TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEETING

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

November 7, 2019
8:00 a.m.

MEMBERS:

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

BOBBY WILKINSON, Executive Director

ON THE RECORD REPORTING
(512) 450-0342
## AGENDA ITEM

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## CONSENT AGENDA

### ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:

#### ASSET MANAGEMENT

a) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement

- 98170 Homes of Persimmons Dallas
- 03245 Meadows Place Senior Village Stafford
- 03257 Caney Run Estates Victoria

b) Presentation, discussion, and possible action regarding an increase to the Housing Tax Credit amount

- 16405 New Hope Housing at Harrisburg Houston

#### BOND FINANCE

c) Presentation, discussion and possible action on Resolution No. 20-005 Authorizing the Execution of Escrow Agreements relating to the Variable Rate Demand Multifamily Housing Revenue Bonds for Creek Point Apartments Series 2000 and Timber Point Apartments Series 2000

#### COMPLIANCE

d) Presentation, discussion, and possible action on Dispute of the Compliance Division's assessment of the Applicant's compliance history to be reported to the Executive Award Review Advisory Committee for Jackie Robinson (19470)

#### COMMUNITY AFFAIRS

e) Presentation, Discussion, and Possible Action on the 2020 Payment Standards for
the Housing Choice Voucher Program (HCVP)

HOME AND HOMELESSNESS PROGRAMS

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

MULTIFAMILY FINANCE

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

RULES

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

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

a) Outreach and Activities Report (Oct-Nov)

b) Report on the Department's 4th Quarter Investment Report in accordance with the Public Funds Investment Act

c) Report on the Department's SFY 2019 draft Balance Sheet/Statement of Net Position for the year ended August 31, 2019

d) Report on the Department's 4th Quarter Investment Report relating to funds held under Bond Trust Indentures

ACTION ITEMS

ITEM 3: OCI, HTF, AND NSP

Presentation, discussion, and possible action on Colonia Self-Help Center Program Awards to Maverick County and Starr County in accordance with Tex. Gov't Code §2306.582 through Community Development Block Grant
Funding

ITEM 4: BOND FINANCE

a) Presentation, discussion, and possible action regarding Resolution No. 20-006 authorizing the form and substance of warehousing agreement, retained mortgage loan agreement and master trade confirmation; authorizing the execution of documents and instruments related to the foregoing; making certain findings and determinations in connection therewith; and containing other provisions relating to the subject.

b) Presentation, discussion, and possible action regarding the Issuance of a Multifamily Note (Ventura at Hickory Tree) Resolution No. 20-007 and a Determination Notice of Housing Tax Credits.

ITEM 5: MULTIFAMILY FINANCE

a) Presentation, discussion, and possible action regarding the issuance of Determination Notices for 4% Housing Tax Credit Applications:

- 19406 Primrose Village Apartments Weslaco
- 19411 Bridge at Canyon View Austin
- 19428 Riverstone Apartments San Marcos
- 19438 Legacy Senior Residences Round Rock
- 19439 Estates of Shiloh Dallas
- 19444 Oaks on North Plaza Austin

b) Presentation, discussion, and possible action on an order approving and recommending to the Governor the repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and an order approving and recommending to the Governor in accordance with Tex. Gov't Code §2306.6724(b) the new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and, upon action by the Governor, directing its publication in the Texas Register.

c) Presentation, discussion, and possible action on an award of a Predevelopment
Grant from the Multifamily 2019-2 Special Purpose Notice of Funding Availability: Predevelopment

d) Presentation, discussion, and possible action regarding the approval for publication in the Texas Register of the 2020-2 Multifamily Direct Loan Special Purpose Notice of Funding Availability

ITEM 6: RULES

a) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.10, Public Comment Procedures; and an order adopting new 10 TAC §1.10, Public Comment Procedures; and directing their publication in the Texas Register

b) Presentation, discussion, and possible action on an order proposing new 10 TAC, Chapter 10, Subchapter G, Affirmative Marketing Requirements and Written Policies and Procedures, and directing its publication for public comment in the Texas Register (TABLED)

c) Presentation, discussion, and possible action on amendments to Title 10, Part 1, Chapter 10, Subchapter F of the Texas Administrative Code, in particular 10 TAC §10.602 Notice to Owners and Corrective Action Periods; §10.605 Elections under IRC §42(g); §10.607 Reporting Requirements; §10.609 Notices to the Department; §10.610 Written Policies and Procedures, §10.611 Determination, Documentation and Certification of Annual Income; §10.612 Tenant File Requirements; §10.613 Lease Requirements; §10.614 Utility Allowances; §10.615 Elections under IRC §42(g); Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments; §10.616 Household Unit Transfer Requirements for All Programs; §10.617 Affirmative Marketing Requirements, §10.618 Onsite Monitoring; §10.622 Special Rules Regarding Rents and Rent Limit
Violations; §10.623 Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period; §10.624 Compliance Requirements for Developments with 811 PRA Units; and Figure §10.625; and directing that they be published for public comment in the Texas Register (TABLED)

d) Presentation, discussion, and possible action on an order adopting the repeal of 10TAC Chapter 12, concerning the Multifamily Housing Revenue Bond Rules, and an order adopting new 10 TAC Chapter 12 concerning the Multifamily Housing Revenue Bond Rules, and directing its publication in the Texas Register

e) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 25, Colonia Self-Help Center Program Rule, an order adopting new 10 TAC Chapter 25, Colonia Self-Help Center Program Rule, and directing their publication in the Texas Register

f) Presentation, discussion, and possible action on the proposed repeal of 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule; proposed new 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule; and directing their publication for public comment in the Texas Register

g) Presentation, discussion, and possible action on the proposed repeal of 10 TAC Chapter 28, Taxable Mortgage Program; proposed new 10 TAC Chapter 28, Taxable Mortgage Program; and directing their publication for public comment in the Texas Register

PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA ITEMS

EXECUTIVE SESSION none

OPEN SESSION --

ADJOURN 149
MR. GOODWIN: Good morning, and welcome to the November 7 Board meeting for the Texas Department of Housing and Community Affairs.

We'll start by taking roll.

Ms. Bingham?

MS. BINGHAM ESCAREÑO: Here.

MR. GOODWIN: Mr. Braden?

MR. BRADEN: Here.

MR. GOODWIN: Mr. Goodwin, yes.

Ms. Reséndiz?

MS. RESÉNDIZ: Present.

MR. GOODWIN: Ms. Thomason, absent.

Mr. Vasquez?

MR. VASQUEZ: Here.

MR. GOODWIN: We have a quorum.

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

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

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

MR. LYTTLE: No, sir.

MR. GOODWIN: Okay. Next item is our consent
agenda. Is there anything on the consent agenda that any
Board member would like to see pulled or anyone in the
audience that would like to be pulled?

