TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

RULES COMMITTEE MEETING

Texas State Capitol
Capitol Extension
Room E1.010
1100 Congress Avenue
Austin, Texas

September 5, 2018
12:36 p.m.

MEMBERS:

LEO VASQUEZ, III, Committee Chairman
PAUL A. BRADEN, Member
LESLIE BINGHAM ESCAREÑO, Member
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MR. VASQUEZ: I'd like to call the meeting to order. I wonder where my gavel is; I'm sure I'm going to be needing it later on this afternoon.

(General laughter.)

MR. VASQUEZ: So I'd like to call the Rules Committee meeting to order of the Texas Department of Housing and Community Affairs. I note that myself, Leo Vasquez; and Board Member Paul Braden are here; Ms. Leslie is not here yet, although not sure, but we're going to get on because we know we have a full agenda and y'all are anxious to get going on this.

Just as heads up warning, on my drive over here I was listening to the Kavanaugh hearings and so I am prepared to ask some real probing questions today, so you'd better be ready.

(General laughter.)

MR. VASQUEZ: So we do have a quorum, and the first item on the agenda is Ms. Marni Holloway, discussing presentation and possible action to make recommendations to the Governing Board on the 2019 Qualified Allocation Plan.

MS. HOLLOWAY: Good afternoon, Mr. Vasquez, Mr. Braden.

So in order to better meet the statutory
requirement of the QAP to provide information regarding
the administration of an eligibility for the 9 percent
program, we've merged most of Chapter 10, which is the
Uniform Multifamily Rules, into Chapter 11, which is the
QAP, so the QAP is much, much longer than it has been in
the past. Asset management and compliance sections will
remain in Chapter 10. Chapter 12, which is our
Multifamily Bond Rule, and Chapter 13, our Direct Loan
Rule, will now reference the QAP for threshold criteria
where they had referenced Chapter 10 previously.

The resulting QAP now has multiple subchapters
which roughly correspond to the Chapter 10 subchapters
just to try to make it easier, we've tried to keep the
numbering as consistent as possible, those kinds of
things. The only place that we've combined is in
Subchapter A which is now both definitions and the QAP
itself, and that's been renamed Pre-application,
Definitions, Threshold Requirements and Competitive
Scoring.

I would suggest that as we are working through
this we sort of pause from time to time to give folks an
opportunity to come up and speak about whatever item it
is that I've just discussed.

MR. VASQUEZ: Right, and I agree. And just so
everyone here knows how we plan to proceed, Marni will
present the section and then we'll take comments on that
section from interested parties. So don't worry, we're
not going to blow by everything so we'll give you a
chance to make your comments and suggestions and then
we'll move on to the next subject matter. Try not to
skip ahead. If there's items that we're going to talk
about later, it's okay to come up here multiple times
separately for each section, just try to limit the
comments to the section that Marni has just presented as
we go.

If your comments are substantially identical to
a previous speaker, in the interest of time, if you feel
compelled to come up and speak on it, please just
indicate "I echo the comments of so-and-so, thank you"
and sit down, please.

And I guess from there, let's go on with the
first section.

MS. HOLLOWAY: Okay. So in that first section
we've made several changes to definitions. We've
modified the adaptive reuse definition to allow for a
broader range of developments; we've added a definition
of common area; we've simplified the definition of
elderly development to remove the limitation and
preference sub-categories; we've expanded the definition
of material deficiency to provide clarity regarding the
application faults that could lead to loss of points or termination; we've added a definition of preservation to frame our preservation work required by statute. And that would be the definition section.

And, Cynthia, did you want to speak to definitions?

MS. BAST: I do have some issues with definitions. Thank you.

MR. VASQUEZ: And as a reminder, speakers, when you come up to the podium, introduce yourself, identify yourself and who you represent, if anyone in particular, and please sign in at the podium.

Cynthia.

MS. BAST: Thank you. Good afternoon. We really appreciate the opportunity to bring topics to the Rules Committee. I'm Cynthia Bast, I am with Locke Lord, and I am not representing any particular client in my testimony.

MR. VASQUEZ: So who are billing? All of them. Right?

MS. BAST: For the good of the order.

MR. ECCLES: Don't answer that.

(General laughter.)

MS. BAST: Thank you, Counsel.

One of the things that I would like to talk a
little bit about is a problem that we have bumped into from time to time in a variety of contexts across the rules, and it has to do with the issue of control and then how that plays out in the ownership of a property, how that plays out in previous participation review, how that ultimately plays out in ownership transfer applications, because it's all tied together. At the end of the day, this Department is interested in knowing that it's doing business with people who are going to be good operators in their program, and that's what you want to investigate.

For instance, one of the problems that we have is that we often have joint ventures between, say, a for-profit developer and a historically underutilized business, where that HUB has certain rights to approve but would not really be said to have control, and we have found that in those instances sometimes the previous participation of that property is attributed to the HUB, even though they can't control it, and it creates issues down the line when you're going through the asset management side.

And so one of the things I have noticed is that we have language in Section 11.1(d)(30) which is the definition of control, Section 11.1(d)(97) which is the definition of principal, Section 11.204(2) which has to
do with applicant eligibility, and Section 11.204(13) which deals with the organizational structure. All of them address control just a little bit differently. They talk about if you have a limited liability company then these are the parties who have control or these are the parties who are principals, and when that language is a little bit different, I think it causes confusion in our applicant community and I think our applicant community would like to streamline this.

So I have some recommendations where in our definition -- well, we basically keep this concept in one of these sections and that would be in Section 11.204(2), which I think lays it out really well, and we take it out of the definition of control, the definition of principal, so that they all cross-reference and they all cross-reference to the same thing.

I also think it's important -- and I know this has been around a long time and I know I've said this before, but someone who owns 10 percent of an entity just by owning 10 percent of an entity does not have control, you don't, you simply do not. Now, if you own 10 percent and you're also a president or maybe you have a voting bloc, you have control, but if you have 10 percent, you don't have control. And so I'd also like to see that up to 50 percent because that is the common definition of
controlling an entity.

MR. VASQUEZ: So how would you treat a managing partner?

MS. BAST: A managing partner is absolutely in control, and that's defined in here. So we define these different roles, and we say if you're a general partner you have control, if you're a managing member you have control, if you're a president or an executive officer you have control, but then we go on to say if you own 10 percent you have control. And I simply disagree with that from a legal standpoint that a 10 percent owner can have control absent other attributes.

So one of the things that I think is a challenge about this meeting and about the posting is that we as a community often don't know what kind of recommendations we can make during the public comment process because it's non-substantive and what kind of things have to get into the rule right now before we approve it for publication. So if the Department is interested in looking at some recommendations on this topic, I have some written up that I am happy to share so that we can hopefully streamline this a little bit.

And that is my comment. I appreciate the opportunity.

MR. VASQUEZ: Thanks. And obviously, I think
we should share these comments with staff. I would think that under the definitions section is where we should have this clearly defined and not conflicting potentially in other sections.

Would we give this to our counsel, or give this to Marni, or give this to our esteemed executive director?

MR. IRVINE: Good afternoon. Tim Irvine, executive director.

I actually, a little bit before the meeting, had the opportunity to look at Cynthia's draft changes, and I think that they line up with my thinking on the matter. To me, control is the present legal ability to make things happen, to compel that the organization will run itself in some particular way. Obviously, if you own 50 percent of the stock, you've got the ability to take shareholder level action that creates new management and it all dominoes into the possibility of a change, so I agree that that is a control threshold.

I think that my reading of her draft changes, it would streamline and smooth this process, and if it's the committee's will, we'd be glad to work to incorporate those changes into the draft that gets published in the Register.

MR. VASQUEZ: Okay. And actually, let me take
this opportunity -- and perhaps Mr. Irvine or Mr. Eccles can help emphasize this more clearly -- this year's rulemaking is not an amendment to prior rules, this is a full replacement, I guess technically a repeal and replacement of the prior rules, so if there's anything that y'all want in it, we have to put it in now for comment. So at this point it's better to err on the side of putting more out and then we weed out things that there's public outcry saying, no, we don't want this, or it needs to be edited a certain way. So again, this year it's a little bit different than the last couple of cycles, it's a full replacement of the prior rules, so if you want something in, if there's a topic that you feel needs to be addressed, now is the time to put it in.

MR. IRVINE: And I would also amplify that under the Administrative Procedures Act that one of the real tests on changing what's published for public comment is whether you are injecting new concepts. I think right here it's clear that the concept of control is something that's out there for public comment. It can be refined in the public comment reasoned response process, but I think that having the concept of control written as clearly as we possibly can is always to our advantage.

MR. VASQUEZ: And another procedural question,
Beau, on each of these if we are directing staff to take
the input from the constituent and work on revising the
language to incorporate a single definition, an all-
'encompassing definition of control, at this point would
we be making motions to present that to the full Board,
or direct staff, or do we just simply direct staff to
please do that.

MR. ECCLES: I think you can actually just
direct staff at this point. And again, where we are in
the process is we are before the proposed rule goes to
the full Board, and then after it clears the full Board
then it is published, then we are in the public comment
period, and then things become a little bit more
difficult to make big changes to. Once the rule is
published in the Register, if an agency changes the rule
in nature or scope in response to public comment, if it
changes in nature and scope so much that it would be
deemed a different rule or if it affects individuals who
would not have been impacted by the rule or if it imposes
a more strict set of requirements for compliance on a
group of folks than it would have, then it would require
that the rule be actually re-published.

That said, we are before that period, this is
not public comment, this is what we call stakeholder
input, so this is the time to inject concepts before it
goes to the Board and the Board takes it. Now, the
process here is you have you guys, the Rules Committee,
who are hearing these things and you can either direct
staff to incorporate that into what is going to be
proposed to the full Board tomorrow as part of this
committee's recommendations, or you can say we don't
recommend that that be incorporated into the staff draft,
the proposed draft as is going before the Board tomorrow.

And if you say this committee doesn't seem to
have any sort of recommendations that it be incorporated
into what the Board will consider tomorrow, those who are
out here can still come before the Board tomorrow and say
we think it should be in there. They're essentially at
the same place tomorrow, pre-adoption of the draft, as we
are today.

MR. BRADEN: So I agree with your comments that
what Cynthia brought up makes sense. I also agree that
it makes sense that it be put in the definitions section.
Even if the substantive language is in 11.204, it would
make more sense to me to put it in the definitions
section. Let's define the terms right and then use them
consistently throughout the document, at least that's the
ideal. So I'm okay with directing staff to pursue that
matter.

MR. VASQUEZ: So again, on this one if staff
could take a look at Ms. Bast's definitions recommendation, and then also work with consolidating wherever there's other definitions of control, just reference back to the original.

MS. HOLLOWAY: And Ms. Bast sent us late yesterday sort of an outline and markup of the various rules. I think probably the best way to handle this in order so it's very clear for the full Board tomorrow is to incorporate those changes and just bring those pages with a bunch of copies, with enough for everyone.

MR. ECCLES: With enough for everyone. It is a bunch of changes, and I think probably speaking through it would be cumbersome.

MS. HOLLOWAY: I think it's easier to follow on paper. Okay. We can do that.

Is that acceptable?

MR. BRADEN: You'll be able to do that before the meeting?

MR. ECCLES: All depends on when this one gets done.

(General laughter.)

MS. HOLLOWAY: Okay. So moving on, under the staff determinations, request for staff determinations, we've broadened the topics that can be addressed through a staff determination. Of course, we've updated the
calendars for the 9 percent cycle and moved the deadlines
that were previously in Subchapter G, I believe, into the
QAP, so all of those dates for all of our programs and
fund sources are all in the same place.

We've clarified the additional phase rule and
added a restriction on the developer fee for the
additional phase so that developers aren't able to build
two phases of less than 50 units and gain the larger fee
on both.

For proximity of development sites we've added
a requirement that sites be separated by at least 1,000
feet, and that the area in between was not created as a
means to meet the separation requirement. Additionally,
sites may not have been under common ownership at any
time in the preceding two years. So this item addresses
the issue that came up in the 2018 9 percent round
regarding the sites with the 10 percent landscape strip
between them.

MR. VASQUEZ: Ten foot landscape strip.

MS. HOLLOWAY: Ten foot, yes. It even says 10
foot and I said 10 percent.

MR. VASQUEZ: Again, Marni will take pauses.

Raise your hand if you want to come up, let us know; if
not, we're going to keep on rolling along.

MS. HOLLOWAY: We've added sites in qualified
opportunity zones to the list of those eligible for basis boost. A qualified opportunity zone is a new concept created out of the spending bill that also gave us the additional 12.5 percent of credits this year. We don't know yet how that will work with housing but this at least gets it in there.

We've increased the minimum amount available to each subregion under the Regional Allocation Formula to 600,000, that's from 500,000. And we've clarified the statewide collapse rule to prevent the misunderstanding that happened at the end of the 2018 round regarding the elderly cap.

MR. VASQUEZ: Marni, as we're going along, could you at least call out the section number?

MS. HOLLOWAY: Certainly.

MS. FINE: Hi. Tracey Fine with National Church Residences.

I really do appreciate all the changes that were incorporated and the opportunity to discuss this before things get more set.

To my interpretation of the statute which specifically says that the Board may not allocate more than a maximum percent of credits available for elderly developments unless there are no other qualified applications in the subregion, under the statewide
collapse it highlights which subregion is available to receive that next award. So it's not talking about subregion compared to subregion, it will highlight which one was underserved and underfunded. And in the case like what happened this past round, I disagreed on how that was determined. There is no legislation that would prevent an elderly development to get awarded based on the definition and the Administrative Code.

MR. VASQUEZ: So the new language you're saying just does not address that sufficiently?

MS. FINE: I believe the new language is in conflict with the statute.

MR. VASQUEZ: Do you have any suggestions?

MS. FINE: I don't think the elderly cap should apply to that statewide collapse.

MR. VASQUEZ: I'm sorry, I've got to look to counsel on that.

MR. IRVINE: Tim Irvine again. I believe that the language is in complete conformity with the requirements of the statute. I believe it was the staff recommendation and an interpretation of the statute that the Board followed at the administration of this issue in the most recently concluded round, that taking funds from other subregions via the collapse to augment this small amount that remained within the underfunded region would
violate the statute by enabling it to do more elderly 
deals in that subregion.

   I believe that the way the statute is written 
the plain meaning to me is if there is still room in what 
was allocated to that subregion and there's nothing left 
but another elderly deal, then it can be done and it can 
exceed the cap. But I do not believe that the statute 
provides for bringing funds in from other regions via the 
collapse to allow you to exceed the elderly cap.

   MR. VASQUEZ: Any other comments so far?

   (No response.)

   MR. VASQUEZ: Marni.

   MS. HOLLOWAY: Okay. 11.7, tiebreaker factors.

   So we've eliminated most of the tiebreakers that we used 
in 2018 and replaced them with a new item that looks for 
developments proposed in census tracts with poverty rates 
below the median of all census tracts from submitted pre-
applications. Once that universe is established, we will 
look for the census tracts with the highest rent burden.

   If a tie still remains, the second tiebreaker is the 
furthest distance from any other development awarded in 
the past 15 years serving the same population. For 
proposed developments in census tracts above the median, 
the only tiebreaker will be distance.

   MS. MEYER: Robbye Meyer.
One thing that TAAHP requested that as tiebreakers we not use any other additional scoring items that were previously used, and I agree with that, and the first tie-break is using poverty as the first level, and we use poverty in the opportunity index, so I would request that poverty be taken out of that. The high rent burden is a level if you want to use that, but poverty is already being used in the opportunity index and now we're using it in the first tie-break, and then in the second level we're using high rent burden.

Rent burden has extensive mapping programs. It's not going to disperse the housing. We're going to use overlays and we're going to take underserved areas and all the location, poverty rates and high rent burdens and we're all going to end up in the same space, so it's not going to disperse the housing, it's going to all end up in the same census tract because you're going to target the lowest poverty rate and the highest rent burden in an underserved area, and we're all going to end up in the same place. So it's not going to disperse housing, it's just going to put us all on top of each other again.

