject Property.

(8) **Secondary Market Area**. A geographic area from which the Development may draw limited demand in addition to the PMA. A SMA is not required, but may be defined at the discretion of the Market Analyst to support identified demand. All of the Market Analyst's conclusions specific to the subject Development must be based on only one SMA definition. The entire PMA, as described in this paragraph, must be contained within the SMA boundaries. The Market Analyst must adhere to the methodology described in this paragraph when determining the Secondary Market Area. (§2306.67055)

(A) The SMA will be defined by the Market Analyst with:

(i) geographic size based on a base year population of no more than 250,000 people inclusive of the PMA; and

(ii) boundaries based on U.S. census tracts.

(B) The Market Analyst's definition of the SMA must include:

(i) a detailed narrative specific to the SMA explaining;

(I) how the boundaries of the SMA were determined with respect to census tracts chosen and factors for including or excluding certain census tracts in proximity to the Development;

(II) whether a more logical market area within the SMA exists but is not definable by census tracts and how this subsection of the SMA supports the rationale for the defined SMA, and also explains how the SMA relates to the PMA in terms of its qualitative and quantitative aspects;

(III) what are the specific attributes of the Development's location within the SMA that would draw prospective tenants currently residing in other areas of the SMA to relocate to the Development;

(IV) what are the specific attributes, if known, of the Development itself that would draw prospective tenants currently residing in other areas of the SMA to relocate to the Development; and

(V) ~~the household and employment concentrations across the SMA and proximity to the Development;~~

(VI) ~~that prospective tenants within one mile of the Development will be able to afford the Pro Forma rent or if not provide further comment on where eligible demand will come from; and~~

(VII) other housing issues in general, if pertinent.

(ii) a complete demographic report for the defined SMA; and

(iii) a scaled distance map indicating the SMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical order with labels as well as the location of the subject Development and all comparable Developments.

(9) **Primary Market Area**. A limited geographic area from which the Development is expected to draw most of its demand. The size and shape of the PMA should be reflective of proximity to employment centers, services and amenities and contain the most significant areas from which to draw demand. All of the Market Analyst's conclusions specific to the subject Development must be based on only one PMA definition. The Market Analyst must adhere to the methodology described in this paragraph when determining the market area. (§2306.67055)

(A) The PMA will be defined by the Market Analyst as:

(i) geographic size based on a base year population no larger than necessary to provide sufficient demand but no more than 100,000 people;

(ii) boundaries based on U.S. census tracts; and

(iii) the population of the PMA may exceed 100,000 if the amount over the limit is contained within a single census tract.

(B) The Market Analyst's definition of the PMA must include:

(i) a detailed narrative specific to the PMA explaining:

(I) how the boundaries of the PMA were determined with respect to census tracts chosen and factors for including or excluding certain census tracts in proximity to the Development;

(II) whether a more logical market area within the PMA exists but is not definable by census tracts and how this subsection of the PMA supports the rationale for the defined PMA ;

(III) what are the specific attributes of the Development's location within the PMA that would draw prospective tenants currently residing in other areas of the PMA to relocate to the Development;

(IV) what are the specific attributes, if known, of the Development itself that would draw prospective tenants currently residing in other areas of the PMA to relocate to the Development; and

~~(V) the household and employment concentrations across the PMA and proximity to the Development;~~

~~(VI) that prospective tenants within one mile of the Development will be able to afford the Pro Forma rent and if not provide further comment on where eligible demand will come from; and~~

(VII) other housing issues in general, if pertinent.(ii) a complete demographic report for the defined PMA;

(iii) a scaled distance map indicating the PMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical order with labels as well as the location of the subject Development and all comparable Developments. The map must indicate the total square miles of PMA; and,

(iv) a proximity table indicating distance from the Development to employment centers, medical facilities, schools, entertainment and any other amenities relevant to the potential residents and include drive time estimates.

(C) **Comparable Units**. Identify developments in the PMA with Comparable Units. In PMAs lacking sufficient rent comparables, it may be necessary for the Market Analyst to collect data from markets with similar characteristics and make quantifiable and qualitative location adjustments. Provide a data sheet for each comparable development consisting of:

(i) development name;
(ii) address;
(iii) year of construction and year of Rehabilitation, if applicable;
(iv) property condition;
(v) Target Population;
(vi) unit mix specifying number of Bedrooms, number of baths, Net Rentable Area; and
  (I) monthly rent and Utility Allowance; or
  (II) sales price with terms, marketing period and date of sale;
(vii) description of concessions;
(viii) list of unit amenities;
(ix) utility structure;
(x) list of common amenities;
(xi) narrative comparison of its proximity to employment centers and services relative to targeted tenant population of the subject property; and,
(xii) for rental developments only, the occupancy and turnover.

(10) **Market Information**.

(A) For each of the defined market areas, identify the number of units for each of the categories in clauses (i) - (vi) of this subparagraph; the data must be clearly labeled as relating to either the PMA or the SMA, if applicable:

(i) total housing;
(ii) all multi-family rental developments, including unrestricted developments, whether existing or proposed;
(iii) Affordable housing;
(iv) Comparable Units;
(v) Unstabilized Comparable Units; and
(vi) proposed Comparable Units.

(B) **Occupancy**. The occupancy rate indicated in the Market Analysis may be used to support both the overall demand conclusion for the proposed Development and the vacancy rate assumption used in underwriting the Development described in §10.302(d)(1)(C) of this chapter (relating to Underwriting Rules and Guidelines). State the overall physical occupancy rate for the proposed housing tenure (renter or owner) within the defined market areas by:

(i) number of Bedrooms;
(ii) quality of construction (class);
(iii) Target Population; and
(iv) Comparable Units.

(C) **Absorption**. State the absorption trends by quality of construction (class) and absorption rates for Comparable Units.

(D) **Demographic Reports**.

(i) All demographic reports must include population and household data for a five (5) year period with the year of Application submission as the base year;
(ii) All demographic reports must provide sufficient data to enable calculation of income-eligible, age-, size-, and tenure-appropriate household populations;
(iii) For Developments targeting seniors, all demographic reports must provide a detailed breakdown of households by age and by income; and

(iv) A complete copy of all demographic reports relied upon for the demand analysis, including the reference index that indicates the census tracts on which the report is based.

(E) **Demand**. Provide a comprehensive evaluation of the need for the proposed housing for the Development as a whole and each Unit type by number of Bedrooms proposed and rent restriction category within the defined market areas using the most current census and demographic data available. A complete demand and capture rate analysis is required in every Market Study, regardless of the current occupancy level of an existing Development.

(i) **Demographics**. The Market Analyst should use demographic data specific to the characteristics of the households that will be living in the proposed Development. For example, the Market Analyst should use demographic data specific to elderly population for an Elderly Development, if available, and should avoid making adjustments from more general demographic data. If adjustment rates are used based on more general data for any of the criteria described in subclauses (I) - (V) of this clause, they should be clearly identified and documented as to their source in the report.

(I) Population. Provide population and household figures, supported by actual demographics, for a five (5) year period with the year of Application submission as the base year.

(II) Target. If applicable, adjust the household projections for the elderly population targeted by the proposed Development.

(III) Household Size-Appropriate. Adjust the household projections or target household projections, as applicable, for the appropriate household size for the proposed Unit type by number of Bedrooms proposed and rent restriction category based on 1.5 persons per Bedroom (round up).

(IV) Income Eligible. Adjust the household size appropriate projections for income eligibility based on the income bands for the proposed Unit Type by number of Bedrooms proposed and rent restriction category with:

(-a-) the lower end of each income band calculated based on the lowest gross rent proposed divided by 35 percent for the general population and 50 percent for elderly households; and

(-b-) the upper end of each income band equal to the applicable gross median income limit for the largest appropriate household size based on 1.5 persons per Bedroom (round up) or one person for Efficiency Units.

(V) Tenure-Appropriate. Adjust the income-eligible household projections for tenure (renter or owner). If tenure appropriate income eligible target household data is available, a tenure appropriate adjustment is not necessary.

(ii) **Gross Demand**. Gross Demand is defined as the sum of Potential Demand from the PMA, Demand from Other Sources, and Potential Demand from a Secondary Market Area (SMA) to the extent that SMA demand does not exceed 25 percent of Gross Demand.

(iii) **Potential Demand**. Potential Demand is defined as the number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placed in service date.

(I) Maximum eligible income is equal to the applicable gross median income limit for the largest appropriate household size based on 1.5 persons per Bedroom (round up) or one person for Efficiency Units.

(II) For Developments targeting the general population:

(-a-) minimum eligible income is based on a 35 percent rent to income ratio;

(-b-) appropriate household size is defined as 1.5 persons per Bedroom (rounded up); and

(-c-) the tenure-appropriate population for a rental Development is limited to the population of renter households.

(III) For Developments consisting solely of single family residences on separate lots with all Units having three (3) or more Bedrooms:

(-a-) minimum eligible income is based on a 35 percent rent to income ratio;

(-b-) appropriate household size is defined as 1.5 persons per Bedroom (rounded up); and

(-c-) Gross Demand includes both renter and owner households.

(IV) Elderly Developments or Supportive Housing:

(-a-) minimum eligible income is based on a 50 percent rent to income ratio; and
(-b-) Gross Demand includes all household sizes and both renter and owner households.

(iv) **Demand from Secondary Market Area:**
(I) Potential Demand from an SMA should be calculated in the same way as Potential Demand from the PMA;
(II) Potential Demand from an SMA may be included in Gross Demand to the extent that SMA demand does not exceed 25 percent of Gross Demand; and
(III) the supply of proposed and unstabilized Comparable Units in the SMA must be included in the calculation of the capture rate at the same proportion that Potential Demand from the SMA is included in Gross Demand.

(v) **Demand from Other Sources:**
(I) the source of additional demand and the methodology used to calculate the additional demand must be clearly stated;
(II) consideration of Demand from Other Sources is at the discretion of the Underwriter;
(III) Demand from Other Sources must be limited to households that are not included in Potential Demand; and
(IV) if households with Section 8 vouchers are identified as a source of demand, the Market Study must include:
(-a-) documentation of the number of vouchers administered by the local Housing Authority; and
(-b-) a complete demographic report for the area in which the vouchers are distributed.

(F) **Employment**. Provide a comprehensive analysis of employment trends and forecasts in the Primary Market Area. Analysis must discuss existing or planned employment opportunities with qualifying income ranges.

(11) **Conclusions**. Include a comprehensive evaluation of the subject Property, separately addressing each housing type and specific population to be served by the Development in terms of items in subparagraphs (A) - (I) of this paragraph. All conclusions must be consistent with the data and analysis presented throughout the Market Analysis.

(A) **Unit Mix**. Provide a best possible unit mix conclusion based on the occupancy rates by Bedroom type within the PMA and target, income-eligible, size-appropriate and tenure-appropriate household demand by unit type and income type within the PMA.

(B) **Rents**. Provide a separate Market Rent conclusion for each proposed Unit Type by number of Bedrooms and rent restriction category. Conclusions of Market Rent below the maximum Net Program Rent limit must be well documented as the conclusions may impact the feasibility of the Development under §10.302(i) of this chapter. In support of the Market Rent conclusions, provide a separate attribute adjustment matrix for each proposed Unit Type by number of Bedrooms and rental restriction category.
(i) The Department recommends use of HUD Form 92273.
(ii) A minimum of three developments must be represented on each attribute adjustment matrix.
(iii) Adjustments for concessions must be included, if applicable.
(iv) Adjustments for proximity and drive times to employment centers and services narrated in the Comparable Unit description must be included.
(v) Total adjustments in excess of 15 percent must be supported with additional narrative.
(vi) Total adjustments in excess of 25 percent indicate the Units are not comparable for the purposes of determining Market Rent conclusions.

(C) **Effective Gross Income**. Provide rental income, secondary income, and vacancy and collection loss projections for the subject derived independent of the Applicant's estimates.

(D) **Demand:**
(i) state the Gross Demand for each Unit Type by number of Bedrooms proposed and rent restriction category (*e.g.* one-Bedroom Units restricted at 50 percent of AMGI; two-Bedroom Units restricted at 60 percent of AMGI); and
(ii) state the Gross Demand for the proposed Development as a whole. If some households are eligible for more than one Unit Type due to overlapping eligible ranges for income or household size, Gross Demand should be adjusted to avoid including households more than once.

(E) **Relevant Supply**. The Relevant Supply of proposed and unstabilized Comparable Units includes:

(i) the proposed subject Units;
(ii) Comparable Units in an Application with priority over the subject pursuant to §10.201(6) of this chapter.
(iii) Comparable Units in previously approved but Unstabilized Developments in the PMA; and
(iv) Comparable Units in previously approved but Unstabilized Developments in the SMA, in the same proportion as the proportion of Potential Demand from the SMA that is included in Gross Demand.

(F) **Gross Capture Rate**. The Gross Capture Rate is defined as the Relevant Supply divided by the Gross Demand. Refer to §10.302(i) of this chapter for feasibility criteria.

(G) **Individual Unit Capture Rate.** For each Unit Type by number of Bedrooms and rent restriction categories, the individual unit capture rate is defined as the Relevant Supply of proposed and unstabilized Comparable Units divided by the eligible demand for that Unit. [Some households are eligible for multiple Unit Types. In order to calculate individual unit capture rates, the Underwriter will make assumptions such that each household is included in the capture rate for only one Unit Type.]

(H) **Absorption**. Project an absorption period for the subject Development to achieve Breakeven Occupancy. State the absorption rate.