(No response.)

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

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

MR. GOODWIN: A second?

MS. RESÉNDIZ: Second.

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

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

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

On item 3 staff is recommending two awards of
Community Development Block Grant funds under the Colonia
Self-Help Center. The first award is for a million dollars
to Maverick County, the second award is for $700,000 to
Starr County.
For Maverick County, at the May 23 Board meeting the Board approved the publication of a request for an administrator to operate the Maverick County Self-Help Center. Maverick County submitted a proposal that received the highest average scores of the two proposals received. Maverick County had administered the self-help center contract in 2011 prior to the recent administrator, but the county was unable to continue due to some HUD concerns and delinquent single audits. In response to Maverick County's proposal to return to administer the self-help center, TDHCA's Compliance Division conducted a previous participation review and did not identify any concerns or delinquencies. The Colonia Resident Advisory Committee also recommended the county for award in their October meeting. The four-year contract term for the county self-help center award is anticipated to begin in December.

Regarding Starr County, Starr County is pending the completion and submission of their single audit for fiscal year September 30 to the Federal Audit Clearinghouse. Starr County's audit is delayed due to the hiring of a new auditor, but the county states it should be completed and submitted by the end of November, beginning of December. TDHCA's Executive Award Review Advisory Committee met to discuss a compliance matter and recommended the conditional approval of Starr County's
self-help center in accordance with 10 TAC 1.303 under the subsection on award conditions that can be imposed by EARAC.

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

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

MR. GOODWIN: Any questions?

MR. BRADEN: Mr. Chair.

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

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

MR. BRADEN: And when are they due?

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

MR. BRADEN: You don't know how many months
after the end of their year?

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

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

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

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

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

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

MR. WILKINSON: We do stuff.

(General laughter.)

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

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

        MR. GONZALES: Right. Yes, sir.

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

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

        MR. GONZALES: Yes, sir.

        MR. GOODWIN: Any other questions?

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

        MR. GONZALES: Administrator? You know, that is an option. One of the biggest concerns, depending on the area, is that these contracts do have to be awarded to a unit of general local government, and some of these areas that we're operating in there's very limited interest other than a county government. Most of the colonias that we're
working with are outside of the jurisdiction, so for a municipality to step in, sometimes it makes kind of difficult for them because they're serving outside their area. So unfortunately, the interest from other units of general government is very limited.

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

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

MR. GONZALES: In Maverick County we have.

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

MR. WILKINSON: Options but limited options.

MR. GONZALES: Yes, sir.

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

MR. GONZALES: Yes, sir. Correct.

MR. GOODWIN: Any other questions?

(No response.)
MR. GOODWIN: If not, do I hear a motion to accept staff's recommendation?

MR. BRADEN: So moved.

MR. GOODWIN: Second?

MR. VASQUEZ: Second.

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

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

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

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

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

(General laughter.)

MR. GOODWIN: Okay.

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

This is item 4(a) which is presentation, discussion, and possible action on Resolution 20-006.
approving the form and substance of the warehousing agreement, retained mortgage agreement, and master trade confirmation; authorizing the execution of documents and instruments related to the foregoing; making certain findings and determinations in connection therewith; and containing other provisions relating to the subject.

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

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

So that is a key piece to our bond issues and a few other
things that we do, but that's our typical use for that agreement.

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

The retained mortgage loan agreement is actually a spinoff out of our master trade confirmation. It gives us the ability, once our TBA provider has hedged loans for the program, it gives us the ability to go in and sort of break those hedges, buy those loans back out to put them in a single-family mortgage revenue bond issue. That gives us a lot of latitude, particularly if we're facing negative arbitrage, if rates are moving quickly and we've got a bond issue out there. If we have loans in the pipeline that are
bond-eligible, we can go in and do this, and we obviously
do an economic analysis first, but it's just another tool
for us that helps us mitigate risk.

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

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

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

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

How was the warehouser identified? Did we do a
request for proposals?

MS. GALUSKI: We did a request for proposals for
the warehouser and for the TBA provider.

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

MS. GALUSKI: Extremely so, yes.

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

(General laughter.)

MR. BRADEN: Thank you. I have nothing further.
MR. GOODWIN: Any other questions?
(No response.)
MR. GOODWIN: If not, do I hear a motion to approve staff's recommendation?
MR. BRADEN: So moved.
MR. GOODWIN: Second?
MR. VASQUEZ: Second.
MR. GOODWIN: It's been moved and seconded. Any further discussion?
(No response.)
MR. GOODWIN: If not, all those in favor say aye.
(A chorus of ayes.)
MR. GOODWIN: Opposed?
(No response.)
MR. GOODWIN: Monica, thank you again for a fabulous job.
MS. GALUSKI: Thank you.
MR. GOODWIN: Next we move on to item 4(b). Teresa.
MS. MORALES: Teresa Morales, director of Multifamily Bonds.
Chairman Goodwin and members of the Board, item 4(b) involves the issuance of multifamily revenue bonds by the Department for the new construction of 216 units in
Balch Springs, with all of the units restricted at 60 percent of the area median family income and serving the general population.

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

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

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

MR. GOODWIN: Any questions?

MR. VASQUEZ: Just a question. So when would
they typically be bought out by you said Fannie Mae?

MS. MORALES: Freddie Mac.

MR. VASQUEZ: Freddie Mac?

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

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

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

MR. GOODWIN: Any other questions?

(No response.)

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

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

MR. GOODWIN: Second?

MR. BRADEN: Second.

MR. GOODWIN: Any other discussion?

(No response.)

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

(A chorus of ayes.)
MR. GOODWIN: Opposed?

(No response.)

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

MS. MORALES: Yes.

MR. GOODWIN: Okay.

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

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

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

Last, Oaks on North Plaza is requesting a waiver of the 14-day deadline associated with the submission of the resolution of no objection which is a threshold item required by statute. Worth noting is that this deadline is
not something that staff often recommends be waived, given the fact that applications can be submitted without it and the length of time the application is under review by staff should provide the applicant with the time necessary to obtain such resolution from the appropriate governing body.

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

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

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

MR. GOODWIN: Any questions?

MS. BINGHAM ESCAREÑO: I have a question about
that waiver. Conditioned on anything?

MS. MORALES: No.

MS. BINGHAM ESCAREÑO: Just a waiver altogether.

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

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

MS. MORALES: The deadline.

MR. ECCLES: And it has been submitted.

MS. BINGHAM ESCAREÑO: Oh, okay. Great.

MR. GOODWIN: Any other questions?

(No response.)

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

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

MR. GOODWIN: Second?

MS. RESÉNDIZ: Second.

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

(No response.)