So I ask that if you're going to keep it that way, then you just swap the two tie-breaks and put distance first and then that will disperse the housing.
first, and then if you get to the other tie-break, but
the distance will disperse the housing better.

MR. VASQUEZ: Okay. Thanks.
And actually, I have a question to staff. I
know previously we had issues with basically everyone
making all the tiebreaking points, or the first four or
seven, or everyone gets them. Right?

MS. HOLLOWAY: Yes.

MR. VASQUEZ: Is this going to help the way we
have it?

MS. HOLLOWAY: Well, it does a couple of
things. One thing is that it doesn't really inject
uncertainty because everybody will know at pre-app what
that median number is, but it's not like saying below 20
percent or everybody below 40 percent, or whatever that
magic number is, it's based on the submitted
applications. Yes, we do use poverty as part of the
threshold measures to get into the opportunity index and
there is some scoring involved there but it's a different
measurement, it's not below the median, across all the
pre-apps it's that 20 percent number.

MR. BRADEN: Have you received any input or
questions with respect to what the speaker just spoke
about?

MS. HOLLOWAY: I don't know if we have. I have
not heard that comment; I had to check with my comment gatherer.

MR. BRADEN: And I had another question on the tiebreaker language, the distance tiebreaker, and it says proposed to be located farthest from an existing tax credit assisted development that serves the same target population -- which I get that -- and that was not awarded less than 15 years ago. Does that mean that was awarded more than 15 years ago? It's double negatives.

MS. HOLLOWAY: Let me double check. So the one that I'm looking at says that was awarded.

MR. BRADEN: I'm looking at page 4 of 15.

MR. VASQUEZ: That serves the same target population that was awarded less than 15 years ago. So if it's awarded in the last 15 years, you measure against it; if it's over 15 years, it doesn't count.

MR. BRADEN: So one here says was not, so I'm confused by that. That must have just been the summary material.

(General discussion regarding pages in document.)

MS. HOLLOWAY: Correct. The language in the draft rule says: Serves the same target population and that was awarded less than 15 years ago.

MR. BRADEN: Okay. That works.
MS. HOLLOWAY: Any other comments?

MS. BURCHETT: Hello. My name is Sallie Burchett with Structure Development.

And I just wanted to clarify, Marni, I think I might be looking at an old draft, mine says the median poverty rate gathered from applications.

MS. HOLLOWAY: We changed that. We changed that as a result of comments.

MS. BURCHETT: Okay.

MR. VASQUEZ: Thanks.

MR. COMBS: Ryan Combs with Palladium USA.

The nuance there, Marni, I'm not sure if I understood that. My understanding was that the way the tiebreaker reads is that at pre-app you take the median poverty rate, right, and then anything underneath that median passes the first half of that tiebreaker.

My concern is that once we go into pre-app we're locked in, so everybody who is submitting applications in January, we work on sites, we make representations to land sellers, we make representations to cities, and this is a very difficult process, and I think that would be a time for it to be difficult because I think the barrier to entry should be high. However, the challenge is when we go in and we submit a pre-app and we have absolutely no idea if it's going to be
competitive in that first tiebreaker or not until after
the pre-applications are in, we're locked, and at that
point it functionally becomes just a lottery. We've
submitted sites that we have no idea how competitive they
are or not.

I like the idea of moving distance up, that's
something that disperses housing, as well as it's
something that's relatively -- I can look at a site and
say, you know, this site is relatively far from an
existing housing tax credit community. That's something
that I can look at and make a reasonable assumption on.
Or if that's not the case, then amending the first
tiebreaker in some way that we can look at a site and
say, you know, this is good real estate, we're willing to
go and really go get shovel ready on a development. You
know, we're all chasing good real estate and that's what
we want to find is something that is reasonably
understandable that we can get there, so whether it's
lowest poverty rate, distance, something that is
reasonably predictable.

MR. REED: Hello. Good afternoon. Cyrus Reed
here with Sierra Club Lone Star Chapter. For the record,
I've never built anything in my life -- well, other than
like little structures behind the house which fall down.
But I am an advocate for energy efficiency and green
building, and so I have two comments related in general to the rules, so I wasn't quite sure where to comment.

One was unlike in your rules for houses where you have specific reference to the state energy code, the minimum state energy code, I don't see a reference in these rules to the fact that the legislature passed and adopted a minimum state energy code, so my suggestion was somewhere in it that you make a reference to that, that all developments must comply with the 2015 International Energy Conservation Code or an equivalent code as required by state law. And maybe that's in some other rule package at TDHCA.

And then in terms of this tiebreaker -- and maybe tiebreaker isn't the right place to put it, maybe it's really in the -- and we can get into this later when you get to the actual points for different aspects -- something like saying that applications that are built to higher energy and water conservation codes such that it will lead to lower water and energy bills for residents will be favored. You know, some way in these rules to give more incentives for more energy efficient, water efficient building I think would be appreciated. And if it doesn't go there, then later when we get to site development, I can suggest some language there.

So thank you.
MR. BOYD: I'm John Boyd with the New Rock Companies.

A quick note as to the tiebreakers. I agree with the previous speaker, Ryan. When we look at sites, we're looking for good real estate, we're looking for sites that achieve all of the goals in the QAP for that year, and so putting it off till the end it is a roll of the dice, which you have to wait till other applications are submitted before we even know that. And I fully agree with bringing the linear distance to bring the number one tiebreaker.

Thank you.

MR. SISK: I'm Tony Sisk, partner with Churchill Residential, and that's what I wanted to say also, I agree with Ryan Combs and the last speaker that we spend a lot of money and time trying to identify good sites and if we knew that the distance from another existing tax credit deal was the number one tiebreaker, that would make it a lot easier to find good sites. So I agree with them very much.

MR. VASQUEZ: Does staff have any comment as to whether distance could or couldn't work?

MR. KROCHTENGE: My name is Zachary Krochtengel.

I guess I'm in the minority, I actually really
like this tiebreaker. I think that the CHAS is a really interesting data set to use because you're now building in a census tract with a population that actually rent burdened. I think that there are problems with the CHAS data, particularly when it comes to kind of college towns where the rent burdened population is very overstated because of the presence of college students. I think the number one CHAS data census tract in the entire state is in College Station, and that's because of those college kids. They're not going to live in a LIHTC building, but the poverty rate is 76.

So I think what staff did to make this a two-part tiebreaker is actually a pretty elegant solution to take out the weaknesses of the CHAS data and really push it to lower poverty census tracts but census tracts with rent burdened people, so I think you're bringing houses to places where people need it. I think if you go to distance first, I think it really drives development further to the outskirts of towns.

If there's already a development in that town, it will either drive it to the outskirts of town or drive it further away from amenities, and I think if you were going to take distance as the first tiebreaker, the biggest thing you have to do is really tighten up amenities. Because right now, I think if I threw a dart
at the board I think I could come up with enough
amenities to probably get an opportunity index score of
perfect.

So I personally think the distance isn't the
right thing to do because of that first tiebreaker
because of that driving force of pushing you away from
other developments. I like the first tiebreaker. I
think that another issue with the first tiebreaker is
that the poverty rate threshold will affect certain
regions differently than others, and I look to the Valley
in that specific instance. I probably didn't understand
that two census tracts that did not meet that poverty
threshold did not go to the CHAS data as the second part
anyway. I would have liked to have probably seen that as
well, but overall, I think this is an interesting
tiebreaker that actually follows a data-driven approach
to bring housing to people that need it but also to bring
housing to places where it's high opportunity.

Thank you.

MR. VASQUEZ: Thanks, Zach.

MR. IRVINE: Tim Irvine.

I would just like to underscore that the
proposed first tiebreaker tracks the number one statutory
purpose of the program, encouraging the development and
preservation of appropriate types of rental housing for
households that have difficulty finding suitable
affordable rental housing in the private marketplace. So
that's the statutory underpinning for it.

        MS. HOLLOWAY: Marni Holloway again.

        Frankly, if we use distance as the first
tiebreaker, it would be like a unicorn to get to the
second one, really.

        MR. BRADEN: I mean, I appreciate the need for
predictability that the developers have talked about, but
I think what Tim talked about, if you think about the
policy reasons why we're doing this, it seems like you
have the tiebreakers right. I mean, to look for poverty
levels and rent burden, put the housing where people need
it, to me that makes a lot of sense, so I'm okay with
leaving the tiebreakers as is. If you have other
suggestions of how it could be predictable, we're fine
with that, but I do think the policy reason for it needs
to put priority.

        MS. HOLLOWAY: The predictability would come
from us setting a number.

        MR. VASQUEZ: And the variability is they're
year to year on where that median level is. Is it
relatively similar?

        MS. HOLLOWAY: So we looked at last year and
the statewide median poverty rate for all pre-apps was
11.6 percent, so if this was a tiebreaker in 2017, the full applications that tied would need to be below that 11.6 percent to move to the rent burden item. Keep in mind that this is a median so it's in the middle. Half of the applications would go to this first tiebreaker and half of them would not.

MR. BRADEN: So that's a possibility, but I'm not sure what the committee would think about using the data from the prior cycle to set that number.

MS. HOLLOWAY: I'm just using that as an example.

MR. BRADEN: No, but I mean it's something that we could discuss. We could look at the data to set the number and then there would be some predictability associated with it.

MS. HOLLOWAY: That would be one way to approach it, absolutely.

MR. VASQUEZ: Again, actually I'm curious as to that figure. Is there a small variability band of 11 to 12.1 or something like that, or is it sometimes 11.6.

MR. BRADEN: With the three-year average from the last three years.

MS. HOLLOWAY: I think if we went back to a three-year average, it would have more predictability. It really is going to depend quite a bit on which
applications are awarded in that previous year. For instance, this past year, because we had quite a few more CRP applications, that poverty level number would have been higher. If we're looking at years where we have more opportunity zone applications for whatever reason, that number is likely to be lower.

MR. VASQUEZ: Again, I think we recognize trying to balance out the positions of some of the development community. I can fully understand why you'd want predictability, but at the same time, I kind of agree that the distance would, especially in urban areas, just really push things.

MS. HOLLOWAY: It would.

MR. VASQUEZ: But maybe there is a way to put in the average.

MS. HOLLOWAY: So average over the past few years or the number from the past year.

MR. BRADEN: I wouldn't use the past year. I think if you look at the past three years, the median, and then average those and see what the number is. But I mean, we're looking for input here. Does that give people predictability?

MR. COMBS: Ryan Combs.

Yes, I actually think that's a great idea, Marni. And really, it doesn't matter what the number is,
if there's a logical reason as to what that number is, then that gives us some predictability that we can go out and really chase great real estate and make representations to land sellers, make representations to cities, whatever that is.

I do want to kind of give a little more thought to the distance, whether the Board decides on that or not, there is a lot in the QAP now that really kind of got its birth last year and the year before that already incentivizes developments to be in larger cities. We've got urban core points and then we've also got underserved points that you can get up to five points if you're in a census tract that's wholly within a city and surrounded by census tracts that don't have any other tax credit developments under 15 years. And so there's already several, at least those two point categories that are pushing people into urban areas, which is why we saw a lot of CRP applications this past year.

If we were to go to a tiebreaker, which is down the line so those have already gotten awarded, if we go to a tiebreaker that incentivizes dispersion, my thought is that we would get a little more balance, we would have some CRP, we would have some urban, and we would also have some that are moving into emerging markets or even growth corridors, which is really great real estate.
But either one of those, I just wanted to give a couple of ideas there.

MS. MARTIN: Hey there. Audrey Martin with Purple Martin Real Estate.

I also like the idea of maybe looking back and doing an average of the median over some period of time before the current round. I think that is a good solution to deal with predictability.

The other thing that I wanted to suggest as an idea is whether it would be possible to decouple the median poverty and the rent burden and make it number one, two and three. I'm not sure what the reason was that those were paired up, but that would be another way to keep the rent burden in the mix beyond the point at which you are just looking at a thumbs up or thumbs down for the median poverty.

MR. VASQUEZ: Okay. Thanks.

Correct me if I'm wrong, the rent burden is the secondary.

MS. HOLLOWAY: It's the second part of the first tiebreaker.

MR. BRADEN: So if we go to this average, we lose the rent burden?

MS. HOLLOWAY: Not necessarily. We certainly could go to the average and keep the rent burden, you
know, keep the item as is, but rather than the median across all the pre-apps, be the average of the past three years median. And actually, in that instance it might make more sense to go to full applications than pre-applications.

MR. BRADEN: That's true.

MS. HOLLOWAY: The other consideration, though, is if we do that and if we talk about being below that average of the medians for the last three years, over the years it's going to keep pushing that median number lower and lower and lower. And that may or may not be what the Board is seeking to do or could be that in future years there's an adjustment saying, wait a minute, this has gone too far, everybody has to be below 5 percent to try to make this first tiebreaker.

MR. BRADEN: A couple of things come to mind. The first speaker, her point is, I think, some of what Ryan, Mr. Combs just made, that the poverty tiebreaker is early on in the process so are we using it twice and are we keeping it as part of the tiebreaker when it was part of -- for them even to get a tiebreaker the poverty was part of the analysis before they even get to that stage.

I really defer to staff. I mean, I do think it's in our statute, it is a point of policy and it's important enough that if staff says it's your
recommendation that that ought to be the first

tiebreaker, I'm okay with that. So then assuming that's
the case where you going to put it in this process, I
think what we're trying to do is, okay, let's go with it
and make it better.

And I think Zach -- I'm sorry, I forgot your
last name -- made the point about when you're coupling it
with rent burden that sort of keeps it from skewing, with
college kids and other people involved, and you don't
want people building all this stuff -- all due respect to
the Aggies -- in College Station and wherever else, so I
think that made sense. So if we go to an average, I do
think you ought to keep that concept in of rent burden as
part of that analysis.

And I do agree, maybe you ought to go to the
full application and maybe look at a three-year average
and then use that number. I mean, you're right, at some
point maybe it keeps being driven down and we're going to
have to reassess it, but maybe we can try that for this
shot.

MR. VASQUEZ: I concur. That sounds
reasonable, giving it a little bit better predictability.

MS. HOLLOWAY: And that's something that we
absolutely could operationalize easily.

MR. VASQUEZ: One more comment.
MS. SANDERS: Elena Sanders, BETCO Housing Lab.

My only comment is with regards to how the poverty levels vary across the State of Texas, and add the areas we consider, Regions 11 and 13, separately because the poverty levels vary so differently. My only suggestion would be to like poverty levels for 11 and 13 and do 11 and 13 average separately because their poverty levels are always so much higher. If you don't do that, often you're going to end up always skipping the first tiebreaker in those regions because the poverty levels in 11 and 13 will always be higher than the median across the rest of the state, so you will essentially always be using distance.

So that's it.

MR. KROCHTENGEL: I was going to echo that same point of either trying to do a multiplier on the last three years or somehow adjust it, and I think it's actually not just 11 and 13, I think other subregions do have higher poverty that maybe no census tract will qualify for this. And I think that when you look at that three-year data it's going to be artificially skewed lower because what was it, two years ago, the first tiebreaker was poverty rate and there were very few CRP deals that first year, so it worries me that you're going to drive that poverty rate very low to where we're going
to abandon the CHAS data altogether in regions that have higher poverty rates.

MR. BOYD: John Boyd again.

I'll make my point quick, I don't like to beat a dead horse. It's a bit of a fallacy to say that the linear distance would push everything to the suburbs. The scoring criteria already pushes it in certain census tracts who are already pretty much on top of each other generally speaking in areas that rent burdened already. There are several municipalities I worked with to try to get support from, major metro areas, major metropolitan counties and cities that have geographic concentration policies, they want us to be removed from the geographic concentration. The linear distance takes care of that. You have other scoring criteria above the threshold, above the tiebreaker which takes care of the amenities, gets you points for those, so I'm not seeing the huge problem with the linear distance, but I sure am hearing a lot of problems with how to calculate from CHAS data and others, and obviously the lack of predictability.