(I) **Market Impact**. Provide an assessment of the impact the subject Development, as completed, will have on existing Developments supported by Housing Tax Credits in the Primary Market. (§2306.67055)

(12) **Photographs**. Provide labeled color photographs of the subject Property, the neighborhood, street scenes, and comparables. An aerial photograph is desirable but not mandatory.

(13) **Appendices**. Any Third Party reports including demographics relied upon by the Market Analyst must be provided in appendix form. A list of works cited including personal communications also must be provided, and the Modern Language Association (MLA) format is suggested.

(14) **Qualifications.** Current Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships) and any changes to items listed in §10.303(c)(1)(B) and (C) of this chapter.

(e) The Department reserves the right to require the Market Analyst to address such other issues as may be relevant to the Department's evaluation of the need for the subject Development and the provisions of the particular program guidelines.

(f) In the event that the PMA for a subject Development overlaps the PMA's of other proposed or unstabilized comparable Developments, the Underwriter may perform an extended Sub-Market analysis considering the combined PMA's and all proposed and unstabilized Units in the extended Sub-Market Area; the Gross Capture Rate from such an extended Sub-Market Area analysis may be used as the basis for a feasibility conclusion.

(g) All Applicants shall acknowledge, by virtue of filing an Application, that the Department shall not be bound by any such opinion or Market Analysis, and may substitute its own analysis and underwriting conclusions for those submitted by the Market Analyst.

§10.304. Appraisal Rules and Guidelines.

(a) **General Provision**. An appraisal prepared for the Department must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation. The appraisal must include a statement that the report preparer has read and understood the requirements of this section.

(b) **Self-Contained**. An appraisal prepared for the Department must describe sufficient and adequate data and analyses to support the final opinion of value. The final value(s) must be reasonable, based on the information included. Any Third Party reports relied upon by the appraiser must be verified by the appraiser as to the validity of the data and the conclusions.

(c) **Appraiser Qualifications**. The qualifications of each appraiser are determined on a case-by-case basis by the Director of Real Estate Analysis or review appraiser, based upon the quality of the report itself and the experience and educational background of the appraiser. At minimum, a qualified appraiser must be appropriately certified or licensed by the Texas Appraiser Licensing and Certification Board.

(d) **Appraisal Contents**. An appraisal prepared for the Department must be organized in a format that follows a logical progression. In addition to the contents described in USPAP Standards Rule 2, the appraisal must include items addressed in paragraphs (1) - (12) of this subsection.

(1) **Title Page**. Include a statement identifying the Department as the client, acknowledging that the Department is granted full authority to rely on the findings of the report, and name and address of person authorizing report.

(2) **Letter of Transmittal**. Include reference to accompanying appraisal report, reference to all person(s) that provided significant assistance in the preparation of the report, date of report, effective date of appraisal, date of property inspection, name of person(s) inspecting the property, tax assessor's parcel number(s) of the site, estimate of marketing period, and signatures of all appraisers authorized to work on the assignment including the appraiser who inspected the property. Include a statement indicating the report preparer has read and understood the requirements of this section.

(3) **Table of Contents**. Number the exhibits included with the report for easy reference.

(4) **Disclosure of Competency**. Include appraiser's qualifications, detailing education and experience.

(5) **Statement of Ownership of the Subject Property**. Discuss all prior sales of the subject Property which occurred within the past three (3) years. Any pending agreements of sale, options to buy, or listing of the subject Property must be disclosed in the appraisal report.

(6) **Property Rights Appraised**. Include a statement as to the property rights (e.g., fee simple interest, leased fee interest, leasehold, etc.) being considered. The appropriate interest must be defined in terms of current appraisal terminology with the source cited.

(7) **Site/Improvement Description**. Discuss the site characteristics including subparagraphs (A) - (E) of this paragraph.

  (A) **Physical Site Characteristics**. Describe dimensions, size (square footage, acreage, etc.), shape, topography, corner influence, frontage, access, ingress-egress, etc. associated with the Development Site. Include a plat map and/or survey.

  (B) **Floodplain**. Discuss floodplain (including flood map panel number) and include a floodplain map with the subject Property clearly identified.

  (C) **Zoning**. Report the current zoning and description of the zoning restrictions and/or deed restrictions, where applicable, and type of Development permitted. Any probability of change in zoning should be discussed. A statement as to whether or not the improvements conform to the current zoning should be included. A statement addressing whether or not the improvements could be rebuilt if damaged or destroyed, should be included. If current zoning is not consistent with the highest and best use, and zoning changes are reasonable to expect, time and expense associated with the proposed zoning change should be considered and documented. A zoning map should be included.

  (D) **Description of Improvements**. Provide a thorough description and analysis of the improvements including size (Net Rentable Area, gross building area, etc.), number of stories, number of buildings, type/quality of construction, condition, actual age, effective age, exterior and interior amenities, items of deferred maintenance, energy efficiency measures, etc. All applicable forms of depreciation should be addressed along with the remaining economic life.

  (E) **Environmental Hazards**. It is recognized appraisers are not experts in such matters and the impact of such deficiencies may not be quantified; however, the report should disclose any potential environmental hazards (such as discolored vegetation, oil residue, asbestos-containing materials, lead-based paint etc.) noted during the inspection.

(8) **Highest and Best Use**. Market Analysis and feasibility study is required as part of the highest and best use. The highest and best use analysis should consider paragraph (7)(A) - (E) of this subsection as well as a supply and demand analysis.

  (A) The appraisal must inform the reader of any positive or negative market trends which could influence the value of the appraised Property. Detailed data must be included to support the appraiser's estimate of stabilized income, absorption, and occupancy.

  (B) The highest and best use section must contain a separate analysis "as if vacant" and "as improved" (or "as proposed to be improved/renovated"). All four elements (legally permissible, physically possible, feasible, and maximally productive) must be considered.

(9) **Appraisal Process**. It is mandatory that all three approaches, Cost Approach, Sales Comparison Approach and Income Approach, are considered in valuing the Property. If an approach is not applicable to a particular

property an adequate explanation must be provided. A land value estimate must be provided if the Cost Approach is not applicable.

(A) **Cost Approach**. This approach should give a clear and concise estimate of the cost to construct the subject improvements. The source(s) of the cost data should be reported.

(i) Cost comparables are desirable; however, alternative cost information may be obtained from Marshall & Swift Valuation Service or similar publications. The section, class, page, etc. should be referenced. All soft costs and entrepreneurial profit must be addressed and documented.

(ii) All applicable forms of depreciation must be discussed and analyzed. Such discussion must be consistent with the description of the improvements.

(iii) The land value estimate should include a sufficient number of sales which are current, comparable, and similar to the subject in terms of highest and best use. Comparable sales information should include address, legal description, tax assessor's parcel number(s), sales price, date of sale, grantor, grantee, three (3) year sales history, and adequate description of property transferred. The final value estimate should fall within the adjusted and unadjusted value ranges. Consideration and appropriate cash equivalent adjustments to the comparable sales price for subclauses (I) - (VII) of this clause should be made when applicable.

(I) Property rights conveyed.
(II) Financing terms.
(III) Conditions of sale.
(IV) Location.
(V) Highest and best use.
(VI) Physical characteristics (e.g., topography, size, shape, etc.).
(VII) Other characteristics (e.g., existing/proposed entitlements, special assessments, etc.).

(B) **Sales Comparison Approach**. This section should contain an adequate number of sales to provide the reader with a description of the current market conditions concerning this property type. Sales data should be recent and specific for the property type being appraised. The sales must be confirmed with buyer, seller, or an individual knowledgeable of the transaction.

(i) Sales information should include address, legal description, tax assessor's parcel number(s), sales price, financing considerations and adjustment for cash equivalency, date of sale, recordation of the instrument, parties to the transaction, three (3) year sale history, complete description of the Property and property rights conveyed, and discussion of marketing time. A scaled distance map clearly identifying the subject and the comparable sales must be included.

(ii) The method(s) used in the Sales Comparison Approach must be reflective of actual market activity and market participants.

(I) Sale Price/Unit of Comparison. The analysis of the sale comparables must identify, relate, and evaluate the individual adjustments applicable for property rights, terms of sale, conditions of sale, market conditions, and physical features. Sufficient narrative must be included to permit the reader to understand the direction and magnitude of the individual adjustments, as well as a unit of comparison value indicator for each comparable.

(II) Net Operating Income/Unit of Comparison. The Net Operating Income statistics or the comparables must be calculated in the same manner. It should be disclosed if reserves for replacement have been included in this method of analysis. At least one other method should accompany this method of analysis.

(C) **Income Approach**. This section must contain an analysis of both the actual historical and projected income and expense aspects of the subject Property.

(i) **Market Rent Estimate/Comparable Rental Analysis**. This section of the report should include an adequate number of actual market transactions to inform the reader of current market conditions concerning rental Units. The comparables must indicate current research for this specific property type. The comparables must be confirmed with the landlord, tenant or agent and individual data sheets must be included. The individual data sheets should include property address, lease terms, description of the property (e.g., Unit Type, unit size, unit mix, interior amenities, exterior amenities, etc.), physical characteristics of the property, and location of the comparables. Analysis of the Market Rents should be sufficiently detailed to permit the reader to understand the appraiser's logic and rationale. Adjustment for lease rights, condition of the lease, location, physical characteristics of the property, etc. must be considered.

(ii) **Comparison of Market Rent to Contract Rent**. Actual income for the subject along with the owner's current budget projections must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. The Contract Rents should be compared to the market-derived rents. A determination should be made as to whether the Contract Rents are below, equal to, or in excess of market rates. If there is a difference, its impact on value must be qualified.

(iii) **Vacancy/Collection Loss**. Historical occupancy data and current occupancy level for the subject should be reported and compared to occupancy data from the rental comparables and overall occupancy data for the subject's Primary Market.

(iv) **Expense Analysis**. Actual expenses for the subject, along with the owner's projected budget, must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. Historical expenses should be compared to comparables expenses of similar property types or published survey data (such as IREM, BOMA, etc.). Any expense differences should be reconciled. Include historical data regarding the subject's assessment and tax rates and a statement as to whether or not any delinquent taxes exist.

(v) **Capitalization**. The appraiser should present the capitalization method(s) reflective of the subject market and explain the omission of any method not considered in the report.

(I) **Direct Capitalization**. The primary method of deriving an overall rate is through market extraction. If a band of investment or mortgage equity technique is utilized, the assumptions must be fully disclosed and discussed.

(II) **Yield Capitalization (Discounted Cash Flow Analysis)**. This method of analysis should include a detailed and supportive discussion of the projected holding/investment period, income and income growth projections, occupancy projections, expense and expense growth projections, reversionary value and support for the discount rate.

(10) **Value Estimates**. Reconciliation of final value estimates is required. The Underwriter may request additional valuation information based on unique existing circumstances that are relevant for deriving the market value of the Property.

(A) All appraisals shall contain a separate estimate of the "as vacant" market value of the underlying land, based upon current sales comparables. The appraiser should consider the fee simple or leased fee interest as appropriate.

(B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value". For public housing converting to project-based rental assistance, the appraser must provide a value based on the future restricted rents. The value used in the analysis ~~must~~ may be based on the ~~post-conversion~~ unrestricted market rents if supported by an appraisal. The Department may require that the appraisal be reviewed by a third-party appraiser acceptable to the Department but selected by the Applicant. Use of the restricted rents by the appraiser will not require an appraisal review. Regardless of the rents used in the valuation, the appraiser~~and~~ must consider any other on-going restrictions that will remain in place even if not affecting rents. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates and/or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter.

(C) For existing Developments with rent restrictions, the appraisal must include the "as-is as-restricted" value. In particular, the value must be based on the proposed restricted rents when deriving the value based on the income approach.

(D) For all other existing Developments, the appraisal must include the "as-is" value.

(E) For any Development with favorable financing (generally below market debt) that will remain in place and transfer to the new owner, the appraisal must include a separate value for the existing favorable financing with supporting information.

(F) If required the appraiser must include a separate assessment of personal property, furniture, fixtures, and equipment ("FF&E") and/or intangible items. If personal property, FF&E, or intangible items are not part of the transaction or value estimate, a statement to such effect should be included.

(11) **Marketing Time**. Given property characteristics and current market conditions, the appraiser(s) should employ a reasonable marketing period. The report should detail existing market conditions and assumptions considered relevant.

(12) **Photographs.** Provide good quality color photographs of the subject Property (front, rear, and side elevations, on-site amenities, interior of typical Units if available). Photographs should be properly labeled. Photographs of the neighborhood, street scenes, and comparables should be included. An aerial photograph is desirable but not mandatory.

(e) **Additional Appraisal Concerns**. The appraiser(s) must be aware of the Department program rules and guidelines and the appraisal must include analysis of any impact to the subject's value.

§10.305. Environmental Site Assessment Rules and Guidelines.