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

(A chorus of ayes.)
MR. GOODWIN: Opposed?

(No response.)

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

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

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

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

And with that, if you have any questions.

MR. GOODWIN: Any questions?

(No response.)

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

MR. GOODWIN: Second?

MR. VASQUEZ: Second.

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

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

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

So three things have led to staff creating this NOFA and bringing it to the Board for approval today. First, the likelihood of having National Housing Trust Fund left over from the 2019-1 NOFA once the application submission deadline occurs later this month, as we currently have approximately $11.3 million in unrequested NHTF. Two is the need to commit and expend NHTF as this is the one source of funds that we're currently administering under the Multifamily Direct Loan Program that has commitment and expenditure deadlines, federal commitment and expenditure deadlines. And then the third motivating factor is the potential demand from 4 percent layered applicants that have received advance notice that they
would get a bond reservation in January 2020 under the 2020 private activity bond lottery that occurred last week. 

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

All NHTF under this NOFA will be available as construction only or construction to permanent loans structured as surplus cash flow loans to finance new construction or reconstruction developments providing 30 percent units that would not have been available otherwise. The maximum per-application request under this NOFA will be $3 million, just like it is under the soft repayment
set-aside right now under the 2019-1 NOFA.

So that concludes my presentation if you have any questions.

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

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

MR. GOODWIN: Okay. Other questions?

MR. BRADEN: To the Chair.

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

MR. SINNOTT: Right. So right now under our annual NOFA and under previous annual NOFAs, it's basically been first come, first served. There's been some priority given to applications with development sites in counties...
that have had FEMA declared disaster declarations, but primarily it's first come, first served under the annual NOFA. So with this NOFA, because our 2020 Direct Loan Rule won't go into effect until January 6, 2020, we'll start accepting applications prior to that, but the earliest that they'll considered received or have an application acceptance date is January 6, 2020 to account for that rule going into effect.

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

MR. GOODWIN: Any other questions for Andrew?

(No response.)

MR. GOODWIN: I want to point out anybody that wants to speak on this issue if you would come up and sit in the first two rows. A few meetings ago we had somebody say they didn't get a chance to come up when we asked for comments, so you've got to be pretty quick if you're sitting in these first two rows. We're not going to move
on without hearing your comments.

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

MS. BINGHAM ESCAREÑO: So moved.

MR. GOODWIN: Second?

MR. VASQUEZ: Second.

MR. GOODWIN: All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

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

MR. COMBS: Thank you. Ryan Combs.

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

And so the challenge is the current rules -- there's a current NOFA that's open right now and under the current rules, me or anybody else can go and apply today,
and as the Multifamily Direct Loan Rules are currently written, and the new rules that you're about to adopt next month, that bond deals have never been competitive. There are the competitive criteria that's in the Direct Loan Rules, but those are always used with 9 percent layered applications in the competitive process, and those competitive criteria are the 9 percent competitive criteria. Bond applications have never really used those competitive criteria because bond applications are taken all throughout the year, they don't comply to that 9 percent cycle.

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

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

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

Beau is shaking his head no, and so if that's
not allowed, then the second option is that you would either put into the NOFA or the new Direct Loan Rule that's coming up next month additional criteria that allows applications that are ready to go now more priority. So applications that are ready to go, that have their resolutions, their zoning, their things that are readiness to proceed, that they're given the ability to be able to be more competitive. And the reason for that is these applications are ready to go, and so me or anybody else, we're having to kind of wait and then get put into this unpredictable competitive process to know if those funds are going to be available, where we know they are now. If I submitted today, I know they're there and I would have access to it, it's just I'm not going to be able to get the 30-day extension because we have this new NOFA that's coming up.

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

MR. GOODWIN: Okay. Any questions?

(No response.)

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

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

MR. GOODWIN: Okay.

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

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

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

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

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

So Mr. Ryan's original plan that he was going to submit a 2019 application requesting direct loan funds and 4 percent tax credits, but he didn't have the reservation yet, meant that his tax credit application would be for 2020, his direct loan application would have been for 2019. We've encountered this situation in the past with Grimm Hotel -- some of you are familiar with that transaction -- and what wound up happening is the only way we could put that together was to have Grimm resubmit a direct loan application that matched up with the bond year so that everything was moving in lockstep through the process.

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

I understand the concern about the competition. Frankly, this is the environment that we are working in at this point. We don't have big pots of money that we're able to make sure that everybody gets their deal. So there is the potential for Mr. Combs's applications to compete well if we get to that point within the direct loan
criteria, or there's the potential to apply the next year in the regular NOFA.

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

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

Any questions?

MR. GOODWIN: Any questions for Marni?

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

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

MR. GOODWIN: Any additional questions?
(No response.)

MR. GOODWIN: Andrew.

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

MR. GOODWIN: Okay.

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

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

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

MR. SINNOTT: For the NOFA, I don't think it's appropriate, after speaking with Beau yesterday. I don't know if adding that kind of criteria to this NOFA is appropriate, I think it's more appropriate to be addressed through the rule, which we're taking public comment on
through November 14, next week. So if the Board would like
to consider -- if stakeholders would like to make public
comment about adding that as a scoring criteria in Chapter
13 for 2020, they may do so, and the Board has the ability
to consider that when we bring the 2020 version of Chapter
13 to the Board next month.

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

    MR. SINNOTT: Correct.

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

    MR. SINNOTT: Correct.

    MR. BRADEN: That would make sense to me.

    MR. GOODWIN: Any other questions?

(No response.)

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

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

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

MR. GOODWIN: Any questions for Barry?

(No response.)

MR. GOODWIN: Marni.

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

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

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

MR. GOODWIN: Right. Okay.

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

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

MR. ECCLES: It would change the selection criteria, and without seeing the comment that would fuel the change to the rule and whether that's something that
would be an allowable rule change because it's -- I can't really comment in the hypothetical on that. It would be pretty thorny to say that a rule change adding a new criteria at this phase would be an allowable flex on the rule that's out for public comment.

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

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

MS. HOLLOWAY: Right.

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

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

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

MR. VASQUEZ: No.
MR. GOODWIN: Any other questions?
(No response.)

MR. GOODWIN: Do I hear a motion from a Board member to accept staff's recommendation?
(No response.)

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

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

MR. GOODWIN: Do I hear a second?

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

MR. GOODWIN: Okay. It's been moved and seconded. Any further discussion?
(No response.)

MR. GOODWIN: All those in favor say aye.
(Ayes: Chairman Goodwin, Members Bingham Escareño, Reséndiz and Vasquez.)

MR. GOODWIN: Opposed?

MR. BRADEN: Opposed.

MR. GOODWIN: One opposed, Mr. Braden.

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

Good morning, Brooke.