Thank you.

MR. VASQUEZ: We're going to take a comment or two more and we're going to wrap up this topic.

MS. BURCHETT: Sallie Burchett, Structure Development.
My background is a city planner and I think that the distance takes us to places where we don't want to be in society. If I were up there, I would be suggesting closest to the grocery store, something where someone could use to enrich their lives. So that's what I don't like about the farthest being the driving factor.

We could use the same poverty rate percentages that we already use in the QAP for the two regions which is 20 percent for every place but 11 and 13 which I think is 35, or it's a little bit higher, so that way it would be consistent, it's already defined, and it's not far from the median.

Thank you.

MR. VASQUEZ: So 11 and 13 already have special figures?

MS. HOLLOWAY: Yes. Because the poverty rates tend to be higher in those regions, yes, absolutely they have some special considerations.

MR. BRADEN: Thoughts?

MS. HOLLOWAY: Well, so if we like the idea of the average of the medians over the past few years and we're concerned about 11 and 13, we could just take that same difference and add it to the median so it also continues to float.

MR. VASQUEZ: I think that obviously we're not
going to be able to satisfy everyone 100 percent on this, but based on this discussion, I think that's a reasonable compromise. It at least gives some certainty but still addresses the mandate of the statute. So can you work on that?

MS. HOLLOWAY: Certainly we can put that together.

Okay. Moving on to 11.8 pre-application, for pre-applications we are limiting the pre-apps to one per site control document to eliminate the recent practice of submitting multiple pre-applications for a single site. We also are clarifying that the pre-application becomes part of the full application, they are not freestanding, the pre-app becomes part of the full app if submitted.

We have created a stricter description of the records an applicant must maintain in order to prove up their search for neighborhood organizations. And now we're getting into scoring items.

Anything?

MS. RICKENBACKER: Good afternoon. Donna Rickenbacker with Marque.

This clarifying language that staff has put into how we, A, search for neighborhood organizations, and two, what constitutes being on record with the county really concerns me on multiple levels.
First, I'm not quite sure what we're trying to solve, so maybe if I had a better understanding of staff's position on this, I would get maybe a little bit more comfortable, but what I see happening is what was happening many years before you all were Board members, especially in cities like Houston that has super neighborhoods, and those super neighborhoods, we would have to notify them. Most of them do have bylaws, if you will, and you would have to notify them and you would be required -- what happens is that these super neighborhoods that you're required to notify end up opposing, in most instances, the developments. And so I'm trying to make sure that we're not kind of going back to those days, and I feel like we drafted, over several cycles, language that really stopped a lot of that type of behavior and allowed developments to move forward in some of those boundaried super neighborhoods.

That, coupled with in other areas outside the city of Houston, I've seen situations where an individual or a group of individuals that are just NIMBYs and didn't want it in their areas would create these neighborhood organizations to stop folks with moving forward with proposed affordable developments.

So I'm very concerned about this language and I'm very hopeful that we can go back to what I feel was
some pretty good language as it related to what's on record with the Secretary of State and county for purposes of notifying neighborhood organizations.

That, also with this language that what's acceptable means searching for neighborhood organizations, anybody that's done a search of the Secretary of State's Office and they're required to put in the word "neighborhood", I mean, my god, the number of hits is going to be just endless. So I just don't think that that would be a good practice and require those applicants then to retain that level of documentation. I just don't know, again, why we're doing this and would like for consideration of going back to what we had last year.

Thank you.

MS. DULA: Tamea Dula with Coats Rose.

I think that with this change the heart is in the right place but in practicality it's going to be very difficult to implement this. The way it is written it's not clear whether this search to identify neighborhood organizations is an internet search or a Secretary of State search or a county search. I would think that it would be an internet search to identify entities. And this clearly comes from the St. Elizabeth Place issues that we had at the last Board meeting.
But if you use the search items that are in here, if you use them all together, god knows what you're going to get, but if you use them separately you're going to have thousands of returns and hits. So how many returns will you get on the word "homeowner" for instance.

Then when you talk about items of record with the county clerk's office, the county clerk only really records bylaws or organizational documents for property owners associations created by developers. Other entities don't go to the county clerk to record their documentation. The documentation recorded there doesn't give any indication whether there is an entity in good standing, as is suggested here. It could be recorded 40 years ago and be defunct for the last 30 years, but it's still of record and you can't tell.

And the item with regard to being of record with the Secretary of State means it must be in good standing. Texas no longer produces something that says you are in good standing with the Secretary of State. In order to show good standing equivalent to other states' concepts of good standing, you'd have to produce a certificate of fact that says that the entity still exists and also a certificate of account status from the Comptroller's Office which says that they've paid their
franchise taxes. Now, some of the nonprofits won't be able to get that because they're not enrolled with the Comptroller's Office because they don't pay franchise taxes.

So I see this as being a very impractical way to handle the situation. Thank you.

MR. VASQUEZ: Ms. Dula may have made a good observation about the good standing certificate, which I think she's correct, it doesn't exist anymore.

MR. BRADEN: I actually agree with the comments made on this section. I know we're trying to deal with the St. Elizabeth situation, but part of that, I'm not even sure if this language worked whether it would address that situation, because part of the discussion at the Board level with respect to that situation is that's a statutory requirement and the statute says that evidence that the applicant has notified the following entities with respect to filing of the application, any neighborhood organization on record with the state or county in which the development is to be located. Even if you make good faith efforts, like the applicant did in that instance, to notify everyone but they missed one. At the time the Board was informed that the applicant had not complied with the statutory requirement because there was no evidence that the applicant had done this, and I'm
not sure this really addresses that per se.

MR. ECCLES: I think the attempt was, as you said, it did deal with the St. Elizabeth Place situation but more the horror story that it could have been if there was a neighborhood organization that came into existence and merely called itself XYZ Corp but they were a neighborhood organization and they couldn't reasonably be found.

I would agree that there's probably no harm in maintaining the old language. The problem is that we have a statutory requirement of on file with the Secretary of State, but there's no separated database of neighborhood organizations with the Secretary of State's Office so there is no distinct way of saying give me the neighborhood organizations that would cover these metes and bounds, and that's difficult, the perception was, for the developers, the applicants who are trying to say we want to show that we've given you full notification but might run into a situation where a shadow organization had been created but through no fault of their own, through no fault of diligent searching, they were not able to come up with it.

I would agree it was an attempt to do something that may have just missed the mark slightly.

MR. BRADEN: So currently how do applicants do
this? I mean, I guess there's some search that takes place for them to make the certification.

MS. HOLLOWAY: Certainly you can search entities on the Secretary of State website for certain key words. For instance, Fifth Ward, we were able to find the other neighborhood organization listed on the Secretary of State website. You can do the same search on county public records, as Tamea mentioned, that will get you CCNRs as articles and bylaws but would also get you DBAs. And as Tamea mentioned, finding out if those organizations are in good standing is going to take additional steps.

MR. VASQUEZ: Again, being the non-lawyer, I think the point of the St. Elizabeth situation is whether they could evidence that they put forth good faith efforts to identify all these groups, and the intent is to make sure that you're notifying everybody that has an interest. Is there simply a way to amend this language or delete this but just giving the applicant the opportunity to evidence that they made full good faith efforts to identify and notify each entity per the statute? Because the statute doesn't give a whole lot of detail on how you do that.

MS. HOLLOWAY: No, it does not.

We certainly could simplify this language about
retaining records of their search and move the bulk of this to the manual as a suggestion of these are ways to find these records.

MR. BRADEN: When this came across I was wondering is there any place in the current application, or what if we created a certificate that basically said we have notified which is the statute, so then that is evidence that they've complied with this requirement that could be submitted to the Board. Now, I don't know what we'd do if somebody comes up and says, well, even though they sent their certificate it doesn't really matter because they never notified me.

MS. HOLLOWAY: So that's exactly what happened with St. Elizabeth.

MR. BRADEN: Right.

MS. HOLLOWAY: But the application requires listing all of the organizations that have been notified and at full application they're required to certify that there haven't been any changes.

MR. BRADEN: But this would be a little different because the certification would track the language of the statute. Right? As opposed to saying these are all the people we've notified, they would say that we've notified any neighborhood organization on record with the state or county. Now, I'm not sure

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people want to do that. But if that had happened with
St. Elizabeth and that would be evidence, and then
somebody else is standing up and saying, well, you never
notified me, I think the Board came to the conclusion
that you had actually notice. And to me, it would seem
like, well, maybe we could make them -- there is evidence
there and you had actual notice, maybe we could have let
that one slide.

I don't know. Maybe we're trying to draft for
one unusual situation and maybe we just leave it alone,
first do no harm kind of thing.

MR. VASQUEZ: I like your suggestion. Again,
there may still be language we need to put in to
emphasize that they need to fully document they've made
every effort to comply with the statute in searching
county and state records, but in, as you said, the rules
add more suggestions on how to comply with this not being
included but not limited to the following steps. And I
think that the community, since they've heard this so
often now and saw what happened to one group, everyone, I
hope, will be more diligent in addressing this and making
sure they're dotting all the I's and crossing all the
T's.

MR. BRADEN: So what's your suggestion?

MR. VASQUEZ: So we take out this language.
MR. BRADEN: Leave it as is.

MS. HOLLOWAY: Take out this new language -- this is what I'm hearing, take out this new language that has been commented on, make sure that there's something in there that requires applicants to maintain evidence of their search for neighborhood organizations.

MR. VASQUEZ: Their search and notification.

MS. HOLLOWAY: Right. We are going to require notification but we can add search, and then these potential ways move to the manual, you know, including but not limited to look at these things.

MR. BRADEN: I'm impressed with Marni's Board to English dictionary. Good job. I agree with that.

(General laughter.)

MR. VASQUEZ: Direct staff to do what you said. All right. So moving on to scoring items, we have added income averaging to the scoring item for income level of tenants. This is the new option that's available to applicants under the spending bill that also gave us the 12.5 percent in the qualified opportunity zone. The percentages that we've used in this scoring item are consistent with applications received over the past five years, so that we're trying to be consistent with what we've done in the past regarding these income levels.
All right. We've made some minor adjustments to the opportunity index, a technical correction, and then split up for public transportation for lesser service or more service, so like sites that would be in transit-oriented districts or something like that that are getting more frequent service get more points.

As a new item to underserved area we've crafted a scoring item that seeks to address the issues of gentrification by looking for census tracts with both high poverty and high rents. We've also added an item that addresses at-risk or USDA set-aside properties that are more than 30 years old and have not received federal funds for rehabilitation.

The Section 811 rule has just been modified for clarity.

Going down to number 7 on urban core, this item has been changed to maintain roughly equivalent population density among the largest cities and to prevent the measurement from extending into more suburban areas of smaller cities. What we've done is maintained the two miles on larger cities and then on the smaller cities it's within one mile of municipal government administration building whereas in previous years it was within two miles. I believe there are some folks that want to comment on that one.
MR. VASQUEZ: Come on down.

MR. SISK: I'm Tony Sisk, Churchill Residential.

Our understanding of urban core was that it was designed to stimulate housing not necessarily in the CBD but within a reasonable driving distance of residents to the CBD. Going to the one mile for cities between 200- and 500,000 we feel is inconsistent with the cities above 750,000 in population. We're in North Texas, so in the case of North Texas that's four miles for Dallas and four miles for Fort Worth. In our opinion, if we went down to one mile for cities of 200- to 500,000, that's inconsistent with being able to go out four miles for Dallas and Fort Worth, because when you get out that far you're really not in urban core, in our opinion.

The rule was changed where a city from 500,000 to 750- could retain the two miles but there's only one city in Texas, that being El Paso, that fits into that category, whereas there's a number of cities in Texas that are in the 200,000 to 500,000. We feel like that all cities in the 200- to 500- have issues in the rings out for two miles, and if you limit that on the multiple cities -- again, there are multiple cities in that category, one that was retained, El Paso, with two miles -- first of all, there's not very many sites,
there's not many people that live within one mile of city hall in those size cities, so what it does is it runs up the already overpriced land and cost, it's hard to find sites that are big enough, and there's some zoning issues, and it increases competition so it encourages bidding wars with in those areas.

And lastly, we felt like that urban core was set up for a two-year policy but by changing this from two miles to one mile, that's a material change for a number of cities that are in 200- to 500,000 population, so we would submit that leave it alone for this year for the 200- to 500,000 and two miles, like El Paso was left alone, and work on it the following year.

MR. VASQUEZ: So your suggestion is every municipality under 750,000 gets two miles.

MR. SISK: It would stay as is with a two-mile ring for cities that are 200,000 to 750-, if you wanted to leave it that way. What you would do is you would add a bunch of cities.

MR. VASQUEZ: Sure. I get it, I understand. It's interesting there's only one city, it's only El Paso that's in the middle band.

MR. SISK: Right.

MR. VASQUEZ: Anyone else on this subject or area?
MR. VASQUEZ: Marni, do you have any comment if we kept it?

MS. HOLLOWAY: As I mentioned earlier, we were looking at a couple of things. One was we were starting to extend into suburban areas but the other is population density. So these population numbers, Patrick, are from 2016. For instance, the City of Irving population was 232,113, the population within that urban core measurement on the old measurement was 232,113. So we start to wind up with situations that like almost the entire city units are within that urban core area.

Also, the intent when we first designed the urban core measurement was to look at walkable, dense, access to transit, employment opportunities, retail space, entertainment, like downtown. Like if you lived in downtown Austin, all of those things would be within easy walking distance. Since then we've gone to smaller and smaller cities but we hadn't adjusted that radius measurement, and this is just correcting that oversight.

MR. VASQUEZ: So is there any harm in still making it two miles instead of down to one for the under 500-?

MS. HOLLOWAY: I don't know that there's any harm. It means that just about any development in urban
is likely eligible for those five points.

MR. VASQUEZ: Are you worried about Irving?

MR. BRADEN: I'm trying to figure out what
would be the urban core of Dallas.

MR. VASQUEZ: Mr. Sisk, do you have anything
else to add?

MR. SISK: (Speaking from audience.) Do I need
to come up front?

MR. VASQUEZ: Well, ideally. We're recording
all of this.

MR. SISK: My only comment to that is these
cities that I'm talking about are much bigger than a two-
mile ring, so there's plenty of area that's outside of
urban core, so I wanted to make that distinction on all
of the cities where we are in North Texas.

MR. IRVINE: Tim Irvine again. Just taking
advantage of a lull in the conversation.

Thinking back to when urban core was created, I
understand Tony's perspective about driveability to
central business district. The reason urban core was
created was because in certain very large cities there
was a trend taking place, gentrification, and it was
economically displacing historic neighborhoods and this
was an attempt to preserve the ability to have affordable
housing continue to build stock in those neighborhoods.
I don't think it's so much a geographic concern as it is an economic development trend concern, so it makes it that much harder.

MR. VASQUEZ: So there's no reason, unless Marni has some other factor than was just discussed, on the two-mile to every city under 750,000.

MS. HOLLOWAY: So the number that I was just quoting -- and Patrick was explaining this better to me -- for instance, in the City of Houston to get to that urban core distance, you're looking at 560,146 in a city with a population of more than 2.2 million, so that 560,000 times four gets you to the population. In the smaller cities it's the entire population times one, so it's not necessarily all of those people are within that mile.

I think, as Tim mentioned, the original intent was to provide a scoring item that supported development in the urban core in these rapidly gentrifying areas. Is there any harm? I don't know, I couldn't speak to that at this point.

MR. VASQUEZ: Make everything under 750,000 two miles.

MS. HOLLOWAY: Make them all two miles? Just go back to what we had before?