(a) **General Provisions**. The Environmental Site Assessments (ESA) prepared for the Department must be conducted and reported in conformity with the standards of the American Society for Testing and Materials ("ASTM"). The initial report must conform with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E1527- 13 or any subsequent standards as published). Any subsequent reports should also conform to ASTM standards and such other recognized industry standards as a reasonable person would deem relevant in view of the Property's anticipated use for human habitation. The ESA shall be conducted by a Third Party environmental professional at the expense of the Applicant, and addressed to the Department as a User of the report (as defined by ASTM standards). Copies of reports provided to the Department which were commissioned by other financial institutions must either address Texas Department of Housing and Community Affairs as a co-recipient of the report or letters from both the provider and the recipient of the report may be submitted extending reliance on the report to the Department. The ESA report must also include a statement that the person or company preparing the ESA report will not materially benefit from the Development in any other way than receiving a fee for performing the ESA, and that the fee is in no way contingent upon the outcome of the assessment. The ESA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

(b) In addition to ASTM requirements, the report must:

(1) state if a noise study is recommended for a property in accordance with current HUD guidelines and identify its proximity to industrial zones, major highways, active rail lines, civil and military airfields, or other potential sources of excessive noise;
(2) provide a copy of a current survey, if available, or other drawing of the site reflecting the boundaries and adjacent streets, all improvements on the site, and any items of concern described in the body of the ESA or identified during the physical inspection;
(3) provide a copy of the current FEMA Flood Insurance Rate Map showing the panel number and encompassing the site with the site boundaries precisely identified and superimposed on the map;
(4) if the subject Development Site includes any improvements or debris from pre-existing improvements, state if testing for Lead Based Paint and/or asbestos containing materials would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;
(5) state if testing for lead in the drinking water would be required pursuant to local, state, and federal laws, or recommended due to any other consideration such as the age of pipes and solder in existing improvements. For buildings constructed prior to 1980, a report on the quality of the local water supply does not satisfy this requirement;
(6) assess the potential for the presence of Radon on the Property, and recommend specific testing if necessary;
(7) identify and assess the presence of oil, gas or chemical pipelines, processing facilities, storage facilities or other potentially hazardous explosive activities on-site or in the general area of the site that could potentially adversely impact the Development. Location of these items must be shown on a drawing or map in relation to the Development Site and all existing or future improvements. The drawing must depict any blast zones (in accordance with HUD guidelines) and include HUD blast zone calculations; and
(8) include a vapor encroachment screening in accordance with Vapor Intrusion E2600-10.

(c) If the report recommends further studies or establishes that environmental hazards currently exist on the Property, or are originating off-site, but would nonetheless affect the Property, the Development Owner must act on such a recommendation, or provide a plan for either the abatement or elimination of the hazard. Evidence of action or a plan for the abatement or elimination of the hazard must be presented upon Application submittal.

(d) For Developments in programs that allow a waiver of the Phase I ESA such as a USDA funded Development, the Development Owners are hereby notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(e) Those Developments which have or are to receive first lien financing from HUD may submit HUD's environmental assessment report, provided that it conforms to the requirements of this section.

§10.306. Property Condition Assessment Guidelines.

(a) **General Provisions**. The objective of the Property Condition Assessment (PCA) for Rehabilitation Developments is to provide cost estimates for repairs and replacements, and new construction of additional buildings or amenities, which are: immediately necessary repairs and replacements; improvements proposed by the Applicant as outlined in a scope of work narrative submitted by the Applicant to the PCA provider that is consistent with the scope of work provided in the Application; and expected to be required throughout the term of the Affordability Period and not less than thirty (30) years. The PCA prepared for the Department should be conducted and reported in conformity with the American Society for Testing and Materials "Standard Guide for Property Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018") except as provided for in subsections (b) and (c) of this section. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section. The PCA must include the Department's PCA Cost Schedule Supplement which details all Rehabilitation costs and projected repairs and replacements through at least thirty (30) years. The PCA must also include discussion and analysis of:

(1) **Useful Life Estimates**. For each system and component of the property the PCA should assess the condition of the system or component, and estimate its remaining useful life, citing the basis or the source from which such estimate is derived;
(2) **Code Compliance**. The PCA should review and document any known violations of any applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the responsibility of the Applicant to ensure that the PCA adequately considers any and all applicable federal, state, and local laws and regulations which may govern any work performed to the subject Property. For transactions with Direct Loan funding from the Department, the PCA provider must also evaluate cost estimates to meet the International Existing Building Code and other property standards;
(3) **Program Rules**. The PCA should assess the extent to which any systems or components must be modified, repaired, or replaced in order to comply with any specific requirements of the housing program under which the Development is proposed to be financed, the Department's Uniform Physical Condition Standards, and any scoring criteria for which the Applicant may claim points;
(4) **Accessibility Requirements.** The PCA report must include an analysis of compliance with the Department's accessibility requirements pursuant to Chapter 1, Subchapter B and Section 10.101 (B)(8) and include the specific scope of work and costs needed to ensure that the Development will meet these requirements upon Rehabilitation (including conversion and Adaptive Reuse).
(5) **Reconciliation of Scope of Work and Costs.** The PCA report must include the Department's PCA Cost Schedule Supplement with the signature of the PCA provider; the costs presented on the PCA Cost Schedule Supplement are expected to be consistent with both the scope of work and immediate costs identified in the body of the PCA report, and with the Applicant's scope of work and Hard Costs as presented on the Applicant's development cost schedule; any significant variation between the costs listed on the PCA Cost Schedule Supplement and the costs listed in the body of the PCA report or on the Applicant's development cost schedule must be reconciled in a narrative analysis from the PCA provider; and
(6) **Cost Estimates for Repair and Replacement**. It is the responsibility of the Applicant to ensure that the PCA provider is apprised of all development activities associated with the proposed transaction and consistency of the total immediately necessary and proposed repair and replacement cost estimates with the Total Housing Development Cost schedule and scope of work submitted as an exhibit of the Application.
    (A) **Immediately Necessary Repairs and Replacement**. Systems or components which are expected to have a remaining useful life of less than one (1) year, which are found to be in violation of any applicable codes, which must be modified, repaired or replaced in order to satisfy program rules, or which are otherwise in a state of deferred maintenance or pose health and safety hazards should be considered immediately necessary repair and replacement. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component which is

identified as being an immediate need, citing the basis or the source from which such cost estimate is derived.

(B) **Proposed Repair, Replacement, or New Construction**. If the development plan calls for additional repair, replacement, or New Construction above and beyond the immediate repair and replacement described in subparagraph (A) of this paragraph, such items must be identified and the nature or source of obsolescence or improvement to the operations of the Property discussed. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or new construction which is identified as being above and beyond the immediate need, citing the basis or the source from which such cost estimate is derived.

(C) **Reconciliation of Costs.** The combined costs described in subparagraphs (A) and (B) of this paragraph should be consistent with the Hard Costs presented on the Applicant's development cost schedule. (D) **Expected Repair and Replacement Over Time**. The term during which the PCA should estimate the cost of expected repair and replacement over time must equal the lesser of thirty (30) years or the longest term of any land use or regulatory restrictions which are, or will be, associated with the provision of housing on the Property. The PCA must estimate the periodic costs which are expected to arise for repairing or replacing each system or component or the property, based on the estimated remaining useful life of such system or component as described in paragraph (1) of this subsection adjusted for completion of repair and replacement immediately necessary and proposed as described in subparagraphs (A) and (B) of this paragraph. The PCA must include a separate table of the estimated long term costs which identifies in each line the individual component of the property being examined, and in each column the year during the term in which the costs are estimated to be incurred and no less than thirty (30) years. The estimated costs for future years should be given in both present dollar values and anticipated future dollar values assuming a reasonable inflation factor of not less than 2.5 percent per annum.

(b) Any costs not identified and discussed in the PCA as part of subsection (a)(4), (5)(A) and (5)(B) of this section will not be included in the underwritten Total Development Cost in the Report.

(c) If a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied, the Department will also accept copies of reports commissioned or required by the primary lender for a proposed transaction, which have been prepared in accordance with:

(1) Fannie Mae's criteria for Physical Needs Assessments;
(2) Federal Housing Administration's criteria for Project Capital Needs Assessments;
(3) Freddie Mac's guidelines for Engineering and Property Condition Reports;
(4) USDA guidelines for Capital Needs Assessment.

(d) The Department may consider for acceptance reports prepared according to other standards which are not specifically named in subsection (b) of this section, if a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied.

(e) The PCA shall be conducted by a Third Party at the expense of the Applicant, and addressed to Texas Department of Housing and Community Affairs as the client. Copies of reports provided to the Department which were commissioned by other financial institutions should address Texas Department of Housing and Community Affairs as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to Texas Department of Housing and Community Affairs. The PCA report should also include a statement that the person or company preparing the PCA report will not materially benefit from the Development in any other way than receiving a fee for performing the PCA. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

~~**§10.307. Direct Loan Requirements.**~~

~~(a) Direct Loans through the Department must be structured according to the criteria as identified in paragraphs (1) - (5) of this subsection:~~

(1) the interest rate may be as low as zero percent provided all applicable NOFA and program rules and requirements are met as well as requirements in this Subchapter;

(2) unless structured only as an interim construction or bridge loan and provided all NOFA and program requirements are met, the loan term shall be no less than fifteen (15) years and no greater than forty (40) years and the amortization schedule shall be no less than thirty (30) years and no greater than forty (40) years. The Department's debt will match within six (6) months of the shortest term or amortization of any senior debt so long as neither exceeds forty (40) years.

(3) the loan shall be structured with a regular monthly payment beginning on the first day of the 25th full month following the actual date of loan closing and continuing for the loan term. If the first lien mortgage is a federally insured HUD or FHA mortgage, the Department may approve a loan structure with annual payments payable from surplus cash flow provided that the debt coverage ratio, inclusive of the loan, continues to meet the requirements in this Subchapter. The Board may also approve, on a case-by-case basis, a cash flow loan structure provided it determines that the financial risk is outweighed by the need for the proposed housing;

(4) the loan shall have a deed of trust with a permanent lien position that is superior to any other sources for financing including hard repayment debt that is less than or equal to the Direct Loan amount and for any other sources that have soft repayment structures, non-amortizing balloon notes, have deferred forgivable provisions or in which the lender has an identity of interest with any member of the Development Team. The Board may also approve, on a case by case basis, an alternative lien priority provided it determines that the financial risk is outweighed by the need for the proposed housing; and,

(5) If the Direct Loan amounts to more than 50 percent of the Total Housing Development Cost, except for Developments also financed through the USDA §515 program, the Application must include the documents as identified in subparagraphs (A) - (B) of this paragraph:

(A) a letter from a Third Party CPA verifying the capacity of the Applicant, Developer or Development Owner to provide at least 10 percent of the Total Housing Development Cost as a short term loan for the Development; or

(B) evidence of a line of credit or equivalent tool equal to at least 10 percent of the Total Housing Development Cost from a financial institution that is available for use during the proposed Development activities.

(b) Direct Loans through the Department must observe the following construction, occupancy, and repayment provisions in accordance with the Federal requirements in 24 CFR Part 92 and as included in the Direct Loan documents:

(1) Construction must begin no later than six (6) months from the date of "Committing to a specific local project" as defined in 24 CFR Part 92 and must be completed within twenty-four (24) months of the actual date of loan closing as reflected by the development's certificate(s) of occupancy and Certificate of Substantial Completion (AIA Form G704). A final construction inspection request must be sent to the Department within 18 months of the actual loan closing date, with the repayment period beginning on the first day of the 25th month following the actual date of loan closing. Extensions to the construction or development period may only be made for good cause and approved by the Executive Director or authorized designee provided the start of construction is no later than twelve (12) months from the date of committing to a specific local project;

(2) Initial occupancy by eligible tenants shall occur within six (6) months of project completion. Requests to extend the initial occupancy period must be accompanied by marketing information and a marketing plan which will be submitted by the Department to HUD for final approval;

(3) repayment will be required on a per unit basis for units that have not been rented to eligible households within twenty-four (24) months of project completion; and

(4) termination and repayment of the HOME award in full will be required for any development that is not completed within four (4) years of the date of funding commitment.

Commenter – 1

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October 14, 2016

Via email htc.public-comment@tdhca.state.tx.us

Ms. Sharon Gamble
9% Competitive Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

Re: Public Comments on QAP and MF Rules

Dear Sharon:

Attached are our comments on the proposed 2017 QAP and Multifamily Rules, submitted in accordance with the notice published in the September 23, 2016, edition of the Texas Register. Please let us know if you have any questions.

Sincerely,

Brownstone Affordable Housing, Ltd., a Texas limited partnership

By: Three B Ventures, Inc., a Texas corporation, its general partner

By:_____
Doak D. Brown, Vice President
doak@thebrownstonegroup.net

enclosures

Subchapter D

10.302(e)(1)(C) Acquisition from Seller without current Title

We agree with Oryx Compliance, LLC's comment on this section.

10.302(e)(9) Reserves

New language has been added to the 5th sentence of this section, and we recommend the following changes.

> In no instance at initial underwriting will total reserves exceed twelve (12) months of stabilized operating expenses plus debt service (and only for USDA or HUD financed rehabilitation transactions the initial deposits to replacement reserves, initial deposits to required voucher reserves and transferred replacement reserves ~~for USDA or HUD financed rehabilitation transactions~~).

Commenter – 2

Leslie Holleman & Associates, Inc.
Residential Real Estate Development & Consulting

October 14, 2016

Via email htc.public-comment@tdhca.state.tx.us

Ms. Sharon Gamble
9% Competitive Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

Re: Public Comment on QAP and MF Rules

Dear Sharon:

Attached is our comment on the proposed 2017 QAP and Multifamily Rules, submitted in accordance with the notice published in the September 23, 2016, edition of the Texas Register.

If you have any questions or need additional information, please feel free to contact me at (970) 731-9797 or leslie@holleman-associates.com.

Sincerely,

LHolleman

Leslie Holleman
President

enclosures

Subchapter D

10.302(e)(9) Reserves

New language has been added to the 5th sentence of this section, and we recommend the following changes.