MS. BOSTON: Good morning, Chairman Goodwin,
Board members. I'm Brooke Boston. I'm presenting item 6(a) which leads to the adoption of 10 TAC Section 1.10 relating to public comment procedures.

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

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

MR. GOODWIN: Any questions?

(No response.)

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

MS. BINGHAM ESCAREÑO: So moved.

MS. RESÉNDIZ: Second.
MR. GOODWIN: Anyone out there want to speak to this? Is somebody coming up to speak on this?

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

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

Good morning.

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

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

So the purpose of the proposed move of these rule sections from Compliance to Fair Housing is to align the TAC rules with some recent organizational moves within the Department which shifts the oversight of the multifamily affirmative marketing requirements and the written policies and procedures, which are sometimes called...
tenant selection criteria, and all the associated review process from the Compliance Division to the Fair Housing data management and reporting unit.

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

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

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

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

MR. GOODWIN: Any questions for Cate?

MS. RESÉNDIZ: Chairman, I have a question.

MR. GOODWIN: Okay.

MS. RESÉNDIZ: Hi, Cate.

MS. TRACZ: Hi.

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

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

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

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

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

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

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

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

(General laughter.)

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

MR. GOODWIN: What is considered a sleeping area?

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

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

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

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

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

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

Just to clarify one third point, Cate said that it's HUD guidance, and some of the things in the HUD program regulations for our Direct Loan Program and 811 are in HUD guidance, but then there are other things that are part of the regulations and part of our contracts with HUD, and so we tried to adopt a rule that addresses all of those factors as well, keeping in mind that supportive housing
developments may have some special characteristics but that our HUD program regulations make us examine those for our Direct Loan Program and 811 on a case-by-case basis and not a just overall policy.

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

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

MR. GOODWIN: I understand, and I understand it's hard to keep track of all these different things. When you were responding about two, you said two per person. I think you meant two per sleeping area?

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

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

(General laughter.)

MS. SYLVESTER: Familial status discrimination
is those under the age of 18 per the family unit.

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

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

MS. BINGHAM ESCAREÑO: So moved.

MR. GOODWIN: Second?

MS. RESÉNDIZ: Second.

MR. GOODWIN: Any discussion?

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay, Walter.

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

A little background. Six of our communities are supportive housing, or we commonly call them SROs, which is not standing room only, its single room occupancy, and it's a HUD definition that's been around for decades. We have 765 units in six communities, and our primary focus is single adults that have been homeless; most of our residents in our SROs have been homeless. So we do a lot
of onsite services, there is psychiatric nurses, there's substance abuse counseling. The units are tiny, they're generally under 400 square feet, efficiencies, if you're thinking in architectural terms.

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

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

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

We've brought all these concerns to staff. What
Megan and staff came up with -- and Megan explained it well, this is a gray area -- they said you're exempt if your supportive housing unless you have 811 or MFDL money and then you need written permission. It shouldn't matter what the funding source is.

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

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

Thanks.

MR. WILKINSON: I'm very sympathetic to Walter's opinions on this matter, and I was happy to put in the exception and then we put in the exception to the exception
based on counsel's concerns. But I totally agree that some of the special populations that you serve in supportive housing it makes sense to have a one person standard.

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

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

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

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

Thank you.

MR. GOODWIN: Any other questions for Walter?

(No response.)

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

MR. MOREAU: Thank you.

MR. GOODWIN: Any other questions for Walter?

MS. BINGHAM ESCAREÑO: Mr. Chair, I think I just
have a question for staff.

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

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

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

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

So the staff or the agency cannot make material changes to something that's been posted for public comment? In other words, if we rethought it and unfortunately could not get to some kind of modification in what's proposed that would address counsel's concern, do we revert back to the language proposed here and just say, sorry, we tried?
Take my hypothetical about if we put the period at the end of the SRO sentence and don't put in the stuff that we think might address the gray area, what would be the path after that?

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

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

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

MR. GOODWIN: Right.

MR. BRADEN: So the gray area is that counsel
thinks that 811 PRA or MFDL may require that? Is that correct?

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

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

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

MR. BRADEN: Okay. But the comments that were made were comparable to Walter's comments, or they were
saying no, put this new language in?

MS. TRACZ: They were comparable.

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

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

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

MS. TRACZ: Yes.

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

The other direct loan programs, we have a lot more flexibility on what we could approve but we have to approve that and we have to do it in our written agreement with the owner. So that's why the exception to the exception, as I believe Bobby termed it, is in the rule.
Not that we don't want to do it, there's just a process that we have to follow for HUD-funded programs and programs that we use those HUD match.

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

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

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

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

(General laughter.)

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

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

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

MS. SYLVESTER: For the 811 units we would need to go to HUD and try to get them to approve something else. For the Direct Loan units we have a lot of flexibility but we have to do that in the prescribed method that HUD has
told us we have to do that if you're going to limit the population. And this is not unique to supportive housing. If you're going to have any preference or limitation for a certain type of population, it has to be reflected in your written agreement per the HUD guidelines -- I'm sorry -- the HUD regulations.

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

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

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

MS. SYLVESTER: I think that's where we are now.
I mean, I think the exception to the exception gives us that flexibility because it says it has to be approved on a case-by-case basis in a written agreement.

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

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

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

MS. SYLVESTER: If we postpone this one, there's
two other rules on the agenda that we will have to postpone as well because they all have citations that have to line up and you can't have -- which is fine. There's no external conditions.

MR. WILKINSON: Shorter agenda.

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

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

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

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

MS. TRACZ: That's right.

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

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

MR. GOODWIN: So we have a motion to table 6(b) and 6(c), but it's more appropriate to take a motion, Beau,
we have to open up the consent items again before we can re-table that?

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

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

MS. BINGHAM ESCAREÑO: I'll second.

MR. GOODWIN: We have a second.

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

MR. ECCLES: Yes.

MR. GOODWIN: Okay. Patricia.

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

So the 6(c) item is the Compliance rule, so I'm not taking out the entire Compliance rule for proposed amendments, just certain sections of it. Therefore, it's possible to still hear parts of 6(c) and just not propose amendments to the particular sections which would be 10.610 and 10.617, the affirmative marketing stuff, so there's a possibility to do that. If you'd like to take some
amendments to the Compliance rule, I can just pause those two particular sections and take them at the same time as Cate's rule.

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

MS. MURPHY: Excuse me?

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

MS. MURPHY: Right.

MR. BRADEN: And then publish the other part?

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

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

(General laughter.)

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

MR. GOODWIN: In your opinion.

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

MR. GOODWIN: Okay. So now I'm relatively confused, so we have 6(b) and 6(c) and a motion to table, and we have it moved and seconded. All those in favor -- any questions?
MR. VASQUEZ: Just before we close out the discussion on 6(b), I just have a question. Is there any place in the rule that addresses maximum occupancy? I mean, we had a lot of discussion on what they must allow minimum.