MR. VASQUEZ: Leave the four miles for the
larger cities, upping that to 750,000.

MS. HOLLOWAY: At four miles?

MR. VASQUEZ: Within two miles is everything under.

MS. HOLLOWAY: Is 500,000 down to?

MR. VASQUEZ: 749,999. In your document here, leave the 750,000 population within two miles and then the population of the cities 250,000 to 749,999, and then strike the rest of the one mile.

MR. BRADEN: I'm fine with that.

MS. HOLLOWAY: Okay. All right.

Moving on amongst the scoring items, on readiness to proceed we've added a provision so that non-priority applications, it pushes out the deadline for applications that are in non-priority status for some period of time. So if someone hadn't been working on getting their deal to closing because it wasn't looking like they were going to win, and then all of a sudden something happens on the list and they are going to win and they've got some catching up to do, and this provision allows them that catch-up.

On the state rep scoring item it is modified to allow the representative to provide a letter that says my constituents support this development rather than requiring a personal statement of support.
The concerted revitalization plan item has been modified for urban developments to clarify the Department's requirements.

Further on in the scoring, we're down to (e)(2) at this point, the cost per square foot scoring item has been increased by 5 percent, and the common area that is included in the net rentable area for supportive housing developments has increased by 25 square foot, up to 75 square foot total. Also in (e) under number (4) leveraging, the leveraging percentages were all increased by 1 percent.

And then at the end of the QAP in (f), the factors that affect scoring and eligibility for current and future rounds, this section describes penalties and we've modified that for clarity because there were a couple of things in there that just were not clear.

So moving on to 11.1(o), this is the third party request for administrative deficiencies. Language has been added to the RFAD section regarding requests that are actually questioning staff's decisions regarding an item rather than presenting new information. As this rule has been modified, we will not be considering those RFADs, they will be disregarded.

Moving on Subchapter B. Under undesirable site features, Subchapter B number 101(a)(2), I think, the
railroad item under undesirable site features has been modified to reflect recent Board decisions.

The next one is undesirable neighborhood characteristics. We've changed the name here to neighborhood risk factors so it's not quite so seeming like a negative. So within this item the distance to an adjacent census tract with a high crime rate has been changed, and there's additional information regarding mitigation that has been added.

Anyone want to speak to those?

MS. LATSHA: Good afternoon. I'm Jean Latsha, I'm with Pedcor Investments.

And I did want to speak to the neighborhood risk factors. This was a change from the first draft that we all saw and we all kind of commented on. I'll say there are few things that kind of in general, I think, go against some of what occurred with the Board with respect to the rules and just kind of making them a little shorter, kind of getting rid of -- I couldn't stand that gotcha term, but I'll go ahead and use it here -- there are a lot of additional mitigation requirements here that would be extremely difficult to meet.

What I see this rule as trying to do is looking at a site kind of holistically. Right? You look at
poverty, you look at blight, you look at schools, you look at crime. A lot of sites have a blemish there. Right? One school that doesn't quite meet standards or a site with high poverty rate or something like that. I think when you get into this kind of nitty-gritty detail in a rule itself and then you find a site that has one blemish and then you're not able to meet this litany of requirements to mitigate for that blemish, I think you might wind up passing on some otherwise pretty good sites, especially coming from someone who we do mainly tax exempt bond developments so we're not competing for credits and there's not another site right behind us that is going to use those credits.

I would suggest that some of these things, I kind of get where you're coming from but maybe if the language -- if staff wanted to leave the language somewhere to maybe put it in the manual. There are other places in the rule, for instance, under the resolution with no objection where it says there is an acceptable but not required form in the manual, so if you do these things that are over here, then you're very likely to get a thumbs up, but if you don't do them or if you stray a little bit from that acceptable format and you present some things that are pretty reasonable, you can still be okay.
MR. VASQUEZ: Let me interrupt, because I think I'm reading this completely differently than you are, in that we're trying to put in language that's meeting what you want. And staff or someone correct me if I'm wrong. I think, again, based on recent Board decisions, we're trying to -- who says that gotcha thing? -- we're trying to remove that gotcha factor and if the community or the school system we're not just automatically eliminating a development because of a certain factor. If there is a concerted revitalization plan, the police just put in a new substation in that area to help fight crime, I believe this language is giving that developer more flexibility and the application more flexibility. If you're reading it differently, tell us how you're seeing that differently, because I think it's meeting what you want.

MS. LATSHA: I am reading it differently. So the way that I'm reading this, when you go to page 66, it's something, something, something, two, so I'm reading this as, okay, if you have a school that does not have a Met Standard rating, everything else is fine, the property is fine, crime is fine, but you would be required, because it's in the rule, the school district has confirmed that a school-age person at the proposed site may, as a matter of right, attend a school in the
district that has a Met Standard, and then we're supposed to provide no-cost transportation. I think that's a lot to ask if you're looking at a site that has one school that doesn't have a Met Standard rating.

And not only that, I think it would be a lot to ask of Compliance to continually monitor something like that when you've got school ratings that change every year. Even the system behind the school ratings changes every year but then they're supposed to come out, decide if the school has a Met Standard rating or not, then decide if you're providing transportation. I find this much more onerous than what was previously in the rule, because I do think that what staff is trying to do is to give us options on how to mitigate for some of these risk factors. And I understand why the risk factors are there, I'm not asking those to be taken away, but I think the way that I'm reading this rewrite is that the requirement to find your site eligible is a lot more onerous than it was in the past.

I'll just leave it at that.

MR. VASQUEZ: Mr. Irvine.

MR. IRVINE: Tim Irvine.

Yes, we're 180 degrees opposite that reading.

We were basically saying, look, when you've identified one of these situations that would require some
mitigation in order for the site to be eligible, here are some things that because they are in rule, if you meet any of them those are automatically, because they're rule compliant, those are acceptable mitigations. It doesn't take off the table the possibility that you may come up with some other form of mitigation which would require your consideration.

MR. VASQUEZ: And actually, as I'm skimming back through this, Jean, if you look at the top of page 64 there is romanette (iv) before all these sections that I think you're referring to that says, Evidence of mitigation for all the schools in the attendance zone that have not achieved Met Standard will include, but is not limited to, jointly satisfying these sub-clauses. I think it's giving options rather than limitations.

Is that the staff's intent?

MR. BRADEN: And that's how I read it too.

MR. VASQUEZ: So again, I think that preamble, that little introductory point is just saying here's examples. And I'm looking at staff nodding heads, and I don't think the intent is at all saying you have to do all this, it's examples of what you can do.

Deputy Director Brooke Boston.

MS. BOSTON: Brooke Boston.

You're exactly right, that was our intent, and
if anything, we saw it as if you want a safe harbor these
are the things you could do, we're laying them out for
you but they're not exclusionary. You're right.

MR. MOREAU: Walter Moreau, the director of
Foundation Communities. We're a community-based
nonprofit. We build affordable housing that has a lot of
services attached, especially health programs, education
programs, financial programs. First, I just want to say
thank you for investing in our work.

And a general comment is that we support the
staff draft. We like the mitigating options for learning
centers and pre-K programs if we were in a situation with
a school that wasn't meeting standard. We have 14
learning centers in our communities now, about 1,000
kids, all free. They got last semester a 3.43 GPA. We
have an intensive pre-K program with one of our local
AISD schools. We really are passionate about putting
housing and services together as a way to really help
folks.

So anyway, we support the staff draft.

MR. VASQUEZ: Thanks.

Just as a side note -- Brooke and I are
exchanging knowing glances here -- we are trying to put
together a little bit of a summary presentation of all
the types of great services that are parts of our
developments that all of you are putting in place, and if you have neat programs that have shown results, whether it's pre-K classes to senior assistance programs to anything in between, if you have a story about that, would you mind sharing it with Brooke? Not right now but sometime when you get back to your offices during the week.

Okay. Getting back to where we were, I think hopefully we've addressed Jean's concern about the intent of this section.

Marni, do you want to continue?

MS. HOLLOWAY: Okay. Moving on in that same subchapter to number (2), development size limitations. The maximum size for developments in rural areas financed with direct loan or bond funds increased from 80 to 120. A little bit further on under rehabilitation costs, a rehabilitation standard was added as an alternative to spending a minimum amount on each unit.

Further under mandatory development amenities and then to common amenities, under mandatory development amenities we clarified that if a development is using historic tax credits and an amenity that's called for in our list is not something the Historical Commission is going to approve, then the Board can just waive the item off the amenities. There are some items like solar
screens that sometimes the Historical Commission will not allow on a development.

Under the common amenities section we have reorganized it for clarity into related groupings, an item shall be reevaluated for points based on the cost or difficulty of providing that amenity.

MS. FINE: Hi. Tracey Fine. I hope I came up at the right time.

We primarily do rehab projects and we do appreciate the expanded list, but year after year we really struggle to meet the minimum point requirements. Even on the expanded list, some of these items are unavailable for a rehab property to take advantage of, things like nine-foot ceilings, walk-in closets, storage rooms, in-unit washers and dryers, covered patios, breakfast bars, upper kitchen cabinets, kitchen islands, pantries. I counted that I could probably reasonably capture seven points for the project that I'm looking at for the next round. This point requirement is a minimum of nine. So I request that either the nine points be lowered back to seven, or that rehabs get a point increase. Right now there is a base score of three, and I would request that that base score go up to five.

There are some items that staff would say, well, you could do this, that would be like granite
countertops, things like that, and I would be concerned maybe having to go after soft money so I could pay for granite countertops in my rehab properties.

MR. VASQUEZ: So overall the list of what it's asking for is just not physically achievable in many of the rehab.

MS. FINE: Either they're not physically achievable or they don't make sense. For example, microwave ovens. My last project I just completed I had to order a microwave oven for every single one of my residents in order to meet my points, but this is a rehab and all my residents already had microwaves and they did not know what to do with their second microwave. It also creates a total headache for my management staff for the next 15 or 35 years to maintain microwaves in all of our units. Or there's one that's a keyless entry. We use keyless entries often in our multi-story elevator buildings, but when we have an exterior door, weather problems create lots of havoc with keyless entries.

MR. VASQUEZ: So is this a new problem?

MS. FINE: So for us this has been an existing problem that we've constantly had a really hard time getting to what was previously seven points, and this new set of language, they expanded the list to be greater but they also expanded the minimum point requirement to be
MR. VASQUEZ: I see the dilemma. Do you have more?

MS. FINE: Actually, I did include in my comments to staff like really specific information on every single one and why I didn't think that we would be able to meet the nine points unless we spent money on things that I would not deem necessary for our rehab property.

MR. VASQUEZ: And you've previously sent these comments to staff?

MS. FINE: Yes.

MR. VASQUEZ: Thanks, Tracey.

MS. HOLLOWAY: Well, and I wasn't aware until Tracey mentioned it that we hadn't increased the points that rehabs start from, we did not, so to be fair, if we're increasing the number of points you have to have, we need to increase the points that rehabs start from. Does that start to get us there?

MR. VASQUEZ: That sounds reasonable.

MR. BRADEN: Increase the base score.

MS. HOLLOWAY: Right. And what we've tried to do, the list over the years for unit amenities and
construction features and all these things have looked like stuff just gets tacked on over and over again, we've tried to take a thoughtful look at what's there, take a look at what makes sense, and one of the items was like Cap 5 cable, and get to a place that will work for everyone, and also renumber or re-score based on the difficulty. And we actually took this topic up at one of our monthly meetings, one of our planning meetings, and got a lot of really, really good input on these.

And then, for instance, on the development construction features out of a resident survey we've added an option for sound insulation in units because that was one of the top concerns for tenants was quiet.

We have made similar changes for resident services. We've also reorganized that section and we've reevaluated for the weighted score of each item.

MR. VASQUEZ: Well, finishing up with Tracey's, we are going to adjust the base score for rehab?

MS. HOLLOWAY: Yes. And we missed that entirely.

On development accessibility requirements at the end of that subchapter, it was modified to meet the HUD requirements that have been previously discussed by the committee, just provided some clarification, and you'll recall that that's something that we took up the
last time we met.

MR. VASQUEZ: And let me interrupt you because I see Cyrus standing.

MR. REED: Cyrus Reed again.

I had mentioned before the potential for adding something about energy efficient and water conservation to tiebreaking but I think that's the wrong place. I think the right place is in the section where you get into the specific amenities, and so again, I wanted to mention that I think some language, as a minimum, should be put in that you have to follow the state standards. And again, if that's in some other TDHCA rulemaking, fine, but I think that's important to let the development community know that we did in 2015 adopt a law that increased our state minimum energy standards, and I was very late in making comments, sending them to Patrick, so I'm not sure everyone has seen them.

And then I also wanted to mention in a number of places within these common amenities or specific amenities it mentions, you know, air conditioning and you've given a general, for example, in common amenities 1.5 points for having at least a 15 SEER air conditioner, and that's above the minimum standards. But maybe you should consider having variable points so the more efficient air conditioning or multi-speed air
conditioning you have, the more points you could potentially get. But you also want to make sure it's actually sized correctly. In other words, we don't want to be building too much air conditioning for what's needed, so making sure that people follow the Manual J requirements, all that stuff, I think could be important.

I don't know that I'm asking to make changes now but I'm just sort of warning you that or letting you know that I think comments will be coming on those specific issues.

And then you do have a good section on green building and I noted that you increased points, I think, from two to four points for green building. I will say there are some other standards out there in addition to the three you have that I've seen other states have adopted, so these would include both sort of Passive House Institute or Passive House Institute U.S., but also there is a green construction standard where ASHRAE and ICC have come together and created a green construction standard. They keep promising the 2018 one is going to come out, they've been promising it for a year, but I've been told it's coming out really soon, so you may want to add some of these additional potential green building standards that people can get certified to help drive that.
And I'll stop there but I've got specific comments but I'll probably wait.

MR. VASQUEZ: And other ideas as we step this section of our rules in place, a lot of this information there could be a home for it in the handbook. Right? I'm just suggesting if you could pass this information on to staff, it doesn't hurt to reemphasize here are the state standards. At this moment I don't know if we're going to be adding specific requirements or complexity. One of our goals of the Board is to de-complexify

MR. REED: De-complexify. So this is a general comment, and again, I'm coming at this as somewhat of an outsider. I think this rulemaking, it would be really helpful at the beginning of the major sections to have a paragraph that -- because this has changed over time -- that says, you know, for this section the minimum points you have to get is X and the maximum is Y, and here's how it's rated. I've seen other states' QAP where it's a lot easier, frankly, to read because they have a table of contents at the beginning of the major sections, they have something that just spells it out in black and white. Because really in this QAP you really have to kind of read through it all to figure out what's going on. I don't know if you can get it done for tomorrow, but I don't think that's a major change in the substance.
And I can provide some examples from other states where they've done a really good job of just at the beginning saying here's the minimum, here's the maximum and here are the categories, and then it goes into the detail. I think that would be helpful, as an outrider.

MR. VASQUEZ: Thank you.

MR. JIMENEZ: Real quickly, Demetrio Jimenez with Tropicana Properties out in El Paso.

Speaking of the 15 SEER HVAC, in El Paso we're in a hot arid climate, we use a lot of evaporative cooling, especially in our units. I'd like to see that be included. In years past they used to have evaporative cooling coupled with this point item, I can't say when but it was certainly included, but we'd like to include that again.

MR. VASQUEZ: And does anyone know when that was dropped? He makes a good point, there's different areas, El Paso is not Houston, but it's hot in both places.

MR. JIMENEZ: Thank you.

MR. VASQUEZ: Please proceed.

MS. HOLLOWAY: Okay. As I mentioned, the accessibility requirements have been modified. I'm almost done. The administrative deficiency section has been modified and we're just now calling it the
deficiency process. This is in Subchapter C under number (7). You'll remember that I mentioned that we better described material deficiencies, and what this section now does is describe both an administrative deficiency process and a material deficiency process.