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Commenter – 3

APOLONIO (Nono) FLORES
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October 14, 2016

Via email htc.public-comment@tdhca.state.tx.us

Ms. Sharon Gamble
9% Competitive Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

Re: Public Comment on QAP and MF Rules

Dear Sharon:

Attached is our comment on the proposed 2017 QAP and Multifamily Rules, submitted in accordance with the notice published in the September 23, 2016, edition of the Texas Register. Please let me know if you have any questions.

Sincerely,

Apolonio Flores

enclosures

Subchapter D

10.302(e)(1)(C) Acquisition from Seller without current Title

We agree with Oryx Compliance, LLC's comment on this section.

10.302(e)(9) Reserves

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Commenter – 4

TX-CAD 2017 Final Comments

The Texas Coalition of Affordable Developers (TX-CAD) is pleased to submit our comments for the 2017 QAP and Multifamily Rules. TX-CAD is a coalition of Developers and consultants who have come together for the purpose of focusing on the improvement of affordable housing policy in Texas. The members of this group represent over 200 years of affordable housing development/policy and approximately 35,000 units of affordable housing in Texas.

QAP

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

The Leveraging issue was studied in depth several years ago and was determined to adversely impact deals – that it directly leads to "a race to the bottom". We believe that this still holds true. The economic impact of lowering the leveraging is devastating to deals and results in developments that are significantly less financially sound. Below is an example of the financial impact on a generic deal:

> *Assume the average Tax Credit Request is $1.5M, the average deal cost at that tax credit request is $18,750,000. ($18,750,000 * 8% = $1.5M). Now reduce the 8% to 7% ($18,750,000 * 7% = $1,312,500) - instead of $1.5M in credits, you can only request $1,312,500 in credits – a $187,500 reduction in annual credits.* ***Multiply that by the 10 year credit period and a 1% reduction in leveraging results in $1,875,000 LESS sources to fund the deal the exact same deal****.*

If you can't reduce your costs to recapture this reduction in credits (which has a circular effect), then you could reduce or defer your developer fee and even then you may still have a gap. A reduction in cost at this level will result in the lowest quality level of materials and finish out, further stigmatizing affordable housing with the public.

Alternatively, an applicant could drive up costs to lower the leveraging percentage but without a source of funding to cover the additional costs, the result is to financially stress a development potentially to a point that it adversely impacts the financial health of the deal or risks not being able to actually get the project closed or constructed.

Finally, one of the unintended consequences of implementing high opportunity scoring in the QAP is the higher cost of land that is competitive. With higher land costs and construction costs rising, to lower the leverage percentage by 1% risks unfeasibility for many high opportunity sites.

We believe this issue has been significantly vetted and shown by Department staff in prior years to not be in the best interest of the program and request it go back to the 2016 language as illustrated below:

> (ii) if the Housing Tax Credit funding request is less than eight (8) percent of the Total Housing Development Cost (3 points); or

considered “a courtesy”. Given the problems with the postings of the logs in the 2015 round, and the frequency with which people of dropped from TDHCA email notifications it does not seem like sound administrative policy to have such an important item be left to such a passive and problematic process. Additionally, we believe that scoring notices are an important part of the administrative process and should be a mandatory, not something that staff “may” provide.

We believe the following language should be removed:

> ~~*The Department will, from time to time during the review process, publish an application log which shall include the self-score and any scoring adjustments made by staff. The posting of such scores on the application log may trigger appeal rights and corresponding deadlines pursuant to Tex. Gov't. Code §2306.6715 and §10.902 of this chapter (relating to Appeals Process). The Department may also provide a courtesy scoring notice reflecting such score to the Applicant.*~~

7. Site and Development Requirements and Restrictions (§10.101(b)(1)(A)(vi))

Under General Ineligibility Criteria, item vi, the addition of adaptive reuse as it relates to one for one replacement units is not appropriate. An adaptive reuse by definition includes no units because it was not being used for residential. “Adaptive Reuse -- The change-in-use of an existing building not, at the time of Application, being used, in whole or in part, for residential purposes…” Adaptive Reuse should be removed from item vi.

> *(vi) A Development utilizing a Direct Loan that is subject to the Housing and Community Development Act, §104(d) requirements and proposing Rehabilitation, or Reconstruction* ~~*or Adaptive Reuse*~~*, if the Applicant is not proposing at least the one-for-one replacement of the existing unit mix. Adding additional units would not violate this provision.*

8. Administrative Deficiencies for Competitive HTC Applications. (§10.201(7)(B))

We recommends keeping the period to cure a deficiency five days instead of reducing to three days.

Justification: More times than not, requests for deficiencies create a ripple effect, where making a change to one document requires the applicant to change several other documents to be consistent. When one of the documents requires input from a third party, addressing the deficiency takes time. Five days is more appropriate than three days.

Appraisal Methodology for RAD Developments

§10.304(d)(10)(B) Appraisal Rules and Guidelines: Value Estimates, Developments with Project-Based Rental Assistance.

Proposed Language:
(B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value". ~~inclusive of the~~

~~value associated with the rental assistance.~~ For public housing converting to project-based rental assistance or project-based vouchers under the Rental Assistance Demonstration (RAD) program, the value must be based on the ~~post conversion restricted rents and must consider any other on going restrictions that will remain in place even if not affecting rents~~ unrestricted market rents. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates and/or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter.

Rationale:

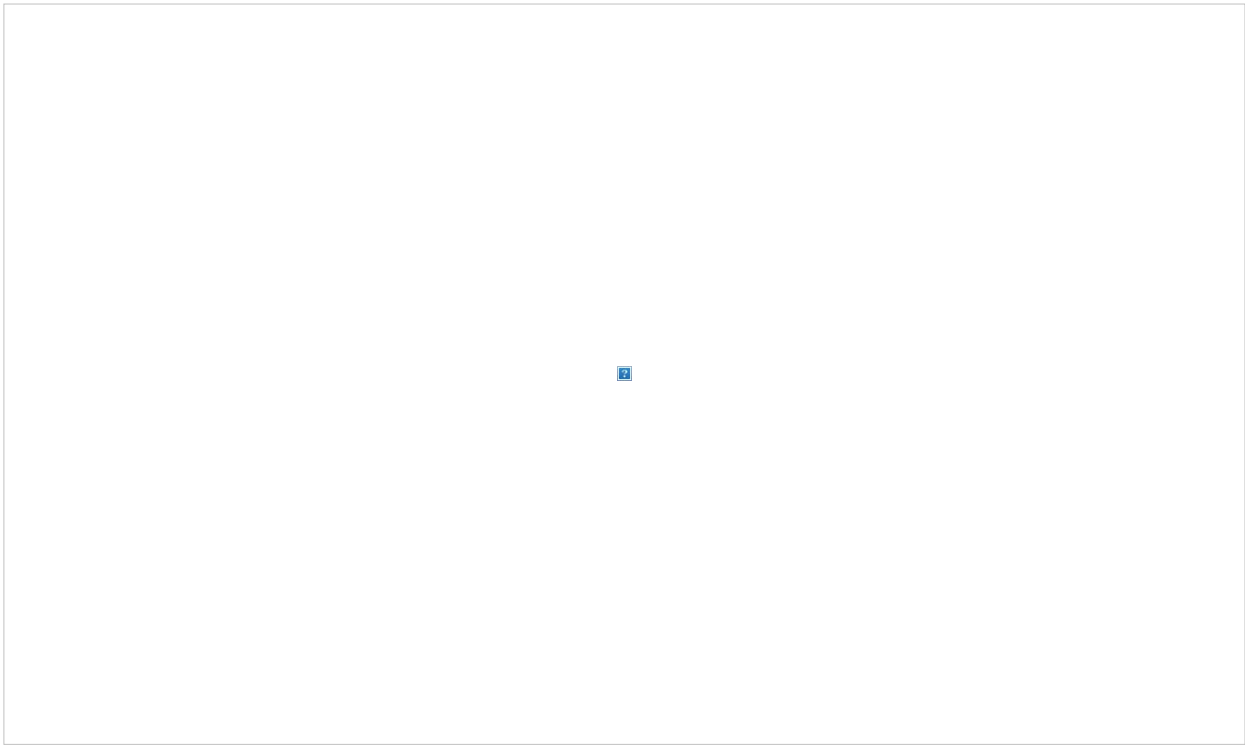
Nationwide a number of closed RAD transactions have been awarded acquisition credits based on building values derived using market rents under the income approach. Tax counsel for these transactions have opined that this approach is reasonable, as have national accounting and appraisal firms. The reason this approach has been accepted nationwide is that in the "As Is" condition public housing developments operate on a breakeven basis, preventing an accurate valuation under the income approach. There are several ways in which HUD may allow the release of public housing restrictions. For public housing converting to Section 8 assistance, at the closing of RAD transactions, the existing public housing restrictions are removed and the property is unencumbered. This release of public housing restrictions supports the use of a market-rent derived value.

Tax credits are an essential tool in the rehabilitation and redevelopment of public housing developments under the RAD program, and the nationally accepted use of a market rent-derived value allows housing authorities to generate needed financing to structure financially feasible transactions. In areas with strong rental markets where affordability crises often exist, the differential between the market rents a housing authority could realize in an unencumbered scenario and the RAD rents provide a mechanism for the housing authority to maximize the value of existing assets to generate more financing to improve and preserve existing affordable housing.

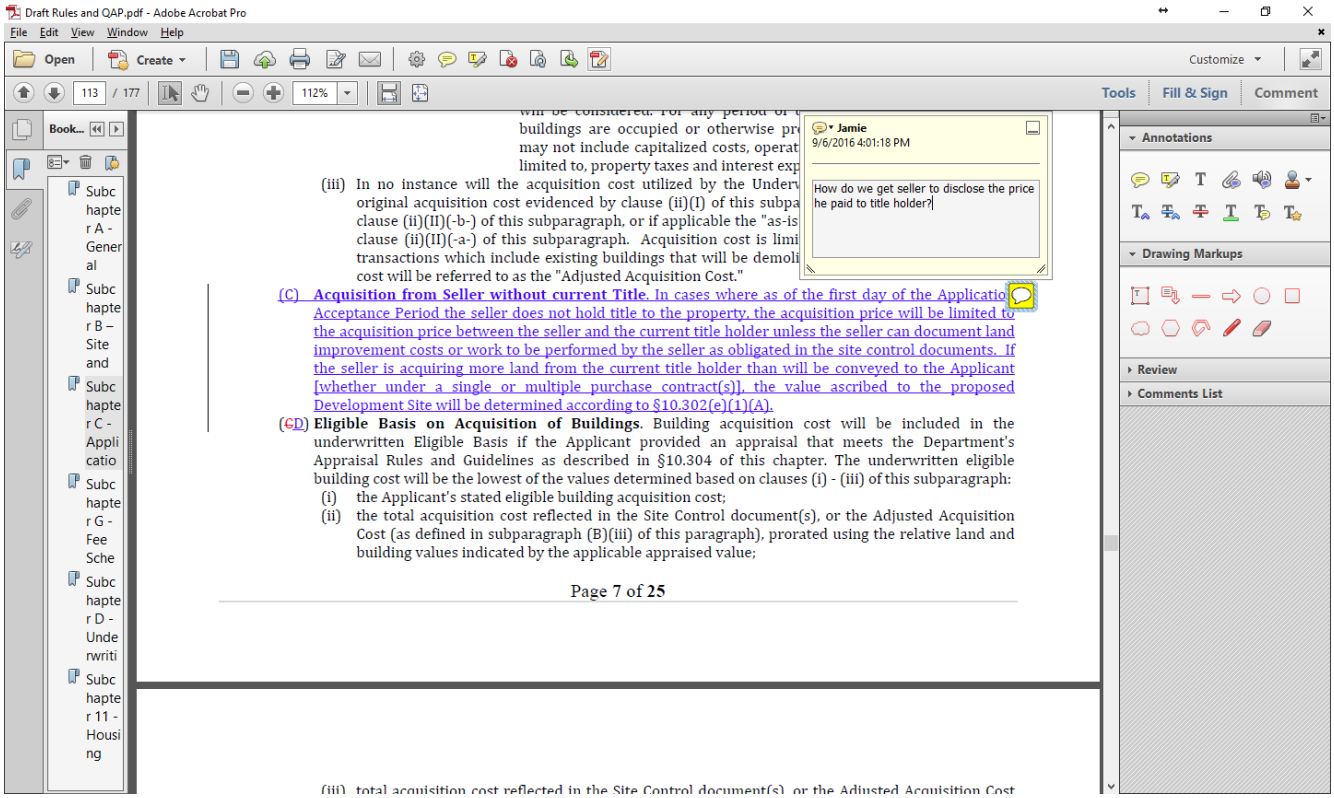
Commenter – 5

From: Jamie Rickenbacker
To: Tom Cavanagh; Brent Stewart
Subject: MF Rules and QAP
Date: Tuesday, September 06, 2016 4:12:38 PM
Attachments: image001.png

I see what you are doing here and understand why. Pushing back on the profiteering of the LIHTC high opportunity land front runners. They will have a tougher cycle making money! ☺ You may need something further to make this work. Something to the effect that if the applicant is not purchasing the land from the current title holder (most don't) then the applicant must require in the purchase and sale agreement with the seller that a copy of the closing statement or other evidence of amount paid to the title holder will be provided to the applicant and be submitted at 10% test. Most control the land then assign control via the buy sell agreement to the LP. So they won't care. Those that are flipping the land will care and make noise. The process may impede the intent on this one.