MS. MURPHY: Patricia Murphy, director of Compliance.

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

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

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

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

MS. MURPHY: I would be guessing.
MR. VASQUEZ: Use that for next time.

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

(No response.)

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

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

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

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

MR. GOODWIN: Second?

MR. BRADEN: Second.

MR. GOODWIN: Any discussion?

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

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

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

MR. GOODWIN: Second?

MR. VASQUEZ: Second.
MR. GOODWIN: Any discussion?

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

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

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

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

MR. GOODWIN: I'm sorry?

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

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

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

MR. GOODWIN: Okay.

MR. BRADEN: Second.

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

(General laughter.)

MR. GOODWIN: All those in favor say aye.
(A chorus of ayes.)

MR. GOODWIN: Any opposed?

(No response.)

MR. GOODWIN: Not even you. Okay.

Now, Teresa, finally.

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

There was public comment that was specific to the neighborhood risk factors mentioned in this rule, however, the section of the rule refers the reader back to the QAP where the neighborhood risk factors are explained in more detail. The reasoned response for the QAP more appropriately explains the public comment received and staff's response which would be applicable to the Bond rule as well. The changes that you see in the Bond rule were made to be consistent with those changes that were made to the QAP through the public comment period.
Staff recommends approval of the adoption of the repeal and the new 10 TAC Chapter 12, as reflected in your Board package.

MR. GOODWIN: Any questions for Teresa?
(No response.)

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

MR. BRADEN: So moved.

MR. GOODWIN: Second?

MR. VASQUEZ: Second.

MR. GOODWIN: Any discussion?
(No response.)

MR. GOODWIN: All those in favor say aye.
(A chorus of ayes.)

MR. GOODWIN: Opposed?
(No response.)

MR. GOODWIN: Thank you, Teresa.

Raul.

MR. GONZALES: Good morning.

MR. GOODWIN: Good morning.

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

On item 6(e) staff is recommending the repeal of existing 10 TAC Chapter 25, the rule that governs our Colonia Self-Help Center Program and adoption of a new rule...
with revisions. After today, the updated rule will be published in the Texas Register.

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

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

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

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

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

MR. GOODWIN: Any questions for Raul?

(No response.)

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

MS. BINGHAM ESCAREÑO: So moved.

MR. GOODWIN: Second?

MR. VASQUEZ: Second.

MR. GOODWIN: Okay. Any discussion?

(No response.)

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

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

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

MR. VASQUEZ: That was 6(e).

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

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

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

Chapter 27 applies to single-family loans originated through the Department's Homeownership Division, specifically loans eligible for a bond program or for which an MCC has been issued. Loans originated under Chapter 27
must meet IRS requirements related to single-family mortgage revenue bonds, including compliance with IRS-defined income and purchase price limits and first time homebuyer requirements. Proposed rule conforms definition and terms to current practice and makes it clear that 10 TAC Chapter 20, the Single Family programs umbrella rule, does not apply to this program and rule. And 10 TAC Chapter 20, that governs like the loans made with the HOME program, with State Housing Trust Fund, Neighborhood Stabilization, NSP, it's those types, they're very different than our homeownership programs.

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

MR. GOODWIN: Okay. Any questions for Monica?

(No response.)

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

MR. BRADEN: So moved.

MR. GOODWIN: Second?

MR. VASQUEZ: Second.

MR. GOODWIN: Any further discussion or
questions?

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay. Item (g).

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

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

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

The proposed rule, again, conforms definition and terms to current practice, makes it clear that 10 TAC Chapter 20, Single Family programs umbrella rule, does not
apply to this program and rule.

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

MR. GOODWIN: Any questions for Monica?

(No response.)

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

MS. BINGHAM ESCAREÑO: Move to approve.

MR. GOODWIN: Second?

MS. RESÉNDIZ: Second.

MR. GOODWIN: Any further questions or discussion?

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

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

MS. HOLLOWAY: Good morning. Marni Holloway,
director of Multifamily Finance.

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

They're already lining up behind me.

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

(General laughter.)

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

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

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

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

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

Today we are discussing those comments and changes staff has made as a result of the comments. This will be the last opportunity for the Board to make any changes to the 2020 QAP before it's transmitted to the
Governor. There are some changes requested in comment that we were not able to make because of the limitations on rulemaking in the Administrative Procedures Act. I'm sure Beau will be able to keep us on track with any potential changes out of our deliberation today.

He's ignoring me.

MR. ECCLES: I hear you.

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

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

MS. HOLLOWAY: Yes.

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

MS. HOLLOWAY: It's on or before December 1.

December 1 is a Sunday.

MR. WILKINSON: They can take till Sunday.

MS. HOLLOWAY: Okay.

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

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

MR. WILKINSON: Midnight December 1.

MS. HOLLOWAY: I stand corrected.

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

MR. GOODWIN: Okay.

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

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

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

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

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

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

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

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

MR. GOODWIN: Okay.

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

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

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

There is also a request to remove the phrase
"for the entire affordability period as applied to subsidy sources." Staff agrees that this particular language is too stringent and has therefore amended the rule to remove that phrase.

One of the new requirements for supportive housing carrying debt is that a resident of the development serve on the owner or service provider board of directors. Representation of the population on a board is a longstanding method of promoting accountability and clear communications and it is an industry best practice. Staff believes that many residents of supportive housing developments are competent to fill this role so we have not removed that requirement.

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

Staff agrees with the commenter's request that
supportive services be required primarily online and have added this requirement to the minimum requirements for services in the definition.

MS. BINGHAM ESCAREÑO: It says onsite.

MR. GOODWIN: You said online?

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

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

MR. GOODWIN: Okay.

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

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

Another reason is because a lot of times the
housing authorities received special pots of vouchers for the target population, primarily people who are homeless, so HUD Mainstream vouchers, for instance, those will come with a specific requirement they be homeless and have a disabling condition, so we might start running into issues of the integrated housing rule, for instance.

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

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

I talked to supportive housing investors, equity investors, I talked to national developers who do
supportive housing across the nation, and they do see lots of projects with debt and those projects don't have 100 percent covered with operational subsidies or project-based vouchers.

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

MR. WILKINSON: What threshold do you suggest?

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

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

MR. STEWART: Brent Stewart, Real Estate Analysis.

So I think part of this is a result of a shift in what supportive housing has kind of been under the rules and under the QAP and so forth. Historically, supportive
housing developments have been developments where there is no income and there's no income to be able to support debt, and therefore, it needed exemptions from the REA rules and it needed some level of commitments from somewhere to pay the operating expenses and to pay for the services that are being provided on the properties. So what's happening now is we're shifting from kind of that really, really, really deep type of supportive housing into one that is not necessarily lighter on -- projects that do generate some revenue and therefore can support debt, and therefore become feasible, and therefore you can do more units that way.