We have added on 11.202, also in Subchapter C, another item describing ineligible applicants. It is an applicant who fails to disclose a voluntary compliance agreement with another government agency.

Going to Subchapter E, 11.902, we've made some modifications here in order to better match statute. This appeals process in 11.902 is only available to applicants for competitive housing tax credits. The appeals process, which is largely the same for bond applications or direct loan applications, would follow 1.7 in the administrative section of the Department's rules.

Also in the appeals section we have added language that says that an appeal may not present or refer to any document, instrument or writing not already contained within the application as reflected in the Department's records. In other words, an application may not be supplemented via appeal.

MR. VASQUEZ: On that last point, is there any allowance for clarifying information versus new
information?

   MS. HOLLOWAY: Absolutely. And what we're
   trying to get to here is that when someone submits an
   appeal or comes and speaks to you as the Board, they may
   not present information that no one has seen before.
   They absolutely can clarify something that we already
   have, or something that follows through that deficiency
   process, but they may not bring in something completely
   new. That's actually statutory, in statute that
   applications may not be submitted without a request from
   the Department.

   MR. VASQUEZ: Okay. So if we're requesting.

   MS. HOLLOWAY: If we're requesting the
   information, absolutely.

   MR. VASQUEZ: Okay. I just wanted to make sure
   that we're not excluding that option for new data.

   MR. IRVINE: Actually what we're doing is we're
   emphasizing a statutory requirement here, and this is in
   the appeals section at 6715 and it says that an appeal
   has got to be based on the original application and
   additional documentation filed with the original
   application. So responses to administrative deficiencies
   or deficiencies in general basically are the one
   permitted way that you can augment that application, but
   you can't just come in at your appeal and say here's a
whole bunch of new stuff for the Board to look at.

MR. VASQUEZ: Okay. Thank you.

MS. HOLLOWAY: I have nothing more.

MR. VASQUEZ: Very well done.

Is there any other member of the public that wants to bring up another point about this subject, about the QAP?

MS. MARTIN: Audrey Martin with Purple Martin Real Estate, and I'm also the QAP Committee chair for TAAHP.

And I just wanted to briefly thank staff for all the work getting to this point, and to the Board committee for giving us all the opportunity to have this discussion. I think it's been a fruitful back and forth this year and I think the rules are in a great spot.

MR. VASQUEZ: Great. Thank you.

Zachary.

MR. KROCHTENGEL: You know my name now, that's exciting.

MR. VASQUEZ: You're on the list.

(General laughter.)

MR. KROCHTENGEL: Yeah, right.

So this is a suggestion I made a couple of times and it kind of goes back to -- it encompasses a few things, it encompasses tiebreakers as well as the two-
mile same year rule, and that is that in two regions in
g particular -- but it also actually affected Region 6
Urban this year, but in Region 11 Urban and in Region 4
Rural, on many occasions there are projects that are
awarded in the same census tract and that is because they
tie on every tiebreaker and then they get down to
distance and they're first and second in distance. And
because the two-mile same year rule does not apply to
those areas, you get a place like Whitehouse, Texas that
gets two deals, you get a place like Lindale, Texas that
gets two deals, you get a CDP like North Midway that gets
two deals, you get another CDP called Olmito that gets
two deals, and it ends up really just putting housing
right next to each other in that same census tract.

If you go to Lindale, Texas there's two 80-unit
deals that can see each other from the same year because
the tiebreaker and the scoring doesn't in any way
differentiate two deals in the same census tract. In
Region 6 Urban this year, three deals directly next to
each other were awarded because of that flat scoring that
is occurring.

And my initial suggestion at a roundtable was
to in some way score one deal in each census tract one
point higher by awarding it the deal in that census tract
closest to a grocery store or whatever amenity that we
I want to call it would get one point automatically. So if you're the only person in that census tract you get one point, if there's two deals in that census tract, one deal gets one point, one deal does not. And that would actually, in my opinion, take deals and say, okay, one deal in this census tract, one deal in the next census tract, one deal in the next census tract, as opposed to two in census tract A, two in census tract B, and then the allocation has run out.

So that's something that I suggested as a concept. I think a few other people in this room probably would like to see something like that that differentiates so that we don't see so many deals in the same census tract, specifically in those two subregions, but also, I think that is a problem that could continue depending on how keep the scoring.

MR. VASQUEZ: I agree with you that's something we need to address. It's not going to happen in this round, but I agree we've got to look at that.

MR. KROCHTENGEL: Thank you.

MR. VASQUEZ: Thanks.

Brooke.

MS. BOSTON: Just to make sure we've got the interests of you guys written down and everything and prepared for tomorrow -- I know you'll be there, I know
you won't -- so I have that we are going to include and address the staff's revisions, we are going to address the tiebreakers as discussed. Relating to the search of the records we're going to go back to the prior version but with a certification that tracks the statute and the language about maintaining evidence and moving things back to the manual. Relating to proximity to urban core, we are going to make a revision relating to the 750- and four miles. And then we were going to adjust the base for rehab that Marni had just mentioned in conversation with Tracey.

I did want to ask so you're okay if we add language relating to an evaporative cooler? It sounded like you were fine with that.

MR. VASQUEZ: Yes.

MS. BOSTON: So for all of those for the meeting tomorrow, whichever will help you, we'll either have a handout for something or we'll be prepared to read language in if it was pretty straightforward. Does that sound sufficient?

MR. BRADEN: Sure. Actually, if we don't have a handout, if you could send me an outline or just give me notes as to what we're doing because I'll probably have to outline it.

MS. BOSTON: Okay. We'll do that. Thank you.
MR. VASQUEZ: Very good.

Again, I want to thank everyone for their input but really want to applaud our team here that's put in great effort and just balancing all kinds of different issues and pulls from different directions, so you've done a great job yet again, and thank you for your efforts.

(Applause.)

MR. VASQUEZ: And with that, since we've been sitting here for over about two hours now, let's take a ten-minute break and recess until, I guess, 2:45.

(Whereupon, a brief recess was taken.)

MR. VASQUEZ: Let's call the meeting back to order. We're losing our crowd.

MR. SINNOTT: I'll be brief. Good afternoon, Chairman Vasquez, Mr. Braden. My name is Andrew Sinnott, Multifamily Loan Programs administrator.

I'm here presenting the draft Multifamily Direct Loan Rule for 2019. Most of the changes from this year's rule to the draft 2019 rule are clarifications, so I'm just going to touch on the more substantive changes that we're making this year.

We added a definition of surplus cash flow in 13.2(12) to provide borrowers and the Department with a specific calculation of surplus cash flow when the
Department's loan is converted to an FHA insured first lien loan. The motivation for providing this rule is so that borrowers, FHA lenders and the Department can have certainty when modeling and underwriting the transactions that contemplate direct loan funding. And I'll just go through these just a few bullet points and I'll wait for public comment at the end, if there's any.

We added pre-development and preservation as activities that may be reimbursed with direct loan funds in 13.3(d) to better align with statute in Texas Government Code 25.6 and Federal Regulations in CFR 92.

We added less stringent market analysis requirements for rehab deals that request direct loan funds as the only Department source in 13.5, so long as they can show that the property is at greater than 80 percent occupancy for the most recent six-month period.

We made explicit the Department's prioritization of fund sources when more than one source is available to award within a set-aside also in 13.5.

We also made explicit in 13.5(f) what year's rules will apply to applications and awards that span more than one year's rules from the time of application submission to the time of loan closing.

We deleted the interest rate specified in 13.8(a), opting to publish it in the NOFA rather than in
We deleted the 20 percent owner equity requirement for direct loan only deals in 13.8.

We added 13.10(e) which addresses applications with direct loan funds that elect income averaging for tax credit purposes.

We accelerated the time in which direct loan awardees must submit environmental review to the Department and execute a contract in 13.11 in order to make a commitment deadline risk that comes with our HOME and NHCF funds, and we deleted the closing deadline requirement that the Board establishes in 13.11 since there was already a closing deadline requirement within that part of the rule.

MR. VASQUEZ: Andrew, let me interrupt for a second.

MR. SINNOTT: Sure.

MR. VASQUEZ: Why did you delete the 20 percent equity?

MR. SINNOTT: I think it's mostly because we allow applicants the ability to mitigate our risk through loan to value in an appraisal, so we have no more than 80 percent LTV when the direct loan is the only source of Department funding, and 20 percent owner equity requirement when the direct loan is the only source of...
Department funding. So we've allowed a few applicants to move forward with just the no greater than 80 percent LTV without providing 20 percent owner equity, so I think that was the motivation behind that change, but if we wanted to keep in some modicum.

MR. VASQUEZ: Is there a minimum owner equity at least?

MR. SINNOTT: Right now it's at 20, but as the draft rule is now, no, there's not. The vast majority of the direct loan deals that we do are layered with tax credits, either 4 percent or 9 percent, mostly 9 percent. It's very, very few that we come across that are direct loan only, and the ones that we have done in the past several years there has been some owner equity even if they weren't able to meet that 20 percent.

MR. VASQUEZ: But if we struck this as is, theoretically there could be zero percent owner equity.

MR. SINNOTT: Potentially, yes.

MR. VASQUEZ: It could be all loan.

MR. SINNOTT: Correct. We have some guarantee language as well, I think that's also in 13.8.

MR. IRVINE: Our principal risk is that there is failure to perform the entirety of the contract and that HUD requires repayment as a result, and we are proposing in these rules that the principal, the
individual who's behind the single asset entity, guarantee performance of the HUD contract, not repayment of loan but performance of the HUD contract.

MR. VASQUEZ: I guess I'm looking for the compelling reason to not have an equity component in the project if we're loaning someone money. I mean, I would love to have that kind of loan.

MR. SINNOTT: Like I said, the vast majority of our deals are tax credit layered, but I don't think staff would be opposed to keeping some modicum of equity conditioned to the guarantee that Tim referenced.

MR. BRADEN: Arguably, if there's 80 percent LTV, there's 20 percent equity in it.

MR. SINNOTT: Or potentially another soft source of funding.

MR. VASQUEZ: You can inflate the value and suddenly you have this magic equity on a just purely LTV basis.

MR. SINNOTT: The 80 percent is based on for new construction it's the as completed appraised value, if it's rehab and they meet the 80 percent LTV as is, they can move forward with that, but if not then they'd be as rehabbed value that reflected no more than 80 percent LTV.

MR. BRADEN: I'm okay if you want to say 10
percent.

MR. VASQUEZ: Do we have public comment on this?

MR. LUCAS: I'm Ray Lucas with Lucas and Associates, and I have dealt with some community-based nonprofits that have good properties and they just needed your direct loan fund to do rehab to bring it up to a higher standard, and it's been tough for them to do the 80 percent loan to value and then come up with 20 percent equity on top of all that to make it work. So it would be beneficial for some of those that are utilizing the program in that respect. We've done a number of them, four or five of them.

So just food for thought. By the time Andrew gets done with them, they're pretty much chained to a fence anyway.

(General laughter.)

MR. BRADEN: And maybe Andrew or Tim can flesh out a little bit how the HUD guarantee is going to work, the guarantee of the HUD obligation.

MR. IRVINE: Simply put, if there were a failure to fulfill the HUD affordability requirements and as a result HUD made demand upon the agency to reimburse them the funds, then we would look to the guarantor for that reimbursement.
MR. BRADEN: So without HUD making a demand on us, there's still some risk associated with our funds, but the bigger risk is if the federal government comes knocking and says give us our money back.

MR. IRVINE: Exactly.

MR. BRADEN: And that's a personal guarantee?

MR. IRVINE: A personal guarantee from a live individual or their estate.

MR. VASQUEZ: Do we have the ability to count other sources of contributions towards that equity? I have real heartburn with totally removing it, even if it is a nonprofit. I mean, a borrower is much more incentivized to make some --

MR. IRVINE: As a government entity, we have a hard time getting into an analysis of a borrower's balance sheet to determine what their true equity position is. I mean, there are things that we could say, yes, it clearly counts as equity if you have unencumbered assets that are readily liquidatable, or whatever, but that's different from actually investing in the development entity cash equity that it can then use for whatever liquidity needs it has. And we find that really the folks that we're dealing with generally don't have the wherewithal to put that kind of investment into their entities.
MR. BRADEN: And have we discovered -- Mr. Lucas just made a comment that it would be helpful to nonprofits he's involved with. Have we come across other applicants who are nonprofits who are having problems putting in the 20 percent?

MR. IRVINE: I'm aware of at least one.

MR. BRADEN: And this is only if the loan is the only source of borrowing associated with the transaction.

MR. IRVINE: Right. When they're layered we have other more significant protections.

MR. VASQUEZ: And I imagine the other groups are demanding that there's some equity in there. You just mentioned a 10 percent figure. I just have a problem eliminating it altogether. I have a problem going under 15.

MR. BRADEN: I mean, some of the concept that you're struggling with, I think, sweat equity or something else is picked up by the 80 percent. Right? The reason there's 80 percent LTV is somebody has either bought right or they're putting something else into it.

MR. IRVINE: The 80 percent LTV is based on assumptions that the appraiser has given that it's an as-built in this manner with these rent restrictions and what's it worth.
MR. VASQUEZ: Would staff have a problem with
instead of deleting it all changing it to provide an
amount not less than 10 percent of the total housing
development cost?

MR. IRVINE: I don't really have a problem with
changing the number of whatever. To me, if you're going
to go down that road, another way you could approach it
would be to flesh out the criteria for obtaining approval
to use a lower equity number and not just arbitrarily
moving the number down but say, for example, upon showing
good reasons, adequate protections and so forth -- that I
could probably flesh out in a couple of hours -- that
there is an ability to have a reduced equity requirement.

MR. VASQUEZ: Are we allowed to distinguish
between for-profit and nonprofit developers?

MR. IRVINE: I don't know why you couldn't.

MR. VASQUEZ: I don't know if there's some sort
of discriminating between free enterprise.

Mr. Lucas has another comment.

MR. LUCAS: Ray Lucas, one more comment.

The projects I work on have Project-Based
Section 8 contracts. That might be a consideration that
is lowering the risk to the Department, that one
criteria.

MR. PHILIP: Sunny Philip. I represent a
nonprofit from South Texas.

And the point we want to raise, especially in regions where the rent levels are so low, those kind of assistance are needed. And also, if you compare the HOME program on the single family side, there's a lot of money going to one single family for the construction and there's no payment back out there. In this case if you are helping, let's say, 20 different families, the benefit of home improvement, the only thing is they're not homeowners and they cannot afford, they're not eligible. So it is mainly a problem, especially for the nonprofits, a difficult situation to come up with the liquidity and still feel that you balance out and the affordability is maintained also.

MR. VASQUEZ: Right.

MS. PHILIP: Any questions?

MR. VASQUEZ: No. Thank you for your comment.

MR. BRADEN: Andrew, do we have a feel for when these applications come to us are most of them nonprofits?

MR. SINNOTT: The direct loan only deals, I'm trying to think of the most recent ones, the last, I'd say, 70 to 80 percent of them have been nonprofit developers.

MR. BRADEN: And the for-profit developers do
not have a problem coming up with the 20 percent?

MR. SINNOTT: So this rule has only been around since, I think, last year, I think 2017, I can't remember if was around 2017, but it's a fairly recent addition to the rule, and I don't know if we've ever come across a for-profit entity requesting direct loan as the only source of Department funds yet.

MR. BRADEN: I'd be okay if you want to say yes, let's get rid of the 20 percent requirement for nonprofits, if you want to leave it in place with respect to for-profits.

MR. VASQUEZ: If we can legally do that. I would think lowering it for nonprofits. I just still have trouble eliminating it altogether. If a nonprofit doesn't have some fundraising in a certain project, perhaps they're not stable enough and viable enough to be doing the whole project in the first place. Being able to have some skin in the game just as an indication that there's some viability to the organization to actually pull it off, in my opinion.