James E. Rickenbacker, CFA
713-664-9100



buildings are occupied or otherwise pr
may not include capitalized costs, operat
limited to, property taxes and interest exp

(iii) In no instance will the acquisition cost utilized by the Underw original acquisition cost evidenced by clause (ii)(I) of this subpa clause (ii)(II)(-b-) of this subparagraph, or if applicable the "as-is clause (ii)(II)(-a-) of this subparagraph. Acquisition cost is limi transactions which include existing buildings that will be demoli cost will be referred to as the "Adjusted Acquisition Cost."

(C) **Acquisition from Seller without current Title**. In cases where as of the first day of the Application Acceptance Period the seller does not hold title to the property, the acquisition price will be limited to the acquisition price between the seller and the current title holder unless the seller can document land improvement costs or work to be performed by the seller as obligated in the site control documents. If the seller is acquiring more land from the current title holder than will be conveyed to the Applicant [whether under a single or multiple purchase contract(s)], the value ascribed to the proposed Development Site will be determined according to §10.302(e)(1)(A).

(CD) **Eligible Basis on Acquisition of Buildings**. Building acquisition cost will be included in the underwritten Eligible Basis if the Applicant provided an appraisal that meets the Department's Appraisal Rules and Guidelines as described in §10.304 of this chapter. The underwritten eligible building cost will be the lowest of the values determined based on clauses (i) - (iii) of this subparagraph:

(i) the Applicant's stated eligible building acquisition cost;

(ii) the total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in subparagraph (B)(iii) of this paragraph), prorated using the relative land and building values indicated by the applicable appraised value;

(iii) total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost

Commenter – 6

EVOLIE HOUSING PARTNERS
404 E WORTH STREET
GRAPEVINE, TEXAS 76051
(817) 424-3908

October 14, 2016

Via email htc.public-comment@tdhca.state.tx.us

Ms. Sharon Gamble
9% Competitive Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

Re: Public Comment on QAP and MF Rules

Dear Sharon:

Attached is our comment on the proposed 2017 QAP and Multifamily Rules, submitted in accordance with the notice published in the September 23, 2016, edition of the Texas Register.

If you have any questions or need additional information, please feel free to contact me at (817) 424-3908 or evon@holleman-associates.com.

Sincerely,

Evon Harris
Manager

enclosures

Subchapter D

10.302(e)(9) Reserves

New language has been added to the 5th sentence of this section, and we recommend the following changes.

> In no instance at initial underwriting will total reserves exceed twelve (12) months of stabilized operating expenses plus debt service (and only for USDA or HUD financed rehabilitation transactions the initial deposits to replacement reserves, initial deposits to required voucher reserves and transferred replacement reserves ~~for USDA or HUD financed rehabilitation transactions~~).

Commenter – 7

DOMINIUM SM

To: TDHCA, Sharon Gamble

From: Dominium

Date: October 14, 2016

Re: Dominium's Comments to Proposed 2017 Rules

Dominium has carefully reviewed the proposed 2017 rules and requests the Department consider the following comments. These comments are in addition to the comments of TAAHP, which we fully support. It should be noted that Dominium has representatives serving on the TAAHP Board and also on their QAP Committee, which provided input to help inform TAAHP's comments.

The below comments of Dominium are generally created through the lens of tax-exempt bond financed transactions, and in particular preservation of existing affordable housing (either Section 42 or project based Section 8). Dominium operates in 23 different states and is primarily a 4% bond shop that does very little 9% work, so we submit these comments with the goal of helping to efficiently preserve and rehab, or construct, affordable housing, utilizing tax-exempt bond and 4% low-income housing tax credits. We believe our broad work with affordable housing financed with tax-exempt bonds provides valuable input to the rules proposed by TDHCA.

New Proposed Rule at 10 Texas Administrative Code ("TAC"), Chapter 11

- 11.4(c) Increase in Eligible Basis—the existing language is ambiguous as it pertains to tax exempt bond financed transactions. We suggest that changes be made to make it clear that 11.4(c)(1) does not apply to 4% bond deals, particularly 4% bond deals that are preservation of existing affordable housing (project based S8 or existing S42).
    - If a 4% bond deals is otherwise eligible for a 30% basis boost under Section 42 of the code there should not be further restrictions on the ability of those transactions to qualify for the basis boost.

- (b)(6)(B) Unit and Development Construction Features
    - 7 points for rehabs may be hard to meet. Suggest this be lowered for rehabilitation deals utilizing 4% bonds.
    - (xii) "High Speed Internet" not defined. Is this able to be charged for? Or does the owner have to just provide the ability for the resident to have high-speed internet?
    - (xiv) What about built-up or 4-ply flat roof? Doesn't provide any points for a quality flat roof. Suggest points be added for flat roof developments to make even with shingles.

New Proposed Rule at 10 Texas Administrative Code ("TAC"), Chapter 10, Subchapter C

- Section 10.201(3)(A)—consider adding the word "material" before "development costs" or make this sentence read "as long as the financing structure and terms remain unchanged**, or such changes are not material.**"
    - This will help avoid an administrative burden to staff and the developer for something that is truly not material.
- Section 10.202—consider a fee payment by the 'challenger' to help dissuade bogus or disingenuous challenges. We would recommend that any 'challenge' be treated as Administrative Deficiency with a fee of $500. This would not only offset the time the Department staff spend on the challenge, but would hopefully dissuade challenges without merit.
- Section 10.204(17) Section 811—Why would this apply to 4% bond deals; seems this should apply to competitive 9% housing tax credits only. Also, project based S8 should be exempt. We further agree with TAAHP comments that this should apply only to 9% deals and not threshold for tax-exempt bond financed transactions.
- Section 10.205—We recommend that this be exempt on project based S8 deals or existing Section 42 deals that are 95% or greater occupied at the time of application from completing a market study—it is an inefficient use of time and money to provide when it has no meaningful value. This would also relieve department staff of some administrative burden in reviewing applications that are proposing to renovate existing affordable housing.
    - Dominium understands this might be to substantive to modify now, but would like the Department to consider this in the future should it be unable to be modified now. Further, we understand that by statute a market analysis is required, but think a full market study is too much, where a less intense version of a market analysis could suffice.

New Proposed Rule at 10 Texas Administrative Code ("TAC"), Chapter 10, Subchapter D

- Section 10.302(d)(4)(D) <p. 5>—DSCR, we suggest the Department consider adding language for tax-exempt bond deals that are 80% or greater project based S8 as many lenders and investors may require a higher DSCR than 1.35, or even 1.50, if there are contract rents above S42 limits, etc.

    - There is a different risk profile on HUD project based Section 8 developments that many investors and lenders underwrite more conservatively, so this is really to allow flexibility to make it easier to preserve HUD-assisted developments.
    - Dominium understands this might be to substantive to modify now, but would like the Department to consider this in the future.
- Section 10.303—market study. Suggest this not be required on existing S42 and S8 deals that are not moving rents more than 5% and that are 90% occupied or greater over the past 12-months. It is an inefficient use of time, Department staff, and money on project based S8 deals and S42 re-syndications that are not significantly moving NOI and are not displacing tenants.
    - Dominium understands this might be to substantive to modify now, but would like the Department to consider this in the future.

Commenter – 8

COATS | ROSE

A PROFESSIONAL CORPORATION

BARRY PALMER
DIRECTOR

BPALMER@COATSROSE.COM
DIRECT: (713) 653-7395
FAX: (713) 890-3944

October 14, 2016

Via Email: bstewart@tdhca.state.tx.us
Mr. Brent Stewart
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

Re: Public Comment - 10 TAC, Chapter 10, Subchapter D

Dear Mr. Stewart,

This letter serves to highlight my concerns regarding Section 10.304(d)(10)(B) of 10 Texas Administrative Code, Chapter 10, Subchapter D, currently under consideration by the Texas Department of Housing and Community Affairs (the "TDHCA"). The language in question fails to take into account the U.S. Department of Housing and Urban Affairs ("HUD") conversion process for redevelopment of public housing sites using the Rental Assistance Demonstration ("RAD") program. Under RAD, HUD provides a housing authority the option of selling the property at market rate, post conversion and once the public housing Declaration of Trust has been released. Accordingly, any acquisition cost appraisal of the improvements of a public housing site which is part of a 4% low-income housing tax credit ("LIHTC") application and RAD conversion should use their market-rate.

Section 10.304(d)(10)(B) addresses reconciliation of final value estimates for appraisals of affordable housing developments. This Section requires that the "as-is" appraisal value of existing public housing developments converting to project-based rental assistance be based on the post conversion restricted rents and consider other on-going restrictions that will remain in place following the project, instead of using a market-rate appraisal methodology. This approach results in an artificially low valuation which ultimately reduces the number of tax credits available to the project.

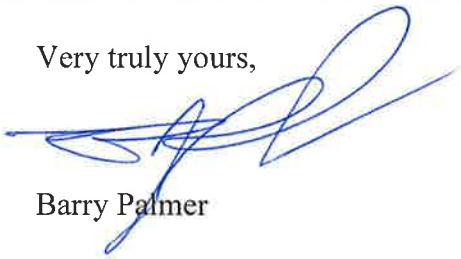
Under current HUD regulations, when a conversion of a public housing unit ("PH") to a market unit under Section 8 assistance occurs, the housing authority surrenders its Congressionally-appropriated Capital Funds for a public housing project in exchange for an affirmative commitment of project-based Section 8 or project-based Housing Choice Vouchers and a release of the Declaration of Trust restricting the property for use as public housing. Following its release, the tax credit Project Owner will enter into a Housing Assistance Payment Contract ("HAP") under either (i) Section 8(d) (project based Section 8); or (ii) Section 8(o)

(project based Housing Choice Vouchers) of the Housing Act of 1937. Finally a renewable RAD Use Agreement is recorded against the title to the development site. For relocated RAD conversions, once all the public housing sites are converted and relocated, the Housing Authority can sell the site for fair market value.

By permitting the use of market rate methodology when valuing project improvements for RAD conversions utilizing 4% LIHTCs, TDHCA will better reflect the economic realities of the RAD transaction. If the housing authority were to dispose of the public housing property rather than convert to RAD they would sell the property for market value. An increase in the appraised value of the improvements would provide an increase in tax credits to the project, and ultimately, greater equity investment for use in substantive rehabilitation of the aging portfolios of housing authorities throughout Texas. Importantly, the practice of permitting fair market valuation of improvements under the conditions above has been approved by state housing agencies and housing finance corporations across the country servicing LIHTC. National tax lawyers at the law firms providing tax opinion in the industry have been willing to provide tax opinions on this valuation method. Finally, major tax credit investors have indicated a willingness to increase investment in 4% LIHTC projects undergoing conversion to RAD. As the increase in credits involves the 4% non-competitive tax credit, of which there is ample availability, any resulting increase in 4% awards will not detrimentally impact the amount of credits available.

For the reasons stated above, TDHCA should alter its rules to permit the use of market-rate appraisal methodology in valuing project improvements for rehabilitation developments combining 4% non-competitive tax credits and conversion under HUD's RAD program.

Very truly yours,



Barry Palmer

Commenter – 9

TAAHP
TEXAS AFFILIATION OF AFFORDABLE HOUSING PROVIDERS | 221 E. 9th street, ste. 408 | Austin, TX 78701
tel 512.476.9901 fax 512.476.9903 taahp.org taahp.org/housing-conference

October 14, 2016

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

Via Hand Delivery

Dear Chairman Oxer & Members of the Board:

On behalf of the Texas Affiliation of Affordable Housing Providers (TAAHP), we submit several recommendations for modifications to the 2017 Multifamily Program Rules, as well as the Qualified Allocation Plan (QAP) and the Underwriting and Loan Policy that are currently subject to public comment. TAAHP has more than 300 members including affordable housing professionals active in the development, ownership and management of affordable housing in the State of Texas.

It is TAAHP's policy to submit only recommendations that represent consensus opinions from the membership. TAAHP's recommendations were developed at a meeting with the TAAHP Membership on October 5, 2016 in response to the rules approved for public comment by the TDHCA Governing Board on September 8, 2015. With those comments as an introduction, please consider the following recommendations with regard to specific provisions of the rules:

Subchapter B – Site and Development Requirements and Restrictions

Section 10.101(a)(2) Undesirable Site Features

TAAHP requests changes to this section, which are included on the attached pages.

Justification: The radii in previous years' QAP are more appropriate. With regard to proximity to railroad tracks, the proposed change is consistent with HUD's guidelines on proximity to active railroad tracks which are more appropriate guidelines to use because they address the impact to the resident, rather than redline entire swaths of urban areas.

Section 10.101(a)(2)(B) Undesirable Neighborhood Characteristics.

TAAHP requests that this entire section be deleted.

Justification: This section is a remnant of the remediation plan and should be removed from the rules in the wake of the dismissal of the ICP litigation. It is an anti-urban provision that works to eliminate large swaths of urban areas from the competition. Furthermore, because that data sources like neighborhood scout and school performance data are inherently faulty and produce inconsistent results, such measures are of questionable value in determining the worth of certain neighborhoods.

In the event that TDHCA does not support an entire removal of this section, we recommend the attached revisions.

§10.101(b)(2) Development Size Limitations.

TAAHP requests the attached changes.

TAAHP
TEXAS AFFILIATION OF AFFORDABLE HOUSING PROVIDERS | 221 E. 9th street, ste. 408 | Austin, TX 78701
tel 512.476.9901 fax 512.476.9903 taahp.org taahp.org/housing-conference

Subchapter D – Underwriting and Loan Policy

§10.304(d)(10)(B) Appraisal Rules and Guidelines: Value Estimates, Developments with Project-Based Rental Assistance.

TAAHP recommends the attached changes.