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

So this is kind of a move towards a different type of supportive housing than what the rules have historically contemplated. There's on magic about 100
percent, 50 percent, 25 percent in terms of because they're not going to be exempted from the REA rules, they're still going to be under it in that way, but I think the concept was to deeply target people and provide these level of services you're going to need some level of vouchers to be able to do that.

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

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

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

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

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

Again, it's a shift from we have developments
and nonprofits where there is a lot of self-funding to support the rents on those projects, the rental income on those projects, and this shift away from that to having developments with more debt or conventional type debt, the vouchers are going to be more important.

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

MR. VASQUEZ: It still has to be feasible.

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

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

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

MR. GOODWIN: Any other questions?

(No response.)

MR. GOODWIN: Any other comments on this issue?

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

And I want to clarify a couple of things that have actually been said. The nonprofit doesn't bring the project-based vouchers to the table, the nonprofit has to
get those vouchers from the housing authority, and a housing authority is only allowed to do up to 20 percent of their voucher capacity in any one project. Also, as it relates to tenant-based vouchers, they are just that, they're tenant-based, and so a housing authority or anyone else cannot steer people to a development, you can only hope that those tenants will, in fact, go to that development.

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

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

They may have a Section 8 tenant, they may have
a public housing tenant, so it may or may not have the capacity and ability to put a supportive housing resident on the board. So we're concerned about having that language about the appointment of a resident on the board, because the housing authority already has a resident, even though it may not be a supportive housing resident.

MR. GOODWIN: Okay. Any questions?

(No response.)

MR. GOODWIN: Additional comments?

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

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

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

MR. GOODWIN: Okay. Any questions for Gerry?

(No response.)

MR. GOODWIN: Any other comments, Marni?

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

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

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

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

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

(General laughter.)

MR. ECCLES: -- and specifically the phrase "all units" and I think that the discussion thus far has gone with 25 percent and 50 percent of units as opposed to all units. And if there's any further discussion on that
MR. GOODWIN: I've got a question. In the Rules Committee did y'all address this specifically, do you recall?

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

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

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

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

MR. GOODWIN: Still doesn't work.

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

MR. BRADEN: And I agree with that comment, sounds right to me.
MR. GOODWIN: As do I.

MS. BINGHAM ESCAREÑO: Me too.

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

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

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

The increase in eligible basis section requires that applications in certain census tracts have a resolution from the appropriate municipality or county which specifically allowed for the construction of the new development in referencing this rule.
A commenter asked that the phrase be revised, as some cities are uncomfortable with this language since it could imply that the development is being permitted or otherwise approved for construction. We agree with the commenter and have made the requested change.

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

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

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

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

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

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

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

To give a little bit of background, in order to receive the highest amount of sponsorship points, which is two for a nonprofit, per legislative code, the nonprofit
has to have the majority of their board members within 90 miles of their site.

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

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

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

So in discussion we kind of came up with this one point option that would allow nonprofits to get one of the two points if we participated in some capacity. We are the general partner, managing member, we property manage,
we do our compliance, we provide our own services. So I ask that this affiliated language be removed so that we can still take this one point for ourselves. I don't understand why we wouldn't be allowed to take that point.

MR. GOODWIN: Questions?

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

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

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

MS. HOLLOWAY: Okay. As I said, this sponsor characteristics item, I have a number of concerns about it when members of the Fab Five still haven't figured it out. If you don't know the Fab Five, they're our application review group, and they know these rules inside and out, and this section is one that needs a good hard look for a number of reasons, and I believe could also be part of considering the national and regional nonprofits. That goes back to our definition of qualified nonprofits, so it's actually a multi-part change that would have to be made.

MR. VASQUEZ: Again, on the surface it sounds like a very reasonable request, but I wish we had discussed it before.
MS. HOLLOWAY: It's one of those, you know, pull this string over here and all these other things happen over here. But yeah, we absolutely recognize that we need to work on these issues.

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

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

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

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

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

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

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

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

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

MS. HOLLOWAY: I'm hearing that that's part of the statutory definition.
Beau, do you have the whole thing?

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

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

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

MS. HOLLOWAY: Live within 90 miles.

MS. RESÉNDIZ: That's the only requirement?

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

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

MS. HOLLOWAY: For our --

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

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

MS. RESÉNDIZ: That is not or that is a requirement?
MS. FINE: I need to double-check the definition.

MS. RESÉNDIZ: Okay.

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

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

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

MR. GOODWIN: Any other questions?

(No response.)

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

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

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

MS. HOLLOWAY: Actually, the change that we made
to sponsor characteristics allowed organizations such as National Church Residences to access that one point item. They are not able at this time to access the two point item, and that is the concern.

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

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

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

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

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

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

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

MS. FINE: You could not take that one point. That was the added language this year.

Did I misunderstand the added language?

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

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

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

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

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

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

MS. HOLLOWAY: Related party or affiliate, which would leave us with spouse of. There's quite a bit of
intermingling and mixing and that's part of the reason that we need to take a really hard look at this section about who qualifies as the nonprofit organization and who qualifies as the HUB.

MR. GOODWIN: Okay. Any further discussion?

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

MR. GOODWIN: Any other comments?

(No response.)

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

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

Because of the restrictions on above the line and below the line scoring, we are not able to increase this item score to eight. Further, the opportunity index is constructed so that applicants must select multiple community features to reach the full seven points. If
schools are increased to eight points, then all other menu items would be effectively negated. Staff is recommending no change to this item.

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

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

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

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

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

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

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

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

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

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

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

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

Rather than making changes at this point, we
will follow the request of the other commenter about not
making changes that would impact site selection currently
underway. Once applications are received in 2020, we will
be better able to evaluate any necessary changes. So the only change that we are recommending in this section is to documentation of the data and the time frame for the data. One commenter requested that the deadline for readiness to proceed in disaster-impacted counties be extended to January. Another requested that it be removed entirely because it was intended to be a temporary measure after Hurricane Harvey. Both of these are substantive changes that cannot be made as the result of public comment.

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

So while we appreciate the benefits of leveraging larger local contributions with tax credits, the commenters suggested change would adversely impact the smaller communities in urban subregions that do not receive HOME or CDBG allocations, so no change is recommended. One commenter requests that the score for community support from the state representative be reduced.
This item score was increased in order to maintain the hierarchy of scoring required by statute after the changes required by House Bill 1973. As such, we do not have the authority to reduce the score.

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

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

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

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

We believe there's an important distinction between a construction lender or a permanent lender saying that a development is feasible, but we recognize the concern for certain supportive housing developments. We've added an exception for those supportive housing developments that will have no permanent debt to the rule.