MR. SINNOTT: We also have -- this has been in the rule for several years now -- if the direct loan amounts to more than 50 percent of the total housing development cost, except for those financed through the USDA 515 program, the application must include 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, or 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. So that kind of catches some of those
potential direct loan only folks as well to the extent
that the direct loan is more than 50 percent of the total
housing. So it's a smaller deal, I can't imagine
anything more than 40 or 50 units, total development cost
of $6- or $7 million.

MR. VASQUEZ: Are you okay with only 10 percent
for nonprofits?

MR. BRADEN: I'm actually okay with deleting it
altogether, so I'm not saying let's just get rid of it
for nonprofits, I'm kind of backing off with my original
position.

MR. VASQUEZ: Ten percent across the board?

MR. BRADEN: I'm okay with that, I guess, if we
just drop it to 10 percent, but I mean, Tim is right,
we're just sort of arbitrarily picking that number.

MR. VASQUEZ: Well, 20 percent equity is more
of a standard financial world number.
MR. IRVINE: I'm probably giving myself a task I don't want, but I would recommend that there be a provision that the applicant may request a lower equity requirement and they are required to substantiate what their equity position would be and why it adequately mitigates the risks of covering costs during construction.

MR. BRADEN: You're proposing a rewrite that does that? I'm okay with that. That's not a Board decision, maybe the executive director can make it too.

MR. VASQUEZ: I'm good with that. I just hate to eliminate this provision altogether, even though there may be some other -- given that other part that you read, there may be some conflict.

MR. IRVINE: The real challenge is during construction where you encounter cash flow issues and so forth and you've got to say, hey, we just need to do this right now to keep this thing on track and we need equity to do it.

MR. VASQUEZ: Exactly. And something is always going to go wrong somewhere down the road.

MR. IRVINE: For example, a line of credit from a prime contractor would suffice.

MR. VASQUEZ: Actually, I think we'd recommend if we could put together language subject to the
direction that Mr. Irvine just outlined, it would be looked upon favorably.

MR. ECCLES: And just one quick clarification on that. Would that be drawing a distinction between for-profits and nonprofits? No? Okay. Thank you.

MR. VASQUEZ: Okay. Sorry for the interruption, Andrew. Continue on.

MR. SINNOTT: That's okay. Actually the last bullet I had was deleting a closing deadline requirement established by the Board, so that was the last thing I had. So other than that, mostly just clarifications and then obviously the references to Chapter 10 have now become references to Chapter 11.

MR. VASQUEZ: Anyone else have any comments that they'd like to add to this subject?

(No response.)

MR. VASQUEZ: Great. Thank you, Andrew.

And moving right along to the Asset Management Division.

MR. BANUELOS: Good afternoon. I'm Rosalio Banuelos, the acting director of Multifamily Asset Management, and I'm here for item 3 which is the presentation and discussion regarding post-award and asset management rules, 10 TAC Chapter 10, Subchapter E.

For this one we're updating the materials, it's
not a repeal. Several of the changes that are being proposed are for clarification and some of the changes are for consistency with other sections of the rules, so I won't go into the details of those changes, and will focus on the most notable changes which are in the sections for amendments, owner transfers and the right of first refusal which are 10.405, 10.406 and 10.407 of the rules.

Under the section for amendments to the housing tax credit application and amendments to the LURA in Section 10.405, staff proposes the addition of an item to allow amendment requests to implement a revised minimum set-aside election mainly for income averaging a permitted by amended Section 42(g)(1) of the Internal Revenue Code, as adopted by the Federal Consolidated Appropriations Act of 2018. This would be a material amendment requiring Board approval for both the application amendment and the amendment to the LURA.

For the ownership transfers which in 10.406(e), staff has suggested that the executive director be given the authority to approve transfers prior to the issuance of IRS Forms 8609 or completion of construction rather than these transfers having to go before the Board for decision making. This would allow the transfers to be approved more quickly and efficiently.
And then the third item that I want to point out is in the right of first refusal offer price 10.407. Staff suggests adding language to clarify the operation of the right of first refusal process as set forth in statute, particularly for developments that have a minimum purchase price. The proposed changes to the right of first refusal are intended to implement what staff believes is the most reasonable reading of statute which is that a minimum sales price, as stated in Section 42(I)(7) is only a sales price that if not met would trigger tax consequences and that negotiations for a higher price and ultimately a higher sales price are allowed for the ones that have a minimum purchase price.

Other than that, it's mainly clarification and consistency with other sections of the rule, so that's all I have.

MR. VASQUEZ: Anyone have any comments? Ms. Bast has a comment.

MS. BAST: Thank you very much. Cynthia Bast. I have just a couple of things. First of all, in the ownership transfer section, this relates to Section 10.406(f), and is an issue that I know I've been talking about with several members of staff for a few years now.

Under Section 42 it says that if credits are
awarded in the nonprofit set-aside that the nonprofit must participate throughout the compliance period, the 15 years. The way our rule is currently written, if a property was in the nonprofit set-aside, then that nonprofit can never come out while the LURA is in effect, or if it does come out, it has to be replaced with another nonprofit.

A few years ago we recognized that same sort of stranglehold on HUBs and allowed HUBs some flexibility to leave an ownership structure on their own volition if they felt they had gotten the benefit of participating in the development and were ready to move on. I think it could be beneficial to allow that for nonprofits as well, so long as the federal requirement that there's been a nonprofit for the compliance period is met. So that is perhaps a new concept that I would like to throw out there for consideration.

And also, keep in mind if a nonprofit is involved and it wasn't in the nonprofit set-aside, they can freely go out, it's just these that were in the nonprofit set-aside that the ownership is kind of locked for the 30 or 40 years of the LURA.

MR. VASQUEZ: So you're talking of being able to replace the nonprofit?

MS. BAST: I'm talking about a nonprofit being
able to leave and if it's after the compliance period you
don't necessarily have to put another nonprofit in
because it's not required by federal law, and it allows
some flexibility for year 15 transfers for preservation
and things like that.

MR. VASQUEZ: Has this been a change that's
been considered in the past?

MS. BAST: I know I've brought it up in public
comment in the past.

MR. BANUELOS: Just to clarify, so nonprofits
are usually required to be in the ownership structure
throughout the compliance period, so that's generally 15
years. Some properties may have elected to extend the
compliance period beyond the 15-year period, so that
would be, I guess, the instance that you are referring
to?

MS. BAST: No, that's not the instance I'm
referring to. What I'm referring to is in 10.406(f)
there's some language that says if you're replacing a
nonprofit, you must have a replacement nonprofit, but if
the development received tax credits pursuant to the set-
aside, then the transferee has to be a qualified non-
profit, but otherwise you can change it out. So there's
this phrase in here that's been in here for a few years
about the set-aside that causes this problem.
And I know Raquel and I have talked about it and I know you haven't had the benefit of that, and I'm sorry for that, but it's an issue that I've tried to address for a few years.

I can make a suggested modification, I can bring it up tomorrow, I can do whatever you would like there.

The second thing that I would like to bring up is in the right of first refusal. First of all, I would like to say that since the change of law in 2015 and since staff has worked very hard to have rules to implement that change of law, I've seen a tremendous benefit to the ownership transfer process. I have seen dozens and dozens of properties that get to year 15 and are changing hands and are going to nonprofits where there's typically a CHDO involved, so I think that in many respects this is working as the change in law intended, and also working toward the intent of having that nonprofit long term ownership. I think things are working well there.

There are two things. One is a change in the rule that was made in 10.407(c)(9). It says that if you have a physical conditions report, which you have to submit to go through the right of first refusal process, and if there are conditions there that are problematic
that they must be satisfied before going through the right of first refusal process. Well, sometimes the change of ownership will bring with it -- most times will bring with it new financing and that's the financing that is going to make those modifications and fixes. Perhaps part of the reason the owner is selling it is because they don't have the wherewithal to make some of these fixes but this new owner will come in and fix it. So if there are those kind of problems, where it says that the physical conditions must be resolved, I'd like that resolution to include the ability for the new owner to have a plan as part of acquiring the right of first refusal.

MR. BANUELOS: So I think the concern there is we have it particularly for habitability and tenant safety, so we were thinking more critical repairs being taken care of. Is that something that could be kept in there just for that reason rather than waiting until the property changes hands and then fixing those items that are critical to the tenants before then?

MS. BAST: I think that's a legitimate concern, and perhaps the rule as it is written will work in that it uses the word "resolved" and that is open enough to allow you to determine what resolves it, whether it be that no, this has to be fixed right now, or we would
accept that it can be fixed in the refinance.

MR. BANUELOS: Right. So just in the past my understanding is that if we had a physical condition inspection of the property and the items have been corrected as a result of that inspection, then we would take that as evidence that the items have been corrected. So it doesn't necessarily have to be spelled out in the PCA or a subsequent report done to show that that item has been addressed.

MR. VASQUEZ: But I think you're saying you want to be able to have the transfer done and that the new owner could implement the habitability and tenant safety measures.

MS. BAST: I can understand your position that if it's an immediate tenant safety issue you don't necessarily want to wait 60, 90, 180 days, but if there's some that could be part of the subsequent owner's refinancing, then I would just ask if there could be flexibility in that interpretation.

MR. BRADEN: I think that's a reasonable position to take, especially when it's safety and habitability. So we're in agreement. Right?

MS. BAST: I think so.

MR. VASQUEZ: Although, the way I read this language it's saying the identified repairs/replacements
must be resolved to the satisfaction of the Department before the development will be considered eligible to proceed with the right of first refusal request.

MR. BRADEN: I think Cynthia just made the point of what resolve means. It's a contractual commitment to address that resolution. We're the ones interpreting the rules.

MS. BAST: I thought that was my job.

(General laughter.)

MR. IRVINE: I would just comment, if it's a matter of imminent health and safety, it's got to be fixed, generally speaking, immediately, in 24 hours, you know, boom. So I just think this is, frankly, a non-issue. Whoever is legally the owner is responsible for doing that and if somebody else wants to pursue an acquisition, they're probably going to step up and say let us help you fix that right away because if we were to have it on our responsibility right now, we would have to fix it immediately. So either way it's got to be fixed right away.

MS. BAST: All right. Last comment on right of first refusal. In your writeup the staff is talking about the sequential negotiation, particularly in the 180-day exclusive period. We've got the 60 days priority for certain kinds of entities and then 60 days for others
and then others. And in the staff writeup it says: If at the end of the sequential exclusive negotiation periods the seller has not negotiated an acceptable transaction, it should be free to negotiate with others, but it seems that before finalizing any such agreement the offering party ought to give the unsuccessful priority negotiation parties an opportunity to meet those terms, thereby giving effect to the reference within the statute to the right of first refusal.

I agree but I don't think that the rule, as currently written, implements that. What the rule does is it establishes here's how you satisfy the ROFR, if you're going through the ROFR, here's how you satisfy it, here's what you can do after you satisfy it, here's what happens if you don't satisfy it. And what it says right now is unless you take one of the offers that you've received, you don't satisfy it, and that's not consistent with what staff says right here which is that if you don't get to the end of your negotiations successfully, you can sell to someone else but not unless you offer it for a match to those prior parties.

So once again, I took a stab at writing that last piece of insert into the rule that would accommodate this sentence in your staff recommendation, and I have submitted that to Mr. Irvine and Mr. Eccles, and am happy.
to discuss it further. But basically what it does is it says if you get to the end and you've negotiated as you were supposed to but you didn't get to a contract with anybody, then you can sell to somebody else but not unless you take whatever that offer is that you have from that other person and you go back to those prior parties and say, okay, one more shot, here's what I've got, match this, and if you don't match this, then you can go forward.

I think that's what this sentence says and so I was just trying to make the rule match what the recommendation says.

MR. VASQUEZ: But in practice, in reality during this kind of process, would not the seller already have been continuing in conversations with the earlier bidders as you're negotiating?

MS. BAST: I certainly think it's possible.

MR. VASQUEZ: Well, it seems likely that you're keeping open all lines of communication with everybody and as you're getting a different deal, you're presenting it to someone else saying, hey, here's this deal.

MS. BAST: Tim has a point which is that in the various tranches of time the language, I believe, talks about exclusive negotiations with certain priority participants, so if this group's time is gone and you're
on to this group, I'm not sure that this rule currently
would allow you to go back to this group. Now,
practically does that happen? It very well may. We have
a situation we worked through where they didn't get there
during the first 60 days but then someone came in on the
second 60 days with an offer that they did like that they
could negotiate, and they did go back to that CHDO and
said, Here's the offer that we like, do you want to match
it? And they didn't, so they went with that second
offer.

MR. VASQUEZ: I'm not convinced or I'm not
compelled to see why we should add this extra language.
What I'm saying in reality it's probably going to happen
anyway and if anyone in that first group really wants the
property, I mean, they're going to continue the
conversation. Why add additional complexity?

MS. BAST: The reason why I would say that is
because over the years I have worked with the right of
first refusal there are a number of nonprofits who feel
very strongly about this provision and who feel that they
need to be given every opportunity to acquire these
properties. So this statement that I'm making and this
suggestion that I'm making is really kind of in response
to that, knowing that there are these nonprofits out
there who care very much about this and who believe it's
very important for them to have these opportunities. And so as I saw this kind of whole perhaps a little bit of a disconnect between the writeup from your staff and what I saw in the rule, I thought I would try to bring this up and talk to you about it and let you know that it could be a concern for the nonprofits. I know there were some nonprofits in the audience today, and they can speak for themselves, I was just thinking about that.

From my perspective, the rule has been working and I'm happy to work with the rule the way it is, I was just trying to bring that thought to bear.

MR. BRADEN: I think as a policy reader, she's right. The concept behind the statute is that the nonprofits get the last bite at the apple, so if you've cut a deal all the way through and then at some point before you ink the deal with somebody else you say, okay, here it is. And what's the time frame to make that response to see if someone could match it, and sure match it in terms of terms. Like if one is all cash and somebody walks in with borrowed money, it's not the same. I don't know if Tim or Beau have had a chance to look at Cynthia's language.

MR. VASQUEZ: Also, there's one more practical aspect. If you're in the group that has in good faith been negotiating, you're that second group, in that...
second batch, and you've spent your time and your attorneys to negotiate in good faith and then all of a sudden this other group comes out of the blue, from your perspective, and says I'll match that. And we're putting in language here that says that other group who had the first chance, could have gone through that negotiation, it seems unfair to the group who did work it through.

MR. BRADEN: Now, of course, statutorily they had notice that that might happen. Right? They're negotiating with the understanding that somebody else has the right of first refusal, and then that argument sort of goes contrary to whole idea that they're going to be negotiating on the side with the first party.

MR. VASQUEZ: After that period has expired that group had that first refusal.

MR. BRADEN: I don't know if staff has any thoughts, comments. I don't feel that strongly about it. If we think it works, I'm okay leaving it alone.

MR. VASQUEZ: I was going to say I'd recommend leaning towards leaving this one. I understand your argument.

MR. IRVINE: Since we're just starting the public comment process, I think the better course is to leave it in and then if we get significant comment saying remove it, then we can consider how the Board would treat
MR. BRADEN: I think that's right.

MR. VASQUEZ: I would agree.

Just one clarification. On the 10.406(f) on replacing the nonprofit, did we come to any resolution on that discussion? So this is after the 15 years or after the compliance period.

MR. BRADEN: I had a question on that.

MR. VASQUEZ: I don't think we had a resolution on that.

MR. BRADEN: So on 10.406(f), doesn't (3) under that says exactly what you're asking for, Cynthia?

MS. BAST: So this is the problem with (3), exceptions to the above may be made on a case-by-case basis if a development is past its compliance period, was not reported to the IRS as part of the nonprofit set-aside. This is the exact phrase that I'm talking about that's the problem. If we would just take that phrase out, then any transaction with a nonprofit in it, whether or not it was in the nonprofit set-aside, once they get to the end of the compliance period, which could be the state extended compliance period, they can step away because (3) does not apply to any deal that was in the nonprofit set-aside.