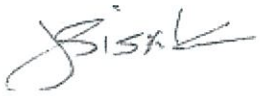
Justification: Nationwide a number of closed RAD transactions have been awarded acquisition credits based on building values derived using market rents under the income approach. Tax counsel for these transactions have opined that this approach is reasonable, as have national accounting and appraisal firms. The reason this approach has been accepted nationwide is that in the "As Is" condition public housing developments operate on a breakeven basis, preventing an accurate valuation under the income approach. There are several ways in which HUD may allow the release of public housing restrictions. For public housing converting to Section 8 assistance, at the closing of RAD transactions, the existing public housing restrictions are removed and the property is unencumbered. This release of public housing restrictions supports the use of a market-rent derived value.

Tax credits are an essential tool in the rehabilitation and redevelopment of public housing developments under the RAD program, and the nationally accepted use of a market rent-derived value allows housing authorities to generate needed financing to structure financially feasible transactions. In areas with strong rental markets where affordability crises often exist, the differential between the market rents a housing authority could realize in an unencumbered scenario and the RAD rents provide a mechanism for the housing authority to maximize the value of existing assets to generate more financing to improve and preserve existing affordable housing.

We thank you for your time and consideration of these recommendations. Please note that representatives from the TAAHP QAP committee are happy to meet with your staff in order to discuss these recommendations fully. I have already reached out to Brent Stewart and Tom Gouris to set up a meeting to review the new underwriting rules and discuss possible alternatives to the problematic sections.

Thank you for your service to Texas.

Sincerely,



Janine Sisak

Chair TAAHP QAP Committee

cc: Tim Irvine – TDHCA Executive Director
Brent Stewart – TDHCA Director of Real Estate Analysis
TAAHP Membership

UNDERWRITING RULES: APPRAISAL RULES

§10.304(d)(10)(B) Appraisal Rules and Guidelines: Value Estimates, Developments with Project-Based Rental Assistance.

(B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value". ~~inclusive of the value associated with the rental assistance.~~ For public housing converting to project-based rental assistance or project-based vouchers under the Rental Assistance Demonstration (RAD) program, the value must be based on the unrestricted market rents. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates and/or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter.

Commenter – 10

From:	TERRI ANDERSON
To:	Brent Stewart; Tim Irvine; Marni Holloway; Sharon Gamble; Andrew Sinnott
Subject:	Comments to the 2017 Proposed Rules
Date:	Friday, October 14, 2016 4:56:48 PM
Attachments:	ADC 2017 Rules - Comments.pdf

Good evening,

Please see the attached document containing my public comments to the proposed rules. It is my hope the Department will consider modification to the proposed rules to ensure fair and equitable distribution of our affordable housing resources, and not engage in policies that perpetuate racial inequality across the State of Texas.

Have a great weekend!

Sincerely,
Terri

Terri L. Anderson, President
Anderson Development & Construction, LLC
347 Walnut Grove Ln
Coppell, TX 75019
Phone: (972) 567-4630
Fax: (972) 462-8715

10 TAC Chapter 10

Subchapter A

10.4(6) – Resolution Delivery Date – The new language regarding Direct Loan Applications "not layered with Housing Tax Credits" implies resolutions will be required in the future. As they are not currently required by statue, this additional requirement makes development more difficult, which works in contradiction to Affirmatively Furthering Fair Housing.

Subchapter B

10.101(a)(2) – Undesirable Site Features – The new language requiring documentation "such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application" is unduly burdensome and creates opportunities for capricious challenges if a developer is unaware of a particular ordinance after reasonable due diligence on the matter. Additionally, TDHCA should adopt HUD's acceptable distances for applicable hazards as the distance requirements appear to be arbitrary without reason.

10.101(a)(3)(B)(i) – Undesirable Neighborhood Characteristics - The poverty rate should be set at 40% to allow inclusion of Revitalization areas worthy of redevelopment and reinvestment and to prevent unlawful redlining of certain neighborhoods.

10.101(a)(3)(B)(iii) – Blight should be expected in revitalization areas.

10.101(a)(3)(C) &(D) – The mitigation of undesirable neighborhood characteristic s is highly subjective and creates an undue burden on the development community and TDHCA for review, with the likelihood of inconsistency on application of opinions.

10.101(b)(4)(D) – Mandatory Development Amenities – Solar Screens are very unattractive and may not be allowed on commercial buildings in many jurisdictions; this item should remain as a Green Building Features as an amenity option and not be mandatory.

10.101(b)(7) 0 Tenant Supportive Serivces – Requiring the intent that services are "to be provided by a qualified and reputable provider in the specified industry...on-site leasing staff or property maintenance staff would not be considered a qualified provider…" adds undue cost to every development escalating operating costs by $30,000 or more a year. Affordable operating margins will become unduly burdened by this requirement.

Subchapter C

10.201 – Procedural Requirements for Application Submission – Restricting only one application for assistance relating to a specific Development Site across all programs is arbitrary and capricious, and does not allow for maximizing the likelihood of successful development on proposed sites. This rule appears to be directly targeting the successful application of a Direct Loan while a non-competitive 9% application was pending. There should be no restriction on applying for different types of funding if the goal of the Department is to develop high quality affordable housing in high opportunity areas.

10.201(5) – Evaluation Process – Posting of a scoring log should not trigger appeal rights. There must be a formal notification process by the Department in order to ensure fair and equitable distribution of program funds. Additionally, the posted scoring logs are untimely and often wrong.

10.201(6)(B) – General Review Priority – Disallowing approval of 4% Bond transactions during May, June or July is not good practice and shuts down many opportunities for development and economic growth in the State of Texas. The Department should maintain an open application calendar as this valuable resource remains grossly under-subscribed.

10.201(7)(B) – Administrative Deficiencies must remain at a five business day response time without penalty, due to other business obligations, travel, vacations, etc. It is unfair to expect every developer to wait for the phone to ring in the office for seven months out of the year. Revert to prior years five day rule.

10.202(1)(K) – Applicant - removing the term knowingly does not allow for due process for the burden placed on an applicant for information submitted as the developer does not fabricate the majority of the documentation required in the application. Please add knowingly back to the requirement.

10.203 – Public Notifications – the 14 day timeframe is too short as the developer may be unaware of any change in public office. Notice should be required within 30 days of the applicant becomes aware of a newly elected (or appointed) official.

10.204(11) – Zoning – Requiring the applicant to provide a release to hold a jurisdiction harmless for zoning change requests is not the burden of a developer if the Political Subdivision is in violation of the Fair Housing Act. Individuals cannot exempt anyone from accountability to the Department of Justice. All applicable language should be removed and revert to the previous language.

10.204(16) – Section 811 Project Rental Assistance Program – This should not be a threshold requirement and should be a point scoring item.

Subchapter D

10.302(d)(4)(D)(i)(I) – Transactions with zero developer fee are more risky and the threshold should be a 50% deferred developer fee to provide for reductions to the interest rate and an increase in amortization.

10.302(e)(7) – Developer Fee – The maximum allowable deferred developer fee should be 50% before an application in deemed infeasible.

10.307(a)(2) – Direct Loan terms should not exceed the loan amortizations and both the term and amortization must be greater than the first lien debt term not to exceed 40 years and 6 months.

10 TAC Chapter 11

11.8(b) – Pre-Application Threshold Criteria – Disclosure of Undesirable Neighborhood Characteristics was provided in the past and TDHCA staff was unable to respond to the voluminous request for waivers

and review. Unless adequate time can be dedicated by TDHCA Staff to provide meaningful feedback and timely presentation to the Board if necessary, this threshold requirement adds undue burden to the developer should the Department disagree with the disclosure or lack thereof, which could subsequently result in inconsistency and subjective termination of applications.

11.9(c)(4)(A)(i) &(ii) – A 20% poverty rate limitation unfairly limits financing in certain neighborhoods.

11.9(c)(4)(A)(ii) - Including "without physical barriers…and the Development Site is no more than 2 miles from the boundary…" is the prime definition of the unlawful Redlining that blatantly violates the Fair Housing Act. Either a census tract is eligible or it isn't. Refusing the same financing across the highway or railroad tracks where minorities historically live is perpetuating racial discrimination. The physical barrier and distance language must be removed.

11.9(c)(8) – Proximity to Urban Core should be located within seven (7) miles to allow more site availability with reasonably priced land that is more feasible for responsible use of the limited tax credit and program resources.

11.9(d)(5) – Community Support from State Representative – Allowing rescission of a letter after submission provides for NIMBYism, which is a violation of the Fair Housing Act. Once a letter of support is submitted, it should not be allowed for removal.

11.9(d)(7)(A)(II) – Concerted Revitalization Plan – Requiring the plan to "include the limited availability of safe, decent, affordable housing" prevents real plans that has been duly adopted from being considered. The goal of the Department should be to seek real plans with real investment and not those procured strictly for the proposed application. Furthermore, the QAP rules may change next year and a city or county should not be required to revise this plan according to TDHCA's narrow prescription for what acceptable on an annual basis.

11.9(e)(4) – Leveraging of Private, State and Federal Resources – The language should revert to prior years percentages. TDHCA Staff admitted in the past the lower percentages caused developments to be too thin and raised them accordingly. Costs have not decreased, so it is unclear why the percentages would. It should be the Department's goal to have well capitalized applications that are able to sustain rises in interest rates and costs.

Commenter – 11

From:	Bob Coe
To:	Brent Stewart
Subject:	Public Comments - 2017 REA Market Analysis Rules & Guidelines
Date:	Friday, October 14, 2016 4:35:00 PM

To: Brent Stewart

From Bob Coe

Re: Public Comment on proposed 2017 draft Real Estate Analysis Rules: 10.303 Market Analysis Rules and Guidelines

Date: October 14, 2017

Hi Brent!

I have issues with only a few of the proposed changes in the Market Analysis Rules and Guidelines. Please consider the following comments:

10.303, (d) (8) (I) (V) - The household and employment concentrations across the SMA (or PMA in following section) and proximity to the development.

This is extremely vague. I'd like to see a lower limit on concentrations which must be addressed.

10.303, (d) (10) (F) - ***Employment - Provide a comprehensive analysis of employment trends and forecasts in the Primary Market Area. Analysis must discuss existing or planned employment opportunities with qualifying income ranges*****.**

Again, I think there needs to be a lower limit and information on employee income levels is almost impossible to get.

(9) (B) (i) (VI) and (8) (B) (i) (VI), which state "that prospective tenants within one mile of the Development will be able to afford the Pro Forma rent and it not provide further comment on where eligible demand will come from; and".

I see no reason for this provision. It will end up increasing the cost of the Market Studies and (to my mind) add nothing useful to the demand analysis. In almost all situations, demand comes from a much larger area than a 1-mile radius. Current scoring is pushing HTC developments into High Opportunity areas, which by definition have fewer low/moderate income renter households. Since the areas where most low/moderate income renters live in don't score well enough to get funded, those households are forced to move to the high opportunity areas which do score well enough to potentially be funded.

Market analysts will have to run an additional Demographic report, and demand analysis for a 1-mile radius of the subject site. Can't run a true 1-mile radius on HISTA Data demographics, so will have to rely only on other demographic source for these demographics.

Thanks in advance for considering these comment!

Bob Coe
Affordable Housing Analysts
3912 Avenue O
Galveston, Texas 77550
281-387-7552

Commenter – 12

From: Darrell G Jack
To: Brent Stewart
Subject: Public Comment - PMA Size
Date: Thursday, October 13, 2016 11:30:24 AM
Attachments: image001.jpg

Brent

Based on the proposed rule changes related to the market studies, and specifically to the boundaries of the PMA, I offer the following public comment for consideration.

Based on the public discussion of the Mason, TX market study, it was stated that redrawing and/or enlarging the boundaries of the PMA by the market analyst after the deadline is considered a material change, and thus not permitted. As I understand the rules, if the department concludes a different (smaller) demand number, there would not be an opportunity for the market analyst to modify the PMA, even if they were to stay under the 100,000 population (max). Nor is there the opportunity for the department to request the market analyst submit a modified and/or enlarged PMA that might satisfy the capture rate threshold. Only that the department may take it upon themselves to develop an extended PMA.

The rule change as proposed is likely to cause the market analyst to have to perform two demand calculations 1) using the smallest PMA they believe will provide sufficient demand to meet the capture rate threshold, and 2) a larger PMA (likely 100,000 pop.) so that a larger PMA may be considered if the staff's demand number is lower than that calculated by the market analyst. Is there any language that could be added that would allow the market analyst to submit a modified demand calculation after the market study deadline?

Sincerely,

Darrell G Jack
Apartment MarketData, LLC
20540 Hwy 46 West
Suite 115 – PMB 416
Spring Branch, Texas 78070
(210) 530-0040

cid:4341d7c9-41b3-40d7-ab54-8d14d1ffd093

Commenter – 13

October 14, 2016

Ms. Sharon Gamble
Mr. Brent Stewart
TDHCA
221 East 11th Street
Austin, Texas 78701

Re: 2017 Uniform Multifamily Rules and QAP

Dear Ms. Gamble and Mr. Stewart:

Please accept these comments on the draft Uniform Multifamily Rule, Qualified Allocation Plan, and Real Estate Analysis Rules on behalf of the state's 28 leading public housing authorities.

Abilene
Arlington
Austin
Baytown
Beeville
Bowie County
Central Texas Council of Governments
Central Texas Housing Consortium
Dallas
Denton
Edinburgh
El Paso
Fort Worth
Georgetown
Granbury
Gregory
Hidalgo County
Houston
Kenedy
Mount Pleasant
New Boston
Pecos
Plano
Port Arthur
San Antonio
Tarrant County
Taylor
Travis County

These housing authorities span the entire state, including large cities, towns, and counties all over Texas.