Under cost of development per square foot, two commenters have requested that costs be increased. This was a topic that was discussed during roundtables with no conclusion that the amount should increase based on the available data.

It's important to note that this is a competitive scoring item meant to encourage the efficient use of a limited resource. Also, the voluntary eligible basis and voluntary eligible building cost items do not limit the cost per square foot. That limitation is created.
by our million and a half dollar cap per application. Staff recommends no changes based on these comments.

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

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

One commenter reminds us the Department incentivized affordability periods of 55 years in the past and suggested that we mandate a 55-year affordability period now. They note that 12 states require or incentivize affordability periods at least that long. Similarly, another commenter notes that the tax credits are limited and with good stewardship a 45-year affordability period is reasonable.
Five commenters asked that the 40- and 45-year affordability period scoring items be removed, reverting to previous years standard of incentivizing a 35-year affordability period.

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

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

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

Three commenters request more planning from
staff before committing to a longer extended affordability period and asked that planning efforts for the 2021 QAP focus on preservation. They state that they're not opposing the extended affordability but prefer more time evaluating and discussing.

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

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

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

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

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

MS. STEVENS: Yes, sir. Good morning. I am
Lisa Stevens. I am actually here speaking on behalf of the
Texas Coalition of Affordable Housing Developers.

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

What we found out is that it's almost 50-50
between states that do have extended affordability and
states that don't, and of the 50 percent of the states that
do, it's very widespread from five years to 69 years, so
what we found is that there is no industry average. Right?
Every state does what they think is best for them. The
other thing that we learned is that of the states that do
provide extended affordability, they also provide some
mitigation that allows for refinancing and rehabilitation
when those projects need to be rehabilitated.

One of the concerns we have is that in Texas we
build a lot of frame construction, and quite frankly, our
underwriting standards today don't take into account what's
going to happen between year 30 and year 45. A lot of
these developments, when you model them financially,
actually trend down and if you take that 30 year trending
and you model it out another 15 years, the likelihood is
that a lot of these developments are going to trend negative. So if they don't have the cash flow to cover operations, how are they going to have the cash flow to maintain the properties and to keep up the rehabilitation that needs to be done?

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

Thank you.

MR. GOODWIN: Thank you.

Any questions? Paul, you had a question?

MR. BRADEN: So what are you asking?

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

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

MR. VASQUEZ: Yes.

MR. GOODWIN: It is? Okay.

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

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

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

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

I think Lauren has the data from the Novogradac
study and can speak more to what other states do, but we think now this is the year to make this policy change.

Thanks.

MR. GOODWIN: Thank you.

Any other questions, comments?

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

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

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

The Novogradac study says and my research showed
that of the states that do commit to extended affordability, the average among those states is 50 years of affordability, and even if you consider all the states together, so considering the states that are not doing any extended affordability, and you weight that average by population -- meaning that what's happening in Texas and our extended affordability has more weight than the total average -- the average is still 40 years of affordability. So what we're asking here for an incentive to either your 40 or 45 is clearly squarely in line with trends that we're seeing across the country.

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

These properties were allocated tax credits between 1998 and 2002, so they're 18 to 22 years old at this point. The third-party property condition assessments for those properties say that there's anywhere from 20 to 40 years of remaining useful life in those properties if they are well maintained. So this is not an issue of whether or not our building standards are going to be up for lasting for up to 40 or 45 years.
And just to sort of highlight one of the properties that was built in 1998 had significant renovations while in the LIHTC program in 2016 and now only two years later is trying to exit the program, despite the fact that that property has up to 20 or more remaining useful years of life to serve low income tenants. So this is a completely feasible thing that we are asking. Walter mentioned, of course, that the real reason why we're concerned about this is because we are and are probably going to continue to be in a massive affordable housing shortage, and it's really important to make decisions now that will make sure that we have affordability moving forward.

Thank you.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: Any other comments?

(No response.)

MR. GOODWIN: Marni.

MS. HOLLOWAY: As I said, staff thinks that we can address these concerns during future planning efforts, and in particular, as we're starting to look at preservation and the work that our Fair Housing Division is doing on creating a database of properties and sort of wrapping our arms around what the preservation needs are.
I can't speak to the concerns regarding property conditions at 40 or 45 years because we haven't really researched that yet. Yes, absolutely properties will need if not two, at least one major rehab to get there.

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

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

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

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

Under our underwriting and loan policy rules, there's a requirement that the applicant must identify the cost of flood insurance for the buildings and for the tenants' contents within the 100-year flood plain and
certify that the flood insurance will be obtained. So that requirement is there, it's just in another part of our rule.

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

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

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

The various forms of mitigation previously allowed were challenging to review and could be seen as subjective. Local governments are better able to discern local conditions, can consider plans to revitalize or if
the area is gentrifying into account before adopting that resolution, along with any other information they may deem appropriate. Staff recommends no changes based on this comment.

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

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

Another commenter opposes the exemption from this risk factor for developments encumbered by a TDHCA LURA on the first day of the application period. They believe that if a development wants to secure additional
federal funding, it should be required to mitigate its being in the attendance zone of a failing school.

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

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

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

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

Three commenters request that the Department allow mitigation if the school is rated Improvement Required in 2018 and F in 2019 if the independent school district has an open enrollment policy or if there is a passing open enrollment charter school. In both instances,
the applicant would commit to providing transportation.

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

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

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

First, there is no correspondence between the attendance zone of a school which is generally a radius around the facility and a census tract. In the case of an elementary school, the radius may be very small, for high
schools it will be larger, but these measurements are not the same as census tracts.

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

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

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

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


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

MS. HOLLOWAY: Right. So if that change hadn't been made, it would have been the 400 schools.
MR. GOODWIN: Okay. Any comments?

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

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

MR. GOODWIN: Three minutes.

MS. LATSHA: Yes, yes.

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

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

It is true that volume cap, which has been undersubscribed for over a decade, is now oversubscribed.
It is true that there is competition for volume cap, but there are many different users of volume cap. This does not all go to housing and certainly not to multifamily housing, so to imply that the 4 percent tax credits work the same way as the 9 percent tax credits with every application undoubtedly having another worthy multifamily rental housing application behind it waiting in the wings is just not accurate.

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

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

You might recall, too, that right after these comments about the program in general were made, this Board approved an applicant's appeal related to schools, partly because that volume cap actually was going to be lost to the state.
I don't want to comment on the Board's decision on that particular appeal, because I know it was a difficult situation, but my point is this: We are assuredly in a robust market for 4 percent tax credit transactions, and we don't know how long that's going to last. We should embrace that and not look at it as a reason to deny or delay funding to these applications.