MR. BRADEN: So this is more directed towards
staff. So why is that phrase in there? Do we know?

MR. BANUELOS: Again, my understanding was that we were intending to clarify that nonprofits could come out if they were not in nonprofit set-aside. I don't know the history of that section, to be fully honest.

MR. BRADEN: Do you think we can run that down?

MR. BANUELOS: Yes, we can look into it.

MR. BRADEN: I hate striking language if there was a specific reason for it, but I think the logic, if you're past the compliance period, which would include any extension, it seems like you should be able to, and this is even through an exception, so it's not even like it's automatic.

MR. BANUELOS: I will look into it, and if it's okay with you, report back on it tomorrow.

MR. BRADEN: Sure.

MR. VASQUEZ: I'm in agreement. I don't see any reason why after the compliance period you can't change, but maybe there was a reason.

MS. BAST: It's the nonprofit's choice.

MR. VASQUEZ: If staff could further research that.

MR. BANUELOS: Yes.

MR. VASQUEZ: Okay. Thank you, Mr. Banuelos.
percent equity, I have some suggested language for you, if I might read it into the record. This assumes that you would leave the 20 percent equity requirement intact but go on to provide:

An applicant for direct loan funds may request Board approval to have an equity requirement of less than 20 percent. The request must specify a proposed equity that will be provided and provide support for why that reduced level of equity will be sufficient to provide reasonable assurance that such owner will be able to complete construction and stabilization timely. The support case will be reviewed by staff and staff will provide their assessment and recommendation to the Board.

The applicant's support should include all mitigating or supporting factors, including, by way of example and not by way of limitation, performance bonds, collateral, lines of credit or inter-creditor agreements. Sweat equity or other forms of equity that cannot be readily accessed will not be allowed to count towards the equity requirement.

MR. BRADEN: Sounds okay to me.

MR. VASQUEZ: Sounds pretty good.

MR. BRADEN: You realize this is coming back to the Board. Right?

MR. VASQUEZ: Moving right along to the next
item on the agenda regarding migrant labor housing
facilities.

MR. GOURIS: That's right. Good afternoon, Mr. Vasquez and Mr. Braden. My name is Tom Gouris and I am a
director of TDHCA here to discuss the licensing and
inspection rules for migrant labor housing facilities.

By way of background, migrant labor housing
facility licensing is an activity that's unlike the
typical program and regulatory activity conducted by the
Department in that it doesn't begin with funding by the
Department, it's more like a regulatory activity such as
a driver's license or a manufactured housing license
permit. In Texas before you can provide housing for two
or more migrant families or three or more individuals for
three or more days as living quarters, you must be
licensed by the Department. This is required under
Section 2306, Chapter LL.

We've been licensing facilities for more than
ten years and over the past year we have had 48
facilities licensed. The names and addresses of each
licensed facility are on our website along with the
information about the law, how to get licensed, how to
make TDHCA aware of potentially unlicensed facilities,
and that website is available in both English and
Spanish. Licenses are valid for a one-year period and
cost $250. The actual inspection and processing of the license is currently handled under an agreement through our sister agency the Manufactured Housing Division, and it occurs when the providers of such housing self-identify as wishing to operate such a facility with a license.

So our enforcement activity here is not as a result of funding for housing and yet, at the same time, we are not a typical law enforcement agency with resources to patrol streets to find unlicensed facilities. We let people know about the legal requirement for licensing and whenever we are told about unlicensed activity we follow up and try to identify and get them licensed.

Last summer it was identified to us that a large segment of the migrant labor population was regulated by the U.S. Department of Labor through the H-2A visa program. This program is administered in the state by the Texas Workforce Commission and requires, among other things, that employers who wish to temporarily employ foreign workers in the U.S. must provide a temporary place for the workers to live. We began to work with our counterparts at the TWC to determine if this activity also needed to be licensed by the Department where it met the three-person, three-day

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standard, and how we could work together to minimize the
duplication of effort and impact to employers.

The U.S. Department of Labor uses two standards
for inspection of migrant labor facilities: the ETA
standard for facilities operation in operation prior to
1980, and the OSHA standards for properties beginning
with operations after 1980. Our Texas statute that
currently exists does not specify a federal standard to
use but instead directs the Board to enact a Texas
standard for inspection, and that rule which we have in
place today dates back to 2005, contains inspection
standards that are primarily an amalgamation of the two
federal standards, generally using what could be
characterized as a more worker-friendly standard where a
conflict between the two exists.

In order to utilize the inspections TWC is
already doing under the H-2A program, we began discussing
revisions to our rule to accept the TWC inspection and
federal minimum standards that they are using to do their
inspections. We received considerable feedback from
advocacy groups and a group of interested legislators who
expressed compelling concerns with regard to the
differences in the two standards and how abandoning our
current standards would lessen the housing protections
for all migrant workers in housing. They identified a
number of instances where the lesser standard would weaken these protections. For example, the ETA standard requires electricity to be available in a housing facility while the OSHA standard only regulates electricity if it's already available at the facility.

So the draft rule before you today identifies nine specific inspection standards that are in the current rule, most of which are in one of the other federal standards but not both, and maintains them as part of the Texas standard going forward. This will allow us to minimize the duplication of effort and impact on the employer by accepting the TWC inspection along with a certification from the employer or provider to the nine additional Texas standards. In addition, the new rule proposes to reduce the licensing fee to $25 for each of the first two years of licensing these Texas providers that are already being inspected by another agency, such as TWC for the H-2A inspections.

We've already been reaching out to over 180 H-2A employers, grower organizations and consultants who help employers through the H-2A process. Unfortunately, it's become clear to us that the TDHCA licensing requirement was not previously well known among these groups. We will continue to reach out to these groups and soon we will be able to receive copies of application
material for the H-2A program directly from TWC and be able to send information about the TDHCA licensing to those employers as they're going through the H-2A approval process.

We've also developed a brand and logo for the licensing program. Much thanks goes to Amy Kincheloe, in our communications and marketing group of our Policy and Public Affairs Division, for her extraordinary work and also the significant input on the logo design from our executive director. The new logo, which is in your information packet, looks like this. It is intended to provide a powerful, positive recognition of a licensed facility so that employees will know that a facility is up to standard. It is expected that the logo will also be used by future employers wishing to self-identify that along with employment opportunities they're offering licensed and regulated housing.

I'll be glad to answer any questions anyone has about the proposed rule or the licensing and inspection process.

MR. VASQUEZ: So, Tom, could you help clarify which are the entities doing these inspections right now?

MR. GOURIS: So on our behalf for the 48 existing properties we have, our Manufactured Housing Division goes out and will do the inspections, and
they've been doing that since the inception of us taking over that requirement. So they actually collect the application, they do the inspection and they issue the license. We have been responsible for the rulemaking and for the policy issues on the subject and taken the brunt of the criticisms from folks when things don't go well, so that's been our role.

And so we're trying now to utilize what the TWC does because they do their own inspections for H-2A process, we're trying to utilize those inspections from the H-2A process. Instead of having our guys go out a second time at the same time, use those inspections, along with a certification from the owner or operator that says they meet the other nine standards, and then license them and deal with any consequences of that if we get complaints or what-have-you and we'd go out and inspect then.

MR. VASQUEZ: So TWC is also going to these same locations?

MR. GOURIS: Well, the 48 properties that have licensed now as far as I can tell are not facilities that also use the H-2A program. The H-2A program is an employer-driven program whereas our facilities that currently exist are historically an owner that became aware of our requirements and got licensed. So in some
cases they're gin operators that have nine to twelve months worth of work or have a significant amount of work, or they might be public housing authorities that provide migrant farm worker housing and recognized that they needed to be licensed and so they got licensed by us.

MR. VASQUEZ: But they're not necessarily H-2A.

MR. GOURIS: That's correct. Our current group is a subset of the whole. The H-2A would probably significantly increase the number of licensees in the state.

MR. VASQUEZ: Do you know what the universe is of potential licensees or licensed facilities?

MR. GOURIS: Well, I was able to search the federal information -- or actually database, we tried to put a database together, and we had over 400 instances identified of potential employers requesting to be part of the H-2A program. I don't know if all of those received that or not. We were able to, from that list, get email addresses for over 180 employers and then there's also some growers and some consultants who help employers in that group, and we sent to all of those and we've received some feedback, a couple dozen feedback from that. But it's hard to tell, it's going to be in the hundreds most likely.
MR. VASQUEZ: And help me out here to understand, so do all H-2A employers also provide housing?

MR. GOURIS: H-2A employers are required to provide housing, but not all H-2A housing is required to be licensed. To be licensed it has to three employees for three days, so pretty much it's going to be three days, but three employees, a lot of them will hire one or two employees or have one or two employees and they won't be required to be licensed under the statute.

MR. VASQUEZ: Are there any conflicts between our state statutes and the federal requirements?

MR. GOURIS: Well, there's potentially one in that the prior requirements are not spelled out, they're referenced in our state statute but they're not spelled out in the federal statute. In addition, there are two federal requirements, like I said, the OSHA and the ETA, and our statute doesn't say you need to do this one or that one or either of them, it just says you need to look at these ten items and anything else that the Board sees fit to include in the requirement.

MR. VASQUEZ: Are these duplicative of the federal statutes that are already in place, are they not as much, are they more? I'm just trying to see are we duplicating efforts, confusing the people.
MR. GOURIS: So our first attempt at revising these rules was to go just with the federal ETA or OSHA, if applicable, standard, and we received feedback that said, hey, there are some things, like for example, electricity is required under the federal ETA requirement but not under the OSHA requirement, so a property that came into service after 1980 wouldn't necessarily be required to have electricity. It seems like all of our properties should have electricity, let's include that as one of the state's standards. So that's the kind of conflict that exists, the conflict between the federal standards that has been adjudicated through our standards by saying we're going to go to this level based on the public comment that we got on the rule to start with.

MR. VASQUEZ: I'm not saying it makes sense. So TWC is currently doing inspections under the federal standards.

MR. GOURIS: They are, yes.

MR. VASQUEZ: But they're doing some OSHA and some ETA depending on the dates?

MR. GOURIS: That is what they're required to do; I can't speak for what they're actually doing but that is what they're required to do. And they have a one-page inspection form that I've seen that intends to accommodate either of those standards.
MR. VASQUEZ: And then we're going to have a whole third different list.

MR. GOURIS: We already do, we currently do have a third list.

MR. VASQUEZ: Okay. But it's a third list that's going to apply to everybody.

MR. GOURIS: Right. But now what we're going to do instead is when we go out and inspect we're going to have an either ETA or OSHA based standard based on what the age of the property is, using the rules that exist, the federal rules that exist, and then have these ten things -- which won't be ten on both ETA and OSHA, there will be, I think, six on OSHA and four on ETA, or something like that because they overlap or they don't overlap some things.

MR. VASQUEZ: And I'm almost done with my questions, I promise.

MR. GOURIS: That's okay.

MR. VASQUEZ: So a facility could meet one of the two federal standards and not meet our state standard.

MR. GOURIS: If they don't certify that they also meet the nine things that are listed there, yes, that could occur.

MR. VASQUEZ: So if they meet our standards,
the state standards that are proposed, they would meet all OSHA and all ETA?

MR. GOURIS: They would meet the requisite OSHA and ETA standards, that's correct. The idea is that we don't go out and inspect something that TWC is already inspecting. We allow TWC to inspect it if they're inspecting it and we accept their inspection, along with a self-certification from the employer or the provider that says they meet these other requirements as well.

And if they don't, then we'd go out and inspect; or if we receive a complaint that says, hey, they're not meeting the standards, we'd go out and inspect or if TWC doesn't do the inspection that year for whatever reason, we'd go out and inspect and we'd use what should be the same standard but our inspectors and their inspectors are going to be using slightly different forms because I'm not sure how the TWC does all of their inspection work other than knowing what their inspection standard is. I mean, I know what their inspection standard is, I don't know what their actual practical method of achieving that standard is. We're outlining it in our rule a little bit more succinctly, I think, as part of that.

MR. VASQUEZ: And just so I liked about almost being done.

MR. GOURIS: That's okay.
MR. VASQUEZ: So if we're going out and inspecting and we're only charging a $25 fee did you say?

MR. GOURIS: No, no. If we're going to go out and inspect, we're going to charge $250, if we can use the TWC inspection and self-certification, then the licensing fee will be $25 for that provider for each of the first two years that we're able to use the TWC inspection. After that we'll come back and say, hey, is this working or not, do we need to change the fee, or whatnot. Right now in the rule if we didn't change, we would just charge them $250 thereafter per year.

MR. VASQUEZ: And there's no U.S. Department of Labor inspectors?

MR. GOURIS: There are U.S. Department of Labor inspectors, but I didn't want to confuse the situation any further, but I will share with you what I understand about them. They don't actually go out firsthand first time, they go out on complaints or on concerns. So if there's some reason for them to go out because there was a problem, then they would go out. It typically has to do with it's the Division of Wage and Hour or Hour and Wage, I can't remember, but they'll go out and do some inspections as well.

There's also been a call, just side note, FYI, by some of the advocacy groups for all of our inspectors.
to get together and kind of compare notes as to how to
inspect things.

MR. VASQUEZ: What a concept.

MR. GOURIS: And we're working on that but we
don't want to be the tail wagging the dog in that
situation, we want to be able to let TWC take the lead if
they so choose, I think.

MR. VASQUEZ: And actually, does any public
member have any comments on the subject?

MR. GOURIS: We have a couple of people that
want to speak to it.

MR. VASQUEZ: Let's let you sit down for a
second. We'll get to everybody.

MR. DeLEON: (By interpreter.) Good afternoon.
My name is Justino DeLeon. I come from the south from
Pharr, from the Rio Grande Valley. It's a privilege for
me to be before you to give live testimony of a severe
case of housing that operates in the area.

I have been living under conditions that don't
comply with the dignity of a farm worker ever since I
crossed the border in 1973. I have always worked in
agriculture as a farmer and I have witnessed and I have
suffered many injustices. Last time I had to sleep I was
forced to sleep on cardboard on the floor. It was very,
very hot and there were mosquitoes, and we were forced,
because of the heat and the mosquitoes, to go out and
sleep in the truck.

    I believe that I'm here because I want that
others don't suffer the same conditions that I had to
undergo. I'm not asking for anything fancy, I'm just
asking some basic conditions because we come here to work
and we put quite a bit of effort so you can have on your
table the fruits and vegetables that you have.

    And I've seen that in many places there's not
even a sign that is posted that it's saying how many
workers can be there, so I believe that the Labor
Department should be inspecting these places. It doesn't
happen, there are no inspections, and this is just not in
Texas, I have seen the same thing in Kentucky, in
Michigan, in many other places. The conditions, they
don't carry out what is necessary to overlook the
conditions, so it's not just in Texas.

    I'm very thankful because that you are really
hearing my complaint, that I'm allowed to give this
testimony and I hope that there will be a positive
response to this. Right now I cannot work, my left leg
was amputated. If it wasn't for that, I would still be
working with my hands to provide and to contribute to the
U.S. economy.

    God bless you.
MR. VASQUEZ: Mr. DeLeon, thank you for your work and your words.

MR. MAUCH: Good afternoon. I'm an attorney with Texas Rio Grande Relate. We're a nonprofit organization that provides free legal services to low income Texans, like Mr. DeLeon. I'm member of our farm worker team which works with migrant farm workers in Texas and six other southern states.

I think a little bit of context might be useful here. According to recent estimates, there are approximately 750,000 migrant farm workers in the State of Texas. They have around 500,000 family members that don't work that travel with them every year from work site to work site. And in view of that sheer number of migrant farm workers and also my organization's experience working with migrant farm workers, it's very clear that this is a massively just ignored problem and that the vast majority of migrant farm workers in the State of Texas live in housing that should be licensed but for one reason or another it's not.