1. Revise Undesirable Neighborhood Characteristics Rule

Legacy public housing sites house tens of thousands of children in Texas. Unfortunately, HUD cost-containment rules resulted in housing that was obsolete the day it was built many decades ago. For example, HUD considered air conditioning a "luxury amenity" and prohibited it in public housing design.

The Rental Assistance Demonstration (RAD) program provides a unique opportunity to undo the mistakes of the past. As you know, the low-income housing tax credit program is a critical component of RAD financing. Through RAD and in partnership with TDHCA, we have the opportunity right now to redevelop public housing.

We are truly appreciative of the Department's efforts in recent years to balance revitalization with high opportunity, and especially in the 2017 draft rules to make adjustments so that our large cities are still eligible to participate. The undesirable neighborhood characteristics rule is one part of the rules where further work is needed.

Attached to this letter is a mark-up of the rule, and all of these changes are logical extensions of the proposed rule. The Department should allow for flexibility in its rule so that the board of TDHCA will have the information pursuant to the disclosure rule, but then can decide whether redevelopment of a site is good housing policy for the State of Texas. Because this provision of the rules is so interwoven with fair housing, a letter from HUD that a site is consistent with site and neighborhood standards regulations should also be allowed as mitigating evidence.

On the subject of crime and neighborhoodscout.com, we have several concerns. First, this website requires a paid subscription. Second, the data is not transparent. We understand that the Department attempted to purchase the data a few years ago, and that this was not possible. It is very difficult to refute a statistic when the geographic boundaries of the beat or neighborhood are unknown and the underlying crime data is not provided. Third, some of the most successful public housing redevelopment efforts nationwide have involved high-crime areas. Cabrini-Green redevelopment, which has not been perfect but has certainly been better than the high-rise towers that existed before, is a prominent example. The reality is that children, unfortunately, are living in high-crime neighborhoods all over Texas and will continue to do so regardless of the 2017 TDHCA rules. The question for the Department is whether it wants to be part of the solution, or whether it wants to redline neighborhoods—the Fifth Ward in Houston, East Austin, downtown Fort Worth – with some of the greatest housing need in the State from participating in housing programs.

On schools, the reality is that many kids attend charter schools. In Austin, as many as 15% of kids attend charter school, and more are being built every day. The argument that a child will not have an opportunity for a good education if affordable housing is constructed in certain neighborhoods is not based in reality. Moreover, huge swaths of our largest cities are ineligible from participating in housing programs with the draft rule as it currently stands. We urge the Department to focus on elementary schools only, which are often neighborhood schools. The vast majority of children in affordable housing attend elementary schools.

As for remediation, the proposed 2017 rule is much stricter and severely constrains the board of TDHCA in exercising discretion. We urge the board to restore the discretion that was already in the rule *before* the federal court dismissed the Dallas lawsuit.

2. Revise Community Revitalization Points So HUD Revitalizing Areas Qualify

These points have become almost impossible to win. Opening this scoring item to HUD-approved plans such as a demolition/disposition approval or the Choice Neighborhoods program should qualify. We also urge the Department to limit these points to qualified census tracts as is required by Section 42(m)(1)(B)(ii)(III) of the Internal Revenue Code.

The requirement of a city resolution is unnecessary and should be removed. If HUD approves a revitalization plan, why would the Department not accept that approval?

The requirement that funding must have been committed to the plan already is also too restrictive. This section needs to be revised to allow redevelopment where HUD has found that a site is part of a "revitalizing area" under HUD regulations. HUD has always carved out an exception to fair housing for revitalizing areas in the site and neighborhood standards. Examples of revitalizing areas at 24 CFR 983.57(e)(3)(vi) include "sites that are an integral part of the overall local strategy for the preservation or restoration of the immediate neighborhood and sites in a neighborhood experiencing significant private investment that is demonstrably improving the economic character of the area (a '**revitalizing area**')."

A letter from a city official or HUD should that a site is a revitalizing area should suffice for these points.

3. Cost Per Square Foot Points Should Focus on Eligible Hard Cost, Not Building Cost

One of the most helpful changes in the 2017 proposed QAP is the term "Eligible Hard Cost" which allows developers voluntarily to include costs in eligible basis to qualify for points. We applaud the Department for this change, which will lead to more transparency and due diligence regarding costs at application.

We do recommend clarifying that the Building Cost limits only apply to Eligible Building Costs so that the first sentences read:

"An Application may qualify to receive up to twelve (12) points based on either the Building Cost per square foot of the proposed Development voluntarily included in eligible basis ("Eligible Building Cost") or the Hard Costs per square foot of the proposed Development voluntarily included in eligible basis ("Eligible Hard Cost"), as originally submitted in the Application. For purposes of this paragraph, Eligible Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Eligible Hard Cost will include general contractor overhead, profit, and general requirements."

Real Estate Analysis Rules

Two changes to the REA rules would be very helpful in RAD transactions: developer fee and property valuation in determining acquisition credits.

The first is allowing 15% developer fee on acquisition costs in 4% tax credit transaction if financed through the RAD program. This would be a carve-out to the general rule that no developer fee is allowed on related-party acquisitions, and would reflect the work that is required in seeking the necessary HUD approval, such as for demolition/disposition and RAD. Also, because the 4% program is not competitive, this change would not harm other developments' feasibility.

The second change to REA rules is to allow the appraisal determining acquisition value in a RAD transaction to reflect market value of the property rather than restricted value. As discussed and approved by the board at the October 13 meeting, this approach to valuation is consistent with HUD guidance and with state agency underwriting practices of RAD transactions throughout the country, including Colorado, Florida, Georgia, New Jersey, Pennsylvania, South Carolina, and

Virginia. Nationwide a number of closed RAD transactions have been awarded acquisition credits based on building values derived using market rents under the income approach. Tax counsel for these transactions have opined that this approach is reasonable, as have national accounting and appraisal firms. The reason this approach has been accepted nationwide is that in the "As Is" condition public housing developments operate on a breakeven basis, preventing an accurate valuation under the income approach. There are several ways in which HUD may allow the release of public housing restrictions. For public housing converting to Section 8 assistance, at the closing of RAD transactions, the existing public housing restrictions are removed and the property is unencumbered. This release of public housing restrictions supports the use of a market-rent derived value. The additional resources generated by this approach can be significant in markets with strong rental markets, where affordability crises often exist. For example, in Austin the differential between appraised value based on market rents versus RAD rents represented approximately $5 million in additional tax credit equity generated from acquisition tax credits.

Below is the requested revision:

" §10.304(d)(10)(B) Appraisal Rules and Guidelines: Value Estimates, Developments with Project-Based Rental Assistance.

(B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value". For public housing converting to project-based rental assistance or project-based vouchers under the Rental Assistance Demonstration (RAD) program, the value must be based on the unrestricted market rents. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates and/or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter."

Thank you for the opportunity to provide comments. We look forward to continuing to work with TDHCA so that important redevelopment opportunities can be appropriately pursued with the 4% and 9% low-income housing tax credit programs.

Sincerely,

Naomi W. Byrne
President, Fort Worth Housing Solutions
PHA QAP Committee Chair

Supporting Public Housing Authorities:

Abilene
Arlington
Austin
Baytown
Beeville
Bowie County
Central Texas Council of Governments
Central Texas Housing Consortium
Dallas
Denton
Edinburgh
El Paso
Fort Worth
Georgetown
Granbury
Gregory
Hidalgo County
Houston
Kenedy
Mount Pleasant
New Boston
Pecos
Plano
Port Arthur
San Antonio
Tarrant County
Taylor
Travis County

(3) Undesirable Neighborhood Characteristics.

(A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. An Applicant may choose to disclose the presence of such characteristics at the time the pre-application (if applicable) is submitted to the Department. Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit the documentation described under subparagraphs (C) and (D) of this paragraph at pre- application and staff may perform an assessment of the Development Site to determine Site eligibility. The Applicant understands that any determination made by staff or the Board at the time of bond inducement regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the undesirable neighborhood characteristics become available while the full Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board. Should staff determine that the Development Site has any of the characteristics described in subparagraph (B) of this paragraph and such characteristics were not disclosed, the Application may be subject to termination. Termination due to non-disclosure may be appealed pursuant to §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)). The presence of any characteristics listed in subparagraph (B) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit, and include, where applicable, a review as described in subparagraph (C) of this paragraph. The assessment of the Development Site and neighborhood will be presented to the Board with a recommendation with respect to the eligibility of the Development Site. Factors to be considered by the Board, despite the existence of the undesirable neighborhood characteristics are identified in subparagraph (E) of this paragraph. Should the Board make a determination that a Development Site is ineligible, the termination of the Application resulting from such Board action is not subject to appeal.

(B) The undesirable neighborhood characteristics include those noted in clauses (i) - (iv) of this subparagraph and additional information as provided in subparagraphs (C) and (D) must be submitted in the Application. If an Application for a Development Site involves three or more undesirable neighborhood characteristics, in order to be found eligible it will be expected that, in addition to demonstrating satisfactory mitigation for each characteristic disclosed, the Development Site must be located within an area in which there is a concerted plan of revitalization already in place or that private sector economic forces, such as those referred to as gentrification are already underway and indicate a strong likelihood of a reasonably rapid transformation of the area to a more economically vibrant area. In order to be considered as an eligible Site despite the presence of such undesirable neighborhood characteristic, an Applicant must demonstrate actions being taken that would lead a reader to conclude that there is a high probability the undesirable characteristic will be sufficiently mitigated within a reasonable time, typically prior to placement in service, and that the undesirable

characteristic will either no longer be present or will have been sufficiently mitigated such that it would not have required disclosure.

a. The Development Site is located within a census tract that has a poverty rate above ~~40~~30 40 percent for individuals

~~b. The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.~~

c. The Development Site is located within 1,000 feet (measured from nearest boundary of blighted structure) of ~~multiple~~ at least 5 vacant structures visible from the street, which that have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.

d. The Development Site is ~~l~~located within the attendance zones of an elementary school~~, a middle school or a high school~~ that does not have a Met Standard rating by the Texas Education Agency. ~~Any school in the attendance zone that has not achieved Met Standard for three consecutive years and has failed by at least one point in the most recent year, unless there is a clear trend indicating imminent compliance, shall be unable to mitigate due to the potential for school closure as an administrative remedy pursuant to Chapter 39 of the Texas Education Code.~~ In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary~~, middle and high school, respectively,~~ which may possibly be attended by the tenants in determining whether or not disclosure is required. The applicable school rating will be the 2016~~5~~ accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K- 6), ~~middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12)~~, the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. ~~Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating.~~ Development Sites subject to an Elderly Limitation or Single Room Occupancy is considered exempt and does not have to disclose the presence of this characteristic.

(C) Should any of the undesirable neighborhood characteristics described in subparagraph (B) of this paragraph exist, the Applicant must submit the Undesirable Neighborhood Characteristics Report that contains the information described in clauses (i)-(viii) of this subparagraph and subparagraph (D) of this paragraph so that staff may conduct a further Development Site and neighborhood review.

(i) A determination regarding neighborhood boundaries, which will be based on the review of a combination of natural and manmade physical features (rivers, highways, etc.), apparent changes in land use, the Primary Market Area as defined in the Market Analysis, census tract or municipal boundaries, and information obtained from any Site visits;

(ii) An assessment of general land use in the neighborhood, including comment on the prevalence of residential uses;

(iii) An assessment concerning any of the features reflected in paragraph (3) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (3);

(iv) An assessment of the number of existing affordable rental units (generally includes rental properties subject to TDHCA, HUD, or USDA restrictions) in the Primary Market Area, including comment on concentration based on the size of the Primary Market Area;

(v) An assessment of the percentage of households residing in the census tract that have household incomes equal to or greater than the median household income for the MSA or county where the Development Site is located; ~~and~~

An assessment of the number of market rate multifamily units in the neighborhood and their current rents and levels of occupancy;

(vii) An assessment of school performance for each of the schools in the attendance zone containing the Development that did not achieve the Met Standard rating, for the previous two academic years (regardless of whether the school Met Standard in those years), that includes the TEA Accountability Rating Report, a discussion of performance indicators and what progress has been made over the prior year, and progress relating to the goals and objectives identified in the campus improvement plan in effect; and

(viii) Any additional information necessary to complete an assessment of the Development Site, as requested by staff.

(D) Information regarding mitigation of undesirable neighborhood characteristics should be relevant to the undesirable characteristics that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application and may include, but is not limited to, the measures described in clauses (i)-(iv) of this subparagraph. In addition to those measures described herein, documentation from the local municipality may also be submitted stating the Development is consistent with their obligation to affirmatively further fair housing. The mitigation must be accompanied by a report summarizing the data and to support the conclusion of a reasonable expectation by staff and the Board that the issues will be resolved or significantly improved by the time the Development is placed into service. Conclusions for such reasonable expectation must be affirmed by an industry professional, as appropriate.