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

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

Thank you.

MR. GOODWIN: Any questions for Jean?
(No response.)

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

MR. PALMER: Good morning. Barry Palmer with
1 Coats Rose, and I'm here today on behalf of the Houston Housing Authority, and particularly about the rule not allowing mitigation for schools.

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

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

4 Under the rule that you currently have there are some carve-outs from the prohibition of going in where there are problem schools. There's a carve-out for elderly, for supportive housing, and there's a carve-out for a property that has an existing TDHCA LURA on it, so if
someone is coming in and wants to re-syndicate a tax credit deal, they're allowed to do that with 4 percent credits even if the school is non-performing.

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

MR. GOODWIN: Okay. Any questions for Barry?

(No response.)

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

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

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

MR. GOODWIN: Okay. But they would have the ability to apply, you'd determine them ineligible, they'd have the right to appeal, and next year's Board could make a determination to make an exception.
MS. HOLLOWAY: Yes. They could consider all the facts and circumstances and make that determination.

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

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

MR. GOODWIN: Thank you.

Any other questions for Marni?

(No response.)

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

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

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

But I have to tell you beyond that, we develop
throughout the state of Texas, mostly in urban areas, and so we see a lot of challenges with the fact that this particular rule pretty much eliminates that mitigation opportunity.

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

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

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

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

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

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

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

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

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

MS. GUERRERO: It could be a year later, but the rules could change at that point. And more importantly, we know that housing is a big factor, quality, safe housing is
a big factor in a child's education. So yes, in the future it could be eligible but we have to wait that year or two years to really see.

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

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

MR. WILKINSON: Thank you.

MR. GOODWIN: Any other comments? Any questions?

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

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

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

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

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

(No response.)

MR. GOODWIN: If not, we'll move on.
Marni, I think they're finished with comments on the neighborhood risk factors.

MS. HOLLOWAY: I have nothing further on that.

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

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

The packet undergoes the same review process as a full application with an opportunity to respond to any deficiencies. If staff determines the site is ineligible and issues a termination, the applicant first appeals to the executive director, at which time they should be
providing any missing information that would impact the
director's decision.

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

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

Staff recommends no changes based on these
comments.

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

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

Staff recommends no changes based on these
comments.
MR. GOODWIN: Okay.

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

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

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

So my suggestion would be if you're not wanting
to do it within the QAP, maybe you consider a rulemaking for all multifamily homes that makes it crystal clear to the developer community that this is the expected minimum thresholds.

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

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

I still think in terms of mandatory amenities and thresholds you might consider some strengthening those. I think we can put together a group and kind of work that through for 2021, but think about having sort of a minimum standard for all your multifamily programs.

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

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: Thank you.

MS. HOLLOWAY: Okay. Under energy and water efficiency features, there are several comments requesting
that items included in this menu be moved to threshold. Others have requested that specific items be added to the list such as rooftop solar systems.

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

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

Another commenter requests that language stating that 4 percent apps may not be reviewed during the 9 percent round be removed from our rule. So changes to Texas Government Code 1372 lengthened the time under the certificate of reservation that a 4 percent applicant has to close from 150 days to 180 days.
Under previous rules, applicants were effectively allowed 180 days to close under our rules by allowing the application to be submitted 30 days prior to the reservation.

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

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

MR. GOODWIN: Nobody moving behind you.

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

In response to other commenters, staff
understands the comments raised regarding the time frame of
the experience. We will propose that this be a topic for
discussion in preparation of the 2021 QAP and we have
changed the language in this item as a result of comment.

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

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

A secondary review of the original appraisal or
second appraisal is only required in a very limited set of
circumstances: that it's an identity of interest
transaction; it's financed with tax-exempt mortgage revenue
bonds, so that removes that 9 percent cycle concern; that
it currently has a project-based rental assistance or rent
restrictions that will remain; and the applicant is asking
that REA staff underwrite an as-is value that exceeds the
original acquisition price. So this is a very narrow set of circumstances under which that second appraisal would be required.

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

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

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

Appraisals are governed by a set of rules they have to adhere to, they're licensed professionals, and I think that we should be able to hang our hats on their reports that may stand by them. No appraiser will be able to look at a report and say it's sufficient or accurate, they're going to have to do their own. And so I'm just
asking that we don't have to add another very expensive third-party report and that we rely on the professional that we're already paying to do it.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: Marni.

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

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

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

The purpose of a developer fee is compensation for work actively performed in developer services which
wouldn't apply to acquisition of an existing development when the proposed owner already owns it. The proposed 5 percent developer fee allowed on the acquisition costs is sufficient to pay transactional costs in an identity of interest transaction, and staff recommends no changes based on these comments.

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

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

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

Staff believes it is reasonable to expect report providers to describe in detail the scope of work and capital needs of a proposed rehabilitation because this will allow the application to be underwritten more
accurately and we believe the proposed scope and cost
review guidelines provide sufficient direction for
providers to complete the review.

We recommend no changes based on these comments.

MR. GOODWIN: Any questions?

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

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

(General laughter.)

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

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

MS. BINGHAM ESCAREÑO: Actually, I would like to
move staff's recommendation with one addition, and
wondering if my fellow Board members would support. The
one on supportive housing and the vouchers and the point
that Mr. Vasquez made about that feasibility would still be
proved in underwriting, would it make sense to change that
to a minimum of 25 percent?

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

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

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

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

MS. BINGHAM ESCAREÑO: A minimum.

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

MR. ECCLES: Of all units.

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

MS. BINGHAM ESCAREÑO: Yes.

MS. HOLLOWAY: Okay. Certainly.

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

MR. GOODWIN: Okay. Any further discussion?
(No response.)

MR. GOODWIN: All those in favor say aye.
(A chorus of ayes.)

MR. GOODWIN: Opposed?
(No response.)

MR. GOODWIN: Thank you very much, Marni.

MS. HOLLOWAY: Thank you.

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

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

MR. GOODWIN: Hold on just a second.

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

MS. DULA: Oh, I'm sorry.

MR. GOODWIN: I'm not sure, Tamea. I want to make sure.
MR. ECCLES: I think that this is in reference to an agenda item, but it's not criticizing or commenting or something that's been voted on or would have been voted on.

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

MR. GOODWIN: Okay.

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

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

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

MR. GOODWIN: Point well made.
MS. DULA: Thank you.

MR. GOODWIN: Thank you.

Any other public comments?

(No response.)

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

MR. VASQUEZ: So moved.

MR. GOODWIN: Second?

MR. BRADEN: Second.

MR. GOODWIN: All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: We're adjourned.

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

MEETING OF: TDHCA Board

LOCATION: Austin, Texas

DATE: November 7, 2019

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

DATE: November 13, 2019

(Transcriber)

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