A large part of the work that needs to be done is not necessarily regulatorily but bringing people into compliance. I think Tom laid out the philosophy of the TDHCA which has been that it's an agency that doesn't have the money to go out and enforce the law, that it's
complaint driven, it's request driven, and I think the
goal of a lot of these regulations has been to bring more
people into the system, and in my experience, even just
bringing people into the system would be a good thing.
The standards as they are now I think are fine in terms
of protecting farm workers, the issue is just getting
people into the system.

To that end, I think there are a couple of
things that I wanted to highlight in terms of bringing
folks into the system. The first is the reduced license
fee which is cut from $250 to $25 for the first two years
for folks who are already licensed under the federal
standards and become licensed for the first time with the
TDHCA. This does have the potential to undermine the
TDHCA's ability to enforce the law.

Prior to the 2016 session, TDHCA had no
specific budget for migrant labor housing at all. In the
2016 session there was an appropriations rider which
passed which allocated $20,000 for the biennium to TDHCA
for the enforcement of this program which is a drop in
the bucket compared to California which spends $750,000 a
year and Michigan which spends one million dollars a
year. This appropriations rider was passed, obviously
more would be good, but it is what passed based on the
licensing fees that were collected in the previous
biennium. So to the extent that driving more people into
the system will increase licensing fees, hopefully that
increase the TDHCA's ability to actually follow their
mandate in enforcing this law.

The concern, I think, that exists with regard
to the discount on licensing fees, first of all, that
there haven't been any complaints to the TDHCA about the
current licensing fee. In fact, it's a lot smaller than
it used to be. When TDHCA took over the program in, I
think, 2006 or 2005, the licensing fee was $750, now it's
$250 for the year. The second thing is if an
appropriations rider were to be proposed in the 2019
session based on licensing fees from this biennium and
those licensing fees are $25 an employer instead of $250
an employer, obviously that's a lot less money that TDHCA
has to actually regulate.

The other concern in terms of bringing folks
into the system is the actual mechanism for using the
federal inspections, either the ETA or the OSHA
standards, to then get compliance to the higher Texas
standard. One thing that is very common in the
agricultural industry that we see time and time again is
that there are a lot of fly by night operators who will
not comply with the law unless they are absolutely forced
to, and there are actually instances that have been
documented by the Austin American Statesman, there's a 2015 article called "Unlivable: How Texas Fails Farm Workers" that documented the TDHCA's enforcement practices for migrant labor housing. That article specifically points out a couple of instances in which the TDHCA offered a license to a housing provider and said, Hey, we're going to give you a license provisionally but there's one thing you need to correct, if you could just certify to us that you're going to correct it, that would be great. And then the next year the same provider, gets inspected, and what do you know, the same problem is still there.

We see this also with employers in the H-2A program. One of the massive loopholes in the H-2A program -- again, there are hundreds of providers in the H-2A program -- very few of them, less than half of them are actually inspected because of the loophole that exists in federal law that doesn't exist in Texas law for hotels and other public accommodations, and in order to qualify for the loophole as an employer, all you have to do is say I certify that this is public accommodation housing that falls under the exception, and the TWC won't go out and inspect.

Our experience in working with farm workers is that even in cases where there's a plausible argument
that the public accommodation exception should apply, it really often is misapplied because housing isn't offered on the same terms and conditions to farm workers as it to other hotel occupants. Our experience has been certification is good but it's not enough, trust but also verify. These regulations don't contain specific provisions that get to that verification and I think it would be a good thing to see -- you know, just have a requirement that if there is a physical structure that's being altered, if you're putting screens on the windows, you're installing a washer and dryer or putting in stalls and showers, take a photo of it and have that actual documentation rather than a certification. That's really administrative oversight and I think drastically increases the likelihood that the rules are going to be complied with.

In terms of the actual standards, again, I think the state standards, as they are, are pretty good. There are, I think, four changes that I wanted to highlight that would change between the current set of regulations and the proposed set of regulations.

The first two only apply to pre-1980 housing, that's the ETA housing, so for this housing compared between the status quo and these proposed regulations, the square footage requirements for workers would go down
and housing would not be required to have a four-burner stove, you could use a hot plate instead. Both of these requirements are particularly important for workers that live in hotel housing which is becoming more and more common as the housing stock in Texas ages, especially in rural communities. What we see really often is that workers are overcrowded in hotel rooms, they don't have adequate cooking facilities and so they're either eating fast food or they have a hot plate and because hotel windows don't open, their hotel room is full of smoke and it's a huge health hazard in addition to being a fire hazard.

The other two particular standards I wanted to highlight that would apply to all housing, these are standards that would disappear under the proposed regs, are a lavatory sink at the housing site. Again, not required for some reason under the federal regulations, the Texas regulations have the good sense to require a sink in the bathroom.

I don't think that's that big of an ask. The other thing is a vector control plan for pests. This is a huge issue for workers. I can't tell you how often I have a worker come into my office and tell me that they're sleeping in facilities where they have tarantulas and scorpions crawling on them while they sleep, they've
got, as Mr. DeLeon mentioned, mosquitoes which are a vector for disease. One of my co-workers in Austin has a jar of scorpions in her office that's this big that his full of scorpions that a client collected because they were crawling on him in his sleep. So pest control, I think, in terms of health and safety, it is something that does affect farm workers quite a lot and it is something that does disappear under these current regulations.

And then a couple of points in enforcement. This is not a proposed change but it's just the state of the regulations. Under 90.8 where the administrative penalties and sanctions are outlined, and this is all theoretical because the TDHCA has not assessed a penalty or sanction in the ten years it's had the program, but hopefully as we get people in the program we can see some state enforcement where there are bad actors. So the 90.8(b) specifies that for each violation of the act or rules a penalty of up to $200 per violation may be assessed. That's the same language that's in the current regulations, but if you look at the statute, the statute specifies that the TDHCA has the authority to assess a penalty of $200 per violation per day.

The penalties are entirely permissive, they're not mandatory under the regulations or the statute.
There's no reason for the TDHCA to limit itself in its own regulations in terms of the penalty structure.

The other issue that I wanted to highlight with regards to enforcement -- and this is, I apologize, a little technical -- is under 90.2 on definitions, sub (10) is provider. So one of the issues, just to give you a little bit of context, that is really hard to regulate in migrant farm worker context is who's actually holding the bag for being in charge of making sure that the workers have good working conditions. And this definition of the word "provider" I think is an attempt by the TDHCA to get at trying to figure out the person who actually is morally responsible or the person who is actually responsible in terms of their obligations to the worker should be the provider who should be the person who's regulated by the statute.

The issue with the provider language in the proposed regulations is that it's somewhat narrow. It says any person who knowingly provides for the use of a migrant labor housing facility by migrant agricultural workers is a provider. And then if you look at 90.3, applicability, there's some language in there that also works in facilities that are contracted for by employers. The problem is that oftentimes you'll have someone in the farm worker context whose specific role is to create
this knowledge gap between the employer and the workforce. One example that we see all the time is we'll have -- this is kind of in the chicken industry -- in processing plants you'll see a worker (sic) who employs half the workers on his processing line, half of the workers on his processing on his processing line are employed by a farm labor contractor because those folks are undocumented, and the folks employed by the farm labor contractor often have much worse working conditions.

The reason that the employer who owns the slaughterhouse and the processing line hires the farm labor contractor is so they can say I didn't know anything. This is a really, really common occurrence in all sorts of farm worker contexts, and I think the provider language, while the intent is good, it does, I think, implicate some problems in terms of employers trying to find loopholes to sort of get out of being able to prove that they have knowledge that their workers worked at a certain site.

MR. VASQUEZ: Mr. Mauch, are you getting close?

MR. MAUCH: Yes. That's actually about where I was ending, so if you've got any questions, I'm happy to take them.

MR. VASQUEZ: Okay. You bring up a lot of
interesting points. I assume you've had these same
discussions with the folks at TWC?

    MR. MAUCH: In what sense?

    MR. VASQUEZ: Well, in highlighting all these
issues, they have gaps in their rules or statute or how
they're reporting things.

    MR. MAUCH: Well, TWC doesn't apply the state
regulations.

    MR. VASQUEZ: Only the federal.

    MR. MAUCH: Yes. We have dialogue with the
folks at TWC all the time about the H-2A visa program,
but not about the state regulations specifically.

    MR. VASQUEZ: And in one of my past life
appointments I was actually chairman of the Texas
Department of Licensing and Regulation where there's just
numerous -- it's kind of the state's umbrella agency with
all sorts of licensing and regulation and all kinds of
crazy things, but one of the biggest issues was it's
super difficult if the legislature provides oversight
responsibility but not the funding to go out and really
do that. And I agree, $20,000 is not even a drop in the
bucket.

    I'm not necessarily going to address all of
your issues right now, but I think what I'm about to
propose, I imagine your group would see it as a positive
step. I guess before I summarize, is there anybody else specifically that wants to also chat. Will it be long or short?

What I'm saying is from my observations here from what I read beforehand and then understanding, there's so much conflict in the rules between what we're proposing here -- not that this is all bad, it's good for what it is, but in the context of that there's other players, the TWC, Department of Labor, the H-2A visas, there's going to be so much conflict between different areas, I'm not comfortable putting forth this rulemaking until we have more discussion between our department -- I think you must have mentioned bringing in all the players together.

Are we on any kind of timeline where this has to be done, Mr. Eccles, in this meeting?

MR. ECCLES: In this meeting you've been dealing with the QAP and that's on a strict statutory timeline. This is not part of the QAP.

MR. VASQUEZ: I mean, we can send this back for further development. And again, I fear not having coherence between our group and these other groups that are supposedly doing their inspections and such. I don't want to create more conflict by just in essence not having this set up. I'd rather we give the Board a
little more confidence that all of this has been fleshed out.

MR. IRVINE: We've got current rules that are in place, and I think Mr. Mauch has expressed he's comfortable that they're acceptable rules. I think that the real focus right now is how do we expand this universe of folks that we've licensed and inspected to encompass the H-2A visa housing solutions, whatever they might be, and pull them in but under the same standard, and to me that's more of a process that will take time but it's already begun. We have, as Tom said, contacted, I believe, about 180 of them to advise them of our licensing requirements. We're beginning to get licensing applications coming in. We will get after the business of processing those.

As regards funding, in our legislative appropriations request we sought to go from a GR appropriation to an appropriated receipts approach where basically every time we collect a licensing fee it's appropriated back to us to help defray the cost of going out.

MR. VASQUEZ: That's how TDLR does it, the licenses pay for the program.

MR. IRVINE: Right, exactly.

I think we're absolutely pointed in the right
direction. I think that these rules were largely born out of a hope that there was some sort of way that we could harmonize what we did with what TWC and DOL are doing, and I just get the sense that that's really not going to align, that Texas standards are different from the DOL standards, and for the moment we'll continue to operate under our current rules which enforce the Texas standards.

MR. VASQUEZ: I think if we can still have more communications that get better alignment between all these different agencies. We need to work on how the budget request works because we can't have a toothless program. If we're going to do this, we have to do it right.

MR. IRVINE: I agree.

MR. VASQUEZ: Do you have any other comments to add? So my recommendation, my request is that the Board ask the Department to bring us that report of where we've consolidated our plans. On the other hand, taken from the perspective of there's got to be some groups out there that are trying to do it right, and then if they have TDHCA coming one day, TWC coming another day and they're getting stuff from the feds coming down, that's unfair as well, which, in my mind, will discourage people from coming out of the shadows.
So if we could push this off to another meeting after having had much more of these different interagency discussions to coordinate, and then -- well, we will soon have the opportunity with the legislature, and the advocacy groups out there, it's critical. We can only do so much without the funding, so help us help you. I'm assuming we're allowed to just -- we're kicking it down the road a little bit but let's do it right. I don't want to be saying here are the new rules.

MR. IRVINE: I don't think you're kicking the program down the road, I think you're just kicking the rule tweaks down the road. I think that the program has really kind of been galvanized. I mean, Tom has really stepped into the breach here and created a lot of channels of communication, not only with the advocacy organizations and the legislators, with TWC, but we're also making inroads with some of the local providers out there in the field, trying to build relationships and awareness. You'll hear a report tomorrow about the branding concept, and I really think that there is something positive about the brands not only for the worker who can migrate to our symbol of safe, decent, licensed, regulated housing, but also to the provider who can say this is a way that I can attract and retain the best possible workforce.
MR. MAUCH: One more thing on the program?

MR. VASQUEZ: Sure.

MR. MAUCH: Well, I guess two things very quickly. You used the word "conflict." I think I would avoid the word "conflict." The federal law is the floor and the Texas law is a little bit higher than that floor. There's not necessarily, as far as we can tell looking at the standards, where one law says something incompatible with the other.

The other thing I'd say, just in terms of you asked about timeline, I think everyone here shares the goal of driving more folks into the program. One thing that we've noticed that's come up in conference calls that I've been on with TDHCA and some employer groups has been this discount, you know $250 a year to $25 a year, has caused a couple of folks to say, well, hold on, if I can just wait until these regulations come into effect then I can save myself $200, so I'm not going to get licensed, I'm going to just wait for a few months. And there's really no incentive for the employer not to do that because there's no enforcement of the law and the status quo. So that, I think, in terms of timeline might be one thing, and it doesn't necessarily mean that the rules would have to be considered now, it would just mean maybe something that staff could consider in terms of
communications with employer groups in terms of discounts to the annual fee.

Thank you for your time. Appreciate it.

MR. VASQUEZ: Thank you, Mr. Mauch.

Señor DeLeon, gracias.

All right. Come on up. This is the last thing on the agenda.

MS. TYLER: And I won't take too much time, and this is not what I thought I would be saying either. My name is Kathy Tyler, I'm here representing myself, but I have worked farm worker communities since 1980.

I've seen a lot of the 48 properties that are licensed, and have followed this program since it came over to TDHCA, and I won't reiterate the full discussion that you've had, and TDHCA staff knows that I'm a broken record in terms of what I would hope that we would do, in addition to licensing, is to provide some incentives for farm worker housing, decent, well established, good housing like our tax credit properties be established for farm workers, and our programs right now don't do that very well, it's too difficult.

There are some things that we could do that would encourage, so the housing authorities and the nonprofits would be developing this housing, and this is what other states do, so that they don't rely totally on
growers and employers, but there's a nonprofit community also providing this housing. So I know it's too late to comment on the QAP or multifamily housing, and there is a federal program, the Farm Labor Housing through USDA, the 514/516. We have a difficult time bringing in federal funds that are available into Texas. Those federal funds are available to us, we just don't access them, and part of that is because we don't have the leverage funding, the ability to compete well with states that do it better than us. So that's a direction that we could take apart from the rules.

And that property also has rental assistance and we're in danger of losing the rental assistance that we currently have, as well as we could be bringing in new rental assistance so farm workers could afford to live in this housing. It's more difficult for migrant workers, and I know we're talking about migrant, but these migrant workers who live in this licensed housing are usually living in substandard housing in their home base too, so it's something that I wish we would do a better job of.

So thank you very much.

MR. VASQUEZ: Thank you.

So, Mr. Irvine, is there anything else we need to address?

MR. IRVINE: No, sir.
MR. VASQUEZ: And there's no need for executive session, so being that there's no further business for the Rules Committee of the Texas Department of Housing and Community Affairs, it is 4:25 and this meeting is adjourned.

(Whereupon, at 4:25 p.m., the meeting was adjourned.)
CERTIFICATE

MEETING OF: TDHCA Rules Committee
LOCATION: Austin, Texas
DATE: September 5, 2018

I do hereby certify that the foregoing pages, numbers 1 through 139, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Housing and Community Affairs.

DATE: September 11, 2018

(Transcriber)
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