(i) Evidence that the poverty rate within the census tract has decreased over the five-year period preceding the date of Application, or that the census tract is contiguous to a census tract with a poverty rate below ~~20%~~ 40% and there are no physical barriers between them such as highways or rivers which would be reasonably considered as separating or dividing the neighborhood containing the proposed Development from the low poverty area must be submitted. Other mitigation may include, but is not limited to, evidence of the availability of adult education and job training that will lead to full-time permanent employment for tenants, a description of additional tenant services to be provided at the development that address root causes of poverty, evidence of gentrification in the area (which may include contiguous census tracts) and a clear and compelling reason that the Development should be located at the Site. ~~Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility.~~

(ii) Evidence that crime rates are ~~substantially~~ decreasing, based on violent crime data from the city's police department or county sheriff's department, for the police beat or patrol area within which the Development Site is located, based on the population of the police beat or patrol area that would yield a crime rate below the threshold indicated in this section. The instances of violent crimes within the police beat or patrol area that encompass the census tract, calculated based on the population of the census tract, may also be used. A map plotting all instances of violent crimes within a one-half mile radius of the Development Site may also be provided that reflects that the crimes identified are not at a level that would warrant an ongoing concern. The data must include incidents reported during the entire 2015 and 2016 calendar year. Violent crimes reported through the date of Application submission may be requested by staff as part of the assessment performed under subparagraph (C) of this paragraph. A written statement from the local police department or local law enforcement agency, including a description of efforts by such enforcement agency addressing issues of crime and the results of their efforts may be provided, and depending on the data provided by the Applicant, such written statement may be required, as determined by staff. For Rehabilitation or Reconstruction Developments, to the extent that the high level of criminal activity is concentrated at the Development Site, documentation may be submitted to indicate such issue(s) could be remedied by the proposed Development. Evidence of such remediation should go beyond what would be considered a typical scope of work and should include a security plan, partnerships with external agencies, or other efforts to be implemented that would deter criminal activity. Information on whether such security features have been successful at any of the Applicant's existing properties should also be submitted, if applicable.

(iii) Evidence of mitigation efforts to address blight or abandonment may include new construction in the area already underway that evidences public and/or private investment. ~~Acceptable mitigation to address extensive blight should go beyond the acquisition or demolition of the blighted property and identify the efforts and timeline associated with the completion of a desirable permanent use of the site(s) such as new or rehabilitated housing, new business, development and completion of dedicated municipal or county-owned park space.~~ In instances where blight exists but may only include a few properties, mitigation efforts could include partnerships with

local agencies to engage in community-wide clean-up efforts, or other efforts to address the overall condition of the neighborhood.

(iv) Evidence of mitigation for all of the schools in the attendance zone that have not achieved Met Standard will include documentation from a school official with oversight of the school in question that indicates current progress towards meeting the goals and performance objectives identified in the Campus Improvement Plan. For schools that have not achieved Met Standard for two consecutive years, a letter from the superintendent, member of the school board or a member of the transformation team that has direct experience, knowledge and oversight of the specific school must also be submitted. The letter should, at a minimum and to the extent applicable, identify the efforts that have been undertaken to increase student performance, decrease mobility rate, benchmarks for re-evaluation, increased parental involvement, plans for school expansion, and long-term trends that would point toward their achieving Met Standard by the time the Development is placed in service. ~~The letter from such education professional should also speak to why they believe the staff tasked with carrying out the plan will be successful at making progress towards acceptable student performance considering that prior Campus Improvement Plans were unable to do so.~~ Such assessment could include whether the team involved has employed similar strategies at prior schools and were successful. In addition to the aforementioned letter from the school official, information should also be provided that addresses the types of services and activities offered at the Development or external partnerships that will facilitate and augment classroom performance.

(E) In order for the Development Site to be found eligible by the Board, despite the existence of undesirable neighborhood characteristics, the Board must find that the use of Department funds at the Development Site must be consistent with achieving at least one of the goals in clauses (i) – (iii) of this subparagraph.

(i) Preservation of existing occupied affordable housing units, subject to federal or state income restrictions and mitigating evidence supports a conclusion that the characteristic will be remedied in an appropriate time period, which may be after placement in service; or ~~to ensure they are safe and suitable, or development of new high quality affordable housing units that are subject to federal rent or income restrictions; and~~

(ii) Factual determination that the undesirable characteristic(s) that has been disclosed are not of such a nature or severity that ~~they~~ should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph. Such information sufficiently supports a conclusion that the characteristic(s) will be remedied by the time the Development places into service; Or

(iii) The Development satisfies HUD Site and Neighborhood Standards or is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order.

Commenter – 14

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2401

October 14, 2016

Re: Draft language related to "Acquisition from Seller without current Title" in the draft 2017 Underwriting and Loan Policy

Mr. Irvine,

I write to you to provide feedback on the proposed "Acquisition from Seller without current Title" language below ("**Proposed Acquisition Language**") proposed in the 2017 Underwriting and Loan Policies. I have worked on projects that involve tax credit funding since 2008 and have a deep respect for TDHCA its staff and its admirable mission to provide affordable housing for Texans and in particular the most vulnerable Texans. As a result I would like to see TDHCA adopt policies that further these interests and promote TDHCA goals. My intent is to share knowledge from a prospective of an individual deeply familiar with the identification, contractual obligations and purchase of development sites utilized in affordable housing projects.

Proposed Acquisition Language:

> (C) **Acquisition from Seller without current Title**. In cases where as of the first day of the Application Acceptance Period the seller does not hold title to the property, the acquisition price will be limited to the acquisition price between the seller and the current title holder unless the seller can document land improvement costs or work to be performed by the seller as obligated in the site control documents. If the seller is acquiring more land from the current title holder than will be conveyed to the Applicant [whether under a single or multiple purchase contract(s)], the value ascribed to the proposed Development Site will be determined according to §10.302(e)(1)(A).

Upon a surface analysis of the Proposed Acquisition Language it is easy to believe the adoption of such will result in lower land prices, less risk for projects and assist TDHCA to maximize it resources and meet its stated goals. However, a deeper analysis of the Proposed Acquisition Language quickly proves the exact opposite would result upon its adoption. Attempting to limit

512-636-6076 • P.O. Box 302663 Austin, TX 78703

the free market acquisition of development sites by adopting the Proposed Acquisition Language will:

A. Increase development site prices
B. Undermine TDHCA policies
C. Generate potential legislative and legal risks for TDHCA.

INCREASE DEVELOPMENT SITE PRICES

The time period from when a developer first contracts for a development site until a developer closes on the development site is generally 14 - 18 months. This length of time is due to the complex nature of securing an award of tax credits and completing the extensive financing and underwriting required to close a development site and start construction. Sometimes this time period is longer. Land owners dislike long term contracts. Many will not enter into long term contracts for numerous reasons including past bad experiences with tax credit developers failing to close. Approximately 70% - 80% of tax credit contracts do not close. Most, if not all, landowners, who do enter into long term contracts require a premium purchase price. This premium can result in a land price that is 50 - 100% higher than if a buyer closed on the development site in the typical market time frame of 4-8 months. An example of this scenario occurred this tax credit cycle in Georgetown, Texas where three projects secured an award of tax credits within several miles of each other. Let's look at the land price for each project per TDHCA public records:

Project	Acres	Site Cost	Units	$/Unit	$/ Sq. Ft.
Merritt Heritage #16185	13.24	$2.85M	244	*$11,680	*$4.94
Kai Point #16188	5	$1.742M	102	$17,078	$8
Live Oaks Apts #16068	4.162	$2M	108	$18,518	$11.03

* Beneficiary of an Intermediary Purchaser

Why was the Merritt Heritage square foot purchase price over 50% less than Live Oaks? Why was Merritt Heritage's per unit land cost 33% - 40% less than its two competitors? Aside from price, the Merritt Heritage site is superior in quality as it is walking distance to HEB, banks, restaurants and numerous commercial services. How did this happen? This was able to happen because my company Oryx was an Intermediary Purchaser of a larger site. Oryx closed on the purchase of a16 acres site utilizing a short term contract and has contracted to sell approximately 13 acres for the development of Merritt Heritage. The Proposed Acquisition Language would prevent the Merritt Heritage project from recognizing these saving and from utilizing a superior for affordable housing.

It may be believed that an Intermediary Purchaser increases the development site costs and undermines TDHCA policies, however, lets take a close look at the facts of the 2016 Georgetown example. Does this transaction maximize TDHCA resources? Yes, the land is being placed into the affordable housing project at a significant discount from similar projects in the area with less desirable locations. Are TDHCA policies being promoted? Yes, the Merritt Heritage project met the highest number of TDHCA policies and therefore finished in first place in Urban Region 7. Additionally, the original land owner of the Merritt Heritage site refused to enter into a long term contract, however, by Oryx serving as an Intermediary Purchaser this superior site was made available for the development of affordable housing. Should Oryx's sale to Merritt Heritage close, and there is no guaranty it will, Oryx is set to make a profit after taking on substantial financial risk, an example the win/win nature of free market forces.

It is undeniable timing inefficiencies exist in the tax credit program due to the funding and underwriting requirements. Such inefficiencies come with a cost, whether paid to a party with legal title to a development site or equitable title (owner of the right to purchase a development site). These costs cannot be avoided and any attempt to do so will only further distort market forces which create efficiencies. The best case scenario is to allow market forces to create as much efficiency as possible and the 2016 Georgetown projects are an example. I believe the intent of Section 42 of the Internal Revenue Code was to learn from the federal government's previous failures in affordable housing and to the greatest extent possible allow affordable housing to be developed, owned and operated in a similar manner as privately funded multifamily housing. Why? Because private ownership and free market forces have proved to be the most effective and efficient way to develop affordable housing. Intermediary Purchasers are not uncommon in the development of privately funded multifamily housing.

By prohibiting Intermediary Purchasers TDHCA will not only remove market forces that promote efficiencies, but TDHCA will require larger numbers of affordable housing projects to pay the higher premiums required for extended contract periods that increase the development site prices and thereby the financial risks of affordable housing projects.

UNDERMINES TDHCA POLICIES

Most real estate brokers around the state of Texas are familiar with the tax credit program and understand approximately 70 - 80% of tax credit contracts do not close. If they do close it takes 14 - 18 months and sometimes longer. Many land owners of sites that best fulfill TDHCA policies to locate affordable housing will not agree to long term contracts. This was the case with the Merritt Heritage site in Georgetown. By adopting the Proposed Acquisition Language TDHCA would undermine its own policies by limiting locations where affordable housing could be developed. Intermediary Purchasers, through our flexibility to close on development sites within typical short term timeframes, expand the potential locations of affordable housing in line with TDHCA policies and thereby promote TDHCAs goals and mission.

POTENTIAL LEGISLATIVE AND LEGAL RISK FOR TDHCA

The state of Texas has a rich history of protecting private property rights. When an individual contracts to purchase a piece of property, equitable title to that property is acquired by the Buyer. When an individual takes a fee interest in a property, legal title to that property is acquired. Both equitable title and legal title are property rights recognized by the laws of the state of Texas. Restrictions on private property rights of any kind in Texas with no justifiable cause have historically been met with fierce resistance from private property owners and property rights activists group.

Let's look at a scenario where the adoption of the Proposed Acquisition Language could ultimately lead. Landowner A owns legal title to a development site. As previously mentioned legal title, like equitable title, is a private property right recognized by the state of Texas. In February of 20xx, a developer, who has secured an award of tax credits, requests a contract extension from Landowner A. Landowner A, who has no interaction, affiliation, obligation or duty to TDHCA or the developer, over the past 12 months has become educated and realizes his property has significantly increased in value now that an award of tax credits has been secured by the developer. Landowner A now doubles or even triples his required price to the maximum amount he believes a developer could pay. Will TDHCA now attempt to restrict the price for which Landowner A can sell his property to the developer? How does TDHCA distinguish between equitable vs legal property rights? How will TDHCA's infringement on legally recognized private property rights be received by lawmakers, judges, and property rights activists groups in a state that vehemently rejects restrictions on private property rights? It is my hope that TDCHA would take the time to consider the immense impact of the Proposed Acquisition Language and remove such language from the final Underwriting and Acquisition Rules.

CONCLUSION

In conclusion, I again applaud the work of TDHCA and its staff and am a great supporter/admirer of its mission. It is my hope and request that TDHCA perform a more thorough analysis and ultimately reject the Proposed Acquisition Language which, upon its adoption, would increase development site costs, undermine TDHCA policies and generate potential legislative and legal risk for TDHCA. I would be grateful for an opportunity to further discuss these matters with you at your convenience should you have any questions.

Sincerest Regards,

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From:	Chris Akbari
To:	Brent Stewart
Subject:	Comments to Subchapter D
Date:	Friday, October 14, 2016 3:40:04 PM

Brent, My comments to Subchapter D are as follows:

10.302(7)(C)(i) - Increase of developer fee for RAD transactions:

(i) the allocation of eligible Developer fee in calculating Rehabilitation/New Construction Housing Tax Credits will not exceed 15 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing fifty (50) Units or more and 20 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing either HUD Rental Assistance Demonstration Program or have forty-nine (49) Units or less;

This will allow RAD transactions to become feasible in areas where the rents are lower.

10.302(7)(C)(ii) - Allow for developer fee on Identity of Interest transactions that are utilizing Project-Based Section 8 Rental Assistance or HUD Rental Assistance Demonstration Program

(ii) no Developer fee attributable to an identity of interest acquisition of the Development will be included unless the project is utilizing Project-based Section 8 Rental Assistance or the HUD Rental Assistance Demonstration Program for at least 50 percent of the Units.

10.304(d)(10)(B) Appraisal Rules and Guidelines: Value Estimates, Developments with Project-Based Rental Assistance.

(B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value". ~~inclusive of the value associated with the rental assistance.~~ For public housing converting to project-based rental assistance or project-based vouchers under the Rental Assistance Demonstration (RAD) program, the value must be based on the ~~post conversion restricted rents and must consider any other on-going restrictions that will remain in place even if not affecting rents~~ unrestricted market rents. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates and/or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter."

Thank you for the opportunity to provide comment.

Chris Akbari, President/CEO